FINANSTILSYNET
THE FINANCIAL SUPERVISORY
AUTHORITY OF NORWAY

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OUR REFERENCE	YOUR REFERENCE	CONFIDENTIAL	DATE
22/4097			21.09.2023

Decision on violation penalty

1. Introduction

Reference is made to the letters from the Financial Supervisory Authority of Norway ("Finanstilsynet") dated 10 October 2022 and 15 February 2023, and to the replies from QVT Financial LP ("QVT") dated 28 October 2022 and 8 March 2023.

Based on an assessment of the facts in the case, Finanstilsynet has concluded that QVT violated the Norwegian Securities Trading Act ("NSTA") section 4-2 as the provision was phrased before 1 September 2022, when funds which are managed by QVT purchased 113 369 shares in Northern Drilling Ltd ("NODL") 17 March 2022 and then crossed over the 5 % threshold in NODL.

On this background, Finanstilsynet has decided to impose a violation penalty in the amount of NOK 100 000.

2. Legal basis

The rules on shareholders' obligation to disclose shares and voting rights are set out in NSTA chapter 4, which was amended with effect from 1 September 2022. According to Regulation of 27 June 2022 no. 1205 on transitional rules to the amendments to the NSTA, section 3, the rules which applied at the time the transaction took place shall be applied, unless the new rules adopted will lead to a more favorable result for the perpetrator. Finanstilsynet hereafter refers to the relevant provisions in the NSTA as they were phrased before 1 September 2022, unless otherwise stated.

Pursuant to the NSTA section 4-2, 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. A company is to be considered closely associated to another person or company with

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which it cooperates when it comes to the use of rights as an owner of a financial instrument, cf. NSTA section 2-5 nr. 5.

Different funds and/or investment companies which are managed 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.

According to the NSTA section 4-2 subsection 6, the notification to the regulated market is required to be made "immediately" after an agreement on acquisition or disposal has been entered into or the party concerned becomes aware of, or should have become aware of, any other circumstance causing the party concerned to reach or fall below a threshold as provided for in the NSTA section 4-2 subsection 1. According to Finanstilsynet's Guidelines regarding chapter 4 of the NSTA of 19 October 2021 ("*Veiledning til verdipapirhandelloven kapittel 4 – flaggeplikt*") paragraph 3.8, 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 a violation of the NSTA section 4-2, provided that both the objective and subjective criteria in the NSTA are met.

Regarding the subjective criteria, the NSTA section 21-9 subsection 2 refers to the Public Administration Act (PAA) section 46 subsection 1. At the time the transaction took place, a violation penalty could be imposed under the PAA section 46 regardless of whether negligence could be proven on the part of the offender. However, Finanstilsynet practiced the PAA section 46 in a manner that required the legal person in question to have acted with at least negligence. Therefore, a violation penalty could be imposed only if one or more person(s) acting on behalf of the company commits the violation negligently or willfully. The subjective requirement could 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.

3. Factual background

QVT crossed the 5 % threshold in NODL on 17 March 2022 when funds which are managed by QVT on 17 March 2022 purchased 113 369 shares in NODL and then crossed over the 5 % threshold in NODL. The transaction was notified to the market on 31 March 2022.

4. Statement of the discloser

In letter of 28 October 2022 QVT informs that it populates its internal security master with shares outstanding data from [redacted] Further, QVT's automated reconciliation tool compares the two sources of shares outstanding and alerts large variances for manual review.

In this instance, the erroneous data which led to missing the NSTA submission deadline, was NODL's shares outstanding. Both [redacted] were reporting shares outstanding that diverged significantly from the actual shares in issue by NODL at that time. QVT's compliance reporting programs believed that QVT's funds under management held approximately 1,25 % of NODL, rather than 5 %.

It is highly unusual, and unprecedented, that this happens to both vendors. QVT runs an additional monthly manual check of variances between the two data providers but cannot possibly manually review all of the tens of thousands of securities. QVT has created multiple automated and human processes to mitigate the risk of these types of errors and those processes have functioned and did function here properly, but unfortunately, a highly atypical set of third party data errors intervened.

On 31 March 2022 QVT became aware that it had missed the deadline because the investment professional who was executing the open order in NODL the same day realized that it appeared that QVT's total position in NODL exceeded 5 % and independently alerted QVT's compliance department to investigate.

In QVT's letter 8 March 2023, the company has further comments. QVT adds that both [redacted] are market leaders in the field of providing market data. This incident, although regrettable, should be looked at as a fortuitous accident.

QVT understands that the NFSA does not allege that QVT as such has acted negligently (i.e. that QVT neither reasonably could or should have acted differently). From a practical perspective, no further controls or systems can reasonably be expected from QVT.

There is no basis for identification with [redacted] Identification requires that the principle has the "*actual authority to instruct and control the contractor*", cf. Rt.1982 s. 645, Rt. 1998 s. 652 and Rt. 2010 s. 1608. QVT does not have the authority to instruct or control [redacted] If the third party has made errors and the primary entity is not to blame, the sanction should be "liability for contributory negligence (*Nw. medvirkningsansvar*)" directed at the third parties.

Under the previous version of the PAA section 46, there was no requirement to prove negligence, but the preparatory works stated that an exemption from sanctions should be made if the actions by the perpetrator were a result of fortuitous accident or force majeure. This matter is at the very core of the previous exemption from objective liability.

