



Scoggin Capital Management LP II
660 Madison Ave., 20th Fl.
New York, NY 10022
USA

OUR REFERENCE
13/9041

YOUR REFERENCE

DATE
27.06.2014

Decision of surrender of gain

1. Introduction

Reference is made to Scoggin Capital Management LP II's ("Scoggin") sale of shares in Northland Resources S.A. ("NAUR") and previous correspondence. Finanstilsynet gave notice of its preliminary decision of surrender of gain in letter of 4 June 2014. Scoggin has given its comments to the preliminary decision in letter of 18 June 2014.

In accordance with the Norwegian Securities Trading Act (the "NSTA") section 17-2, Finanstilsynet has decided to order Scoggin to surrender the gain obtained through the sale of 850,607 NAUR shares on 26 August 2013 in violation of the NSTA section 3-14.

The size of the gain to be surrendered amounts to **NOK 5.27 million**.

Finanstilsynet gave an account for the factual background and the legal basis for the surrender of gain in the preliminary decision. This is, in essence, the following:

2. The factual background

The holders of a new bond loan issued by NAUR were entitled to receive warrants representing new shares. According to the terms and conditions for the warrants issue, after receipt of an exercise notice, NAUR was under the obligation to allot and issue the warrants to the warrant holders *"on or prior to the last Business Day of the month in which the Notice of Exercise is received by the Issuer"*.

Scoggin delivered its exercise notice on 20 August 2013. On 26 August 2013 Scoggin sold a total number of 850,607 NAUR shares at an average price of NOK 33.823392 per share. Scoggin was obliged to deliver the shares T+3 on 29 August 2013, but failed to deliver before 30 August 2013.

3. Legal basis

The legal basis for the surrender of gain is the NSTA section 3-14 (*Sale of financial instruments not owned by the seller*) and section 17-2 (*Surrender of gain*).

Finanstilsynet finds that Scoggin did not have access to the named shares on 26 August 2013 and thus could not secure delivery (T+3) on the settlement date. Consequently Scoggin was in breach of the NSTA section 3-14 on the date the shares were sold. Furthermore Finanstilsynet finds that the other conditions for ordering the surrender of gain are fulfilled.

Based on the facts in this specific case, Finanstilsynet will for its further assessment consider that NAUR had a contractual obligation to deliver the shares before the last settlement in the VPO on 30 August 2013, and that the ability for NAUR to deliver the shares in accordance with its obligations, was not pending on the fulfilment of any uncertain factors. Consequently, Finanstilsynet finds a basis for concluding that Scoggin had access to the shares on 27 August 2013, and could have secured timely delivery on 30 August 2013.

Finanstilsynet has calculated the gain as the price difference between Scoggin's actual sales price on 26 August and an estimated hypothetical sales price for the same number of shares on 27 August 2013.

The daily volume weighted price ("VWAP") of the NAUR share over the three weeks from 12 August to 30 August 2013 was on average 2.6 % higher than the days closing price. Applying the same ratio on the alternative estimate for 27 August 2013, gives a VWAP for that day of NOK 27.62. Scoggin's sales price on 26 August of NOK 33.82 per share was approximately on the VWAP that day (NOK 33.68). Thus, Scoggin's alternative sales price on 27 August 2013 is estimated at NOK 27.62 (corresponding to the alternative VWAP that day). Based on this, Finanstilsynet has calculated the gain to be surrendered to NOK 5.27 million.

4. Scoggin's arguments

In the letter of 18 June 2014 Scoggin states that it has no comments to Finanstilsynet's presentation of the factual background or of Scoggin's arguments. According to the letter, the primary argument that no violation of the prohibition on uncovered short sale has taken place is maintained, but Finanstilsynet's assessment is noted and will not be challenged further. Given Finanstilsynet's conclusion that a violation has taken place, Scoggin has pointed out that any gain to be surrendered must be calculated on the basis of the difference in price between 26 August and 27 August 2013.

Scoggin argues that Finanstilsynet's assessment, when it comes to applying the average difference between the closing price and the VWAP over the three weeks from 12 August to 30 August 2013 of 2.6 % to establish the hypothetical alternative sales price on 27 August 2013 (resulting in an estimated sales price of NOK 27.62 per share), is somewhat arbitrary. Scoggin argues that the hypothetical sales price on 27 August 2013, should be established by applying the difference between the closing price and the VWAP on 26 August 2013, of 10.1 %, (resulting in an estimated sales price of NOK 29.62).

By applying the difference between the closing price and the VWAP on 26 August Scoggin has calculated the gain to be 3.56 million.

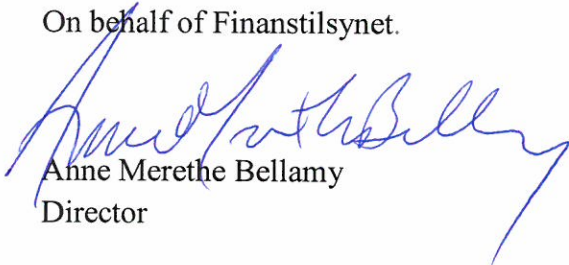
5. Finanstilsynet's assessment

As described under section 3 above, Finanstilsynet has made a discretionary calculation of Scoggin's gain based on a hypothetical share price on 27 August 2013. Finanstilsynet has noted Scoggin's arguments and acknowledges that there are alternative methods for calculating the gain. However, Scoggin's arguments regarding the calculation are not sufficiently weighty. Finanstilsynet therefore maintains its discretionary calculation of the gain.

6. Acceptance of the surrender of gain

Scoggin is asked to decide whether or not to accept the decision of surrender of gain and return the enclosed copy of this letter with the relevant signatures in the form below within 15 August 2014. If Finanstilsynet's decision is accepted, a new letter stating the time limit for the payment along with relevant payment information will be sent.

On behalf of Finanstilsynet.



Anne Merethe Bellamy
Director



Geir Holen
Head of section

Copy:

Advokatfirmaet Thommessen AS

Surrender of gain is **accepted**

Surrender of gain is **not accepted**

For Scoggin Capital Management LP II *

For Scoggin Capital Management LP II *

Name in block letters

Name in block letters

Date:

Date:

* Copy of certificate of incorporation or other document that states the authority to commit the company must be enclosed