



FINANSTILSYNET

THE FINANCIAL SUPERVISORY
AUTHORITY OF NORWAY

Canada Pension Plan Investment Board
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CANADA

OUR REFERENCE
23/13916

YOUR REFERENCE

DATE
29.04.2024

Decision regarding violation penalty

1. Introduction

Reference is made to the Financial Supervisory Authority of Norway's ("Finanstilsynet") letter regarding advance notification of violation penalty dated 14 March 2024 and its letter of 23 November 2023 and to the reply received from Canada Pension Plan Investment Board ("CPPIB") dated 5 April 2024 and 14 February 2024.

Finanstilsynet has concluded that CPPIB has violated the notification requirement under section 3-5 of the Norwegian Securities Trading Act ("NSTA") and article 5 cf. article 9 of Regulation (EU) No 236/2012 ("SSR"), by not notifying Finanstilsynet within the time limit set out in the SSR of the relevant net short positions listed in section 3 below.

Finanstilsynet has made an overall assessment of the circumstances in this matter and has therefore decided to impose a violation penalty of NOK 40 000.

2. Legal basis

The obligation to report net short positions is set out in the NSTA section 3-5 cf. the 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 applies 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.

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According to the SSR article 9, the relevant time for calculation of a net short position shall be at midnight at the end of the trading day, and the notification must be made to Finanstilsynet no later than at 15:30 CET on the following trading day, cf. article 9 subsection (2). The position holder is responsible for the notification of net short positions being correct and complete. A notification will not be considered to have been made before it is completed and/or any errors are corrected.

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

- 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.

According to the PAA section 46 subsection (2), attention may also be given to *inter alia* whether the enterprise could have prevented the offence through guidelines, instructions, training, controls or other measures.

3. Factual background

Finanstilsynet has registered that CPPIB has filed the following net short positions too late:

Issuer	Position	Position Date	Reported
SUBSEA 7	1,13%	30 June 2022	1 July 2022, 17:50 CET
NORDIC SEMICONDUCTOR	0,55%	20 June 2023	21 June 2023, 17:31 CET
CRAYON GROUP HOLDING	0,2%	2 November 2023	3 November 2023, 16:51 CET

4. CPPIB's statements

In its e-mail of 5 April 2024, CPPIB writes that CPPIB made the relevant filings on the dates required and "(...) within 2.5 hours of the relevant deadline, and further, that the underlying causes were of a technical nature that were quickly remediated. In light of these considerations, we do feel that we have substantively fulfilled our regulatory obligations and respectfully disagree with Finanstilsynet's finding of negligence. On that basis, we kindly request that this determination be reconsidered."

In its response of 14 February 2024 CPPIB said that the late filings were a result of "unique operational factors and uncommon situations". CPPIB is now receiving support from an external vendor supported system, FundApps.

In respect of the late filings for SUBSEA 7, CPPIB informed that they completed an internal reorganization of accounts and that the statutory holiday in Canada (July 1st is Canada Day) implied that the analysis and verification steps were delayed and resulted in the notification being approximately 2.5 hours late.

For the late filing for Nordic Semiconductor, CPPIB said that:

"The platform used to calculate firm-wide index exposure was delayed following a version update that required remediation and the process used to consume Financial Instruments Reference Database System ("FIRDS") data published by ESMA was briefly out of service, necessitating the restoration of network connectivity".

CPPIB explained that the disclosure followed an annual rebalance which required additional time for internal validation of an unusually large volume of net new short positions, including the Nordic Semiconductor position.

To mitigate impact going forward, CPPIB will receive earlier notice of rebalancing activities to manage the necessary validation activities. Efficiency gains using FundApps will also provide more time for validation.

CPPIB writes that – in relation to late filings relating to Crayon Group Holding – CPPIB identified on 3 November 2023 an issue with the holdings data received from their investment subledger. *"Following remediation of the issue, the holdings reporting process was re-run to reveal a disclosable change in our net short position in Crayon Group Holding; this occurred after the local Norwegian reporting deadline".*

CPPIB underlines that the company takes the regulatory compliance matters very seriously and regret the discrete issues that resulted in the late position notifications.

5. Finanstilsynet's assessment

5.1 Violation of the SSR

Finanstilsynet's assessment is that failure to notify Finanstilsynet within the time limit constitutes a violation of the reporting requirements under the NSTA section 3-5, cf. Articles 5 and 9 of the SSR. The net short positions were subject to the notification requirement set out in the SSR Article 5 and Article 9 subsection (2).

