



Mirabella Financial Services LLP
11 Strand, London, WC2N 5HR, UK
WC2N 5HR
UNITED KINGDOM

VÅR REFERANSE
23/14368

DERES REFERANSE

DATO
12.09.2024

Decision regarding violation penalty

Reference is made to the Financial Supervisory Authority of Norway's ("Finanstilsynet") advanced notification on violation penalty in letter dated 6 August 2024, and the reply from Mirabella Financial Services LLP ("Mirabella ") dated 28 August 2024.

Based on an assessment of the facts in the case, Finanstilsynet has concluded that Mirabella violated the Norwegian Securities Trading Act ("NSTA") section 4-2, cf. section 4-4 subsection 1 no. 1, when funds managed by Mirabella on 31 October 2023 purchased 48,092,367 shares in Nordic Mining ASA ("NOM") and exceeded the 10 % disclosure threshold. The transaction in NOM was notified to the market on 29 November 2023.

On this background, Finanstilsynet has decided to impose a violation penalty in the amount of NOK 200 000.

1. Legal basis

Pursuant to the Norwegian Securities Trading Act ("NSTA") section 4-2, cf. section 4-7, a shareholder shall immediately notify the regulated market of a transaction which causes the shareholder's proportion of shares to reach, exceed or fall below 5 %, 10 %, 15 %, 20 %, 25 %, 1/3, 50 %, 2/3, or 90 % of the votes in a company whose shares are quoted on a regulated market.

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, follows from NSTA Section 4-4 subsection 1 no. 1. Under this provision Mirabella will have an obligation to notify the market if it 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. Finanstilsynet generally considers management companies to have entered into such an agreement with the funds of which assets are managed by the management company, cf. Guideline from Finanstilsynet to the Securities Trade Act (Veiledning til verdipapirhandeloven kapittel 4 flaggeplikt) chapter 4 page 16.

The NSTA section 4-2, cf. section 4-4 subsection 1 no. 1 applies to shares admitted to trading on a regulated market of an issuer having Norway as its home state.

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, cf. section 4-4 subsection 1 no. 1.

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. According to PAA section 46, the legal person in question must 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.

In 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 losses 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 Public Administration Act Section 46 subsection 2;
9. other relevant arguments.

2. Factual background

Mirabella crossed the 10% threshold in NOM on 31 October 2023, when funds managed by Mirabella purchased 48,092,367 shares in NOM. The transaction was not notified to the market until 29 November 2023.

3. Statement of the discloser

In a letter dated 4 March 2024, Mirabella, accepts the factual basis as described by Finanstilsynet. Mirabella has however explained that the late notification was due to technical errors. Mirabella has used a third-party data provider to meet its regulatory disclosure obligations for major holdings within its discretionary managed portfolios. Unfortunately, due to omitted critical data points in the reports from these providers, Mirabella experienced a technical issue that prevented timely identification of threshold breaches, resulting in delayed disclosures.

Mirabella conducts regular audits on the data integrity from these providers and has implemented additional internal controls to prevent future data omissions and ensure compliance with regulatory requirements. Following the discovery of the oversight during a routine check, Mirabella has

enhanced its detection systems to better identify reportable positions and address gaps in market data, thereby minimizing the risk of future technical breaks and ensuring more timely regulatory disclosures.

In the email dated 28 August 2024, Mirabella acknowledges receipt of Finanstilsynet's notice regarding the fine. Mirabella will ensure prompt settlement and are reviewing our processes to prevent future issues.

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

Finanstilsynet finds that Mirabella notified the market too late when funds which are managed by Mirabella on 31 October 2023 purchased 48,092,367 shares in NOM which resulted in the crossing of the 10 % threshold in NOM. The transaction was notified to the market on 29 November 2023.

According to the NSTA section 4-7, the notification