5. Finanstilsynet's assessment of whether a violation penalty shall be imposed and its size

Finanstilsynet finds that QVT notified the market too late when funds which are managed by QVT on 17 March 2022 purchased 113 369 shares in NODL and then crossed over the 5 % threshold in NODL. The transaction was notified to the market on 31 March 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 17 March 2022. For larger groups of companies which operate in different jurisdictions and time zones, Finanstilsynet has accepted that these companies shall be allowed a certain time to consolidate their data. However, the delay in this case exceeded the time which is necessary to consolidate data between jurisdictions and time zones.

On this background, Finanstilsynet finds that NSTA Section 4-2 was infringed.

In order to impose a violation penalty, one or more persons acting on behalf of QVT must have acted with at least negligence.

As explained by QVT, two third party service providers which delivered shares outstanding data to QVT reported incorrect outstanding shares of NODL to QVT. Due to this QVT's compliance reporting programs believed that the respective funds under management of QVT held approximately 1.25 % instead of 5 %. QVT's manual systems did not discover the error before the notification deadline had passed, and QVT was made aware of the error through an investment professional who was executing the open order in NODL.

QVT has alleged that they cannot be held responsible as they do not have the authority to instruct or control the third party data providers, with reference to Rt. 1982 s. 645, Rt. 1998 s. 652 and Rt. 2010 s. 1608. In Finanstilsynet's view, the judgements are not comparable to the present case. In the judgements, the question at hand was whether a principle could be held liable for breaches of law made by a contractor. In the present case, on the other hand, the contractors themselves did not breach the notification obligation or other provisions. Instead, they contributed to QVT *itself* breaching its obligations. Therefore, the authority to instruct or control the contractor is not a condition for imposing liability on QVT.

Instead, Finanstilsynet refers to Rt. 2002 s. 1312 where the Supreme Court stated that in the event that a brokerage firm had committed errors in its capacity as contractor, the principal would be responsible, as identification must be made (page 1319). In Finanstilsynet's view, the judgment entails that QVT will be identified with errors made by the third parties committed in their capacity as contractor for QVT.

Therefore, for the subjective criteria to be met, one or more persons acting on behalf of QVT and/or the third party market data providers must have acted negligently in relation to fulfilling the notification obligation.

Finanstilsynet finds that the negligence requirement has been met in this case.

Firstly, Finanstilsynet has noted QVT's statement that the company "understands that the NFSA does not allege that QVT as such has acted negligently (i.e. that QVT neither reasonably could or should have acted differently)." This is not accurate; Finanstilsynet finds that anonymous and/or cumulative errors were present, which includes – but is not limited to – errors made by QVT itself.

As a professional management company operating in the Norwegian securities market, QVT 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. QVT has a strong incentive to implement adequate measures to counteract the well-known risk of erroneous data, including systems that ensure that data received from third parties is correct in order to ensure timely compliance with the disclosure obligation.

Finanstilsynet accepts QVT's statement that it is not possible to manually monitor every single corporate action across all markets QVT is invested in, but due to the inherent risk of erroneous data, Finanstilsynet finds that a monthly check appears inadequate given that the notification obligation arises "immediately" after the transaction. The error that arose in this case is, in Finanstilsynet's opinion, an indication that persons acting on behalf of QVT could and should have ensured that better systems were in place.

The third party provider is also a professional company which is expected to be well aware of the abovementioned risk, and QVT cannot evade responsibility by relying on third parties in the fulfillment of certain tasks. On the basis of the information provided by QVT, Finanstilsynet considers that anonymous and cumulative errors were present on the part of the third party providers.

Finanstilsynet's assessment is thus that one or more persons acting on behalf of QVT – including the third parties – could and should have acted differently, and that anonymous and cumulative errors 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, 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 one or several persons of the two third parties have acted negligently.

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 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.

QVT has stated that the error committed does not justify any pecuniary sanctions, and refers to the preparatory works to the previous version of the PAA, which state that an exemption from sanctions should be done *"...if the actions by the perpetrator are a result of fortuitous accidents or force majeure. In these instances, the negligible preventive effects do not justify liability.*"[1]

Finanstilsynet notes that at the time the preparatory works were written, an objective liability applied, and the respective parts of the preparatory works refer to cases where the perpetrator has not acted with negligence. In Finanstilsynet's view, these statements are not relevant, as the subjective criteria is negligence in the current version of the PAA, and Finanstilsynet finds that QVT has acted with negligence.

In any event, there is an inherent, foreseeable risk that market providers provide the wrong data. The fact that QVT received erroneous data without noticing until after the notification deadline, indicates that QVT's internal systems are inadequate, not that there has been a fortuitous accident or force majeure.

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, other criteria specified in the NSTA section 21-14 may also 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 QVT. Finanstilsynet has in particular

[1] Prop 62 L (2015-2016) section 10.3.2 and Prop 96 LS (2018-2019) section 7.6.5.4

taken into consideration that one or several persons acting on behalf of QVT acted negligently, and that the violation of the disclosure obligations could have been prevented had QVT 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.

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 regarding violation penalty

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

Based on the facts listed above and with the legal basis under the NSTA sections 21-3, 21-9, PAA Section 46 and NSTA section 21-14, cf. the NSTA section 4-2, Finanstilsynet has decided to make the following decision regarding a violation penalty:

"QVT Financial LP is required to pay a violation penalty of NOK 100,000 (one hundred thousand Norwegian kroner) to the Norwegian Treasury."

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.

On behalf of Finanstilsynet

Thomas Borchgrevink
Head of Section

Eva Bech
Higher Executive Officer

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