



OUR REFERENCE
18/8988

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DATE
07.03.2019

DECISION REGARDING VIOLATION PENALTY

1 Introduction

Reference is made to previous correspondence regarding [REDACTED] [REDACTED] late notification of net short position in [REDACTED], including the advance notification from The Financial Supervisory Authority of Norway ("Finanstilsynet") dated 23 January 2019 and [REDACTED] response in the letter dated 18 September 2018.

Based on the information available, Finanstilsynet has concluded that [REDACTED] has violated the Norwegian Securities Trading Act ("NSTA") section 3-14, cf. Regulation (EU) No 236/2012 ("SSR") Article 5, cf. Article 9, by not notifying Finanstilsynet within the time limit laid down in the Regulation. The legal basis, factual background and Finanstilsynet's assessment of the case are set out below in sections 2, 3 and 5, respectively.

2 Legal basis

In accordance with NSTA section 3-14 subsection (1) the SSR, with such modifications as set out in the applicable annex IX to the EEA-agreement, applies as law in Norway.

A natural or legal person who has a net short position in relation to issued share capital of a company that has shares admitted to trading on a venue, with Finanstilsynet as competent authority, shall notify Finanstilsynet in accordance with SSR Article 9, cf. Article 5 subsection (1), where the position reaches or fall below a relevant notification threshold. A relevant notification threshold is a percentage that equals 0,2 % of the issued share capital and each 0,1% above that, cf. Article 5 subsection (3).

According to SSR Article 9, the relevant time for calculation of a net short position shall be at midnight at the end of the trading day. The notification of the net short position shall be made not later than at 15:30 CET on the following trading day.

The consolidated version of SSR is available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R0236-20140917&from=EN>.

The NSTA section 21-4 subsection (1) empowers Finanstilsynet to impose a violation charge for wilful or negligent violation of the obligation to notify Finanstilsynet about the net short positions in accordance with NSTA section 3-14, cf. SSR Article 5, cf. Article 9.

3 Factual background

██████████ crossed a relevant threshold on 19 March 2018 at 0,2% in ██████████. This position was reported on 22 March 2018 at 06:18 CET, one day too late.

4 ██████████ response

██████████ has in letter of 18 September 2018 explained that the late notification for the position on 19 March 2018 was due to a combination of data and system issues, including with an external data provider. ██████████ has also, cf. e-mail of 26 February 2019, acknowledged the late position and accepted the violation charge as notified by Finanstilsynet's in letter of 23 January 2019.

5 Finanstilsynet's assessment

5.1 Grounds for the violation penalty

Finanstilsynet has taken into account ██████████ statements in letter of 18 September 2018.

SSR requires the position holder to notify Finanstilsynet when the stated disclosure thresholds are crossed. In the present case, ██████████ crossed a relevant thresholds above 0,2 % in ██████████ thus triggering the disclosure obligation under NSTA section 3-14, cf. SSR.

An investor is expected to have put in place appropriate procedures and/or systems that will enable the investor to identify and satisfy its disclosure obligations in a timely and complete manner. Failure to meet this standard is considered negligent under relevant Norwegian legal principles.

Finanstilsynets's assessment is that the late reported position on 22 March 2018 constitutes a clear breach of the requirement under NSTA section 3-14, cf. SSR Regulation. Finanstilsynet finds that both the objective and subjective conditions for imposing a violation penalty on the discloser are met.

5.2 The size of the violation penalty

NSTA section 21-4 (5) 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.

The penalty is set at NOK 20,000. The amount is based on an overall evaluation of the breach, taking into account that Finanstilsynet consider the violation negligent. Finanstilsynet has also taken into account that late notification relates to position under the 0,5% threshold and therefore did not obstruct information to other market participants.

6 Finanstilsynet's decision

Based on the facts described above and pursuant to NSTA section 21-4 subsection (1), cf. SSR Regulation, Finanstilsynet has made the following decision regarding a violation charge:

██████████ is required to pay a violation charge of NOK 20 000 (twenty thousand Norwegian kroner) to the Norwegian Treasury.

Pursuant to section 28 of the Norwegian Public Administration Act, this administrative decision may be appealed to the Ministry of Finance. An appeal must be submitted within three weeks of the date on which notification of the administrative decision has reached the party concerned. The appeal must be sent to Finanstilsynet.

An invoice for payment of the violation penalty will be sent separately from the The Norwegian National Collection Agency.

On behalf of Finanstilsynet

Anne Merethe Bellamy
Director

Marte Voie Opland
Head of section

This document is electronically approved, and does not need a signature.