The net short positions listed under section 3 should have been reported to Finanstilsynet within 15:30 (CET) the following day on which the relevant position was taken. As acknowledged by CPPIB, the net short positions were therefore reported to Finanstilsynet too late:

- SUBSEA 7 was reported approx. 2 hours and 20 minutes too late;
- NORDIC SEMICONDUCTOR was reported approx. 2 hours too late; and
- CRAYON GROUP HOLDING was reported approx. 1 hour and 20 minutes too late.

In addition, the net short positions in SUBSEA 7 and NORDIC SEMICONDUCTOR were above the 0,5% threshold which means that Finanstilsynet is obliged to publish such net short positions in the Norwegian Short Sale Registry in accordance with the SSR Article 6. It follows from Finanstilsynets webpage that net short positions above 0,5% are published each business day at 15:30 CET. This means that the net short positions in NORDIC SEMICONDUCTOR were made public on 22 June 2023 at 15:30 CET and SUBSEA 7 was made public on 2 July 2023 at 15:30 CET. As such, the information to the market was – in effect - delayed for a longer period.

Finanstilsynet finds that the objective conditions under the NSTA section 21-2 subsection (1) for imposing a violation penalty on CPPIB 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 establishes in advance appropriate procedures and/or systems to proactively identify the notification obligation under the SSR and ensures that these procedures and/or systems are applied correctly and in accordance with the relevant local legislation.

Finanstilsynet has no reason to doubt CPPIB's statements, hereunder that the late notifications listed under section 3 are the result of the various reasons mentioned in CPPIB's letter. However, in Finanstilsynet's view, one or more persons acting on behalf of CPPIB, who is responsible within CPPIB that CPPIB's systems are correctly implemented in compliance with Norwegian law, has acted negligently, or that cumulative errors within CPPIB were present. This includes any errors made by a third party, such as FundApps which CPPIB has engaged to meet its legal reporting obligations.

Accordingly, Finanstilsynet finds that the subjective conditions under the NSTA section 21-2 cf. section 21-9 for imposing a violation penalty are met.

When assessing whether to make use of a violation penalty, Finanstilsynet has made a concrete assessment of the individual matters of the case in accordance with the NSTA section 21-2 cf. section 21-9, section 21-14 and the NPA Act section 46 subsection (2). Participants in the Norwegian securities market are expected to have established appropriate procedures and systems in order to proactively identify the notification obligation under the SSR.

Based on the above, Finanstilsynet's opinion is that a decision to impose a violation penalty regarding the abovementioned violations of the SSR, will not be disproportionate in this case.

The NSTA section 21-2 cf. section 21-9 and section 21-14 state 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 the 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 this case and has in particular taken into consideration that CPPIB is a legal person required and expected to have the necessary legal systems in place for timely calculating its positions.

Finanstilsynet does not find it as a mitigating circumstance that 1st July was a bank holiday in Canada in respect of the late filing for the net short position in SUBSEA 7. Finanstilsynet considers it however as a particularly aggravating circumstance that CPPIB was previously imposed a violation penalty by Finanstilsynet on 1 December 2021 for late filings of its net short positions. In 2021, CPPIB's main argument for the late filings were errors from technical systems which CPPIB operated with. Finanstilsynet would expect that CPPIB had corrected these technical errors, and that reporting would be made timely.

In the assessment of the size of the violation penalty, Finanstilsynet has paid particular attention to the length of the delays and the size of the positions subject to reporting requirements. Two of the positions were also required to be published in Finanstilsynet's Short Sale Registry which means that information to the market was further delayed.

In Finanstilsynet's view, a violation penalty in the amount of NOK 40,000 is nevertheless consistent with the level of previous penalties given by Finanstilsynet for similar violations of the SSR.

6. Decision regarding violation penalty

On the basis of the above, Finanstilsynet has decided to impose Canada Pension Plan Investment Board a violation penalty in the amount of NOK 40,000 for its violation of the NSTA section 3-5.

The legal basis is the NSTA section 21-2, 21-9 and 24-14, cf. SSR Articles 5, 6 and 9.

Please be informed that the decision 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 (NNCA). If the administrative decision is not appealed, the NNCA will send a claim for payment after the deadline for an appeal has expired. If the decision is appealed, the claim will be sent after the appeal has been decided by the Ministry of Finance. The NNCA'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 email 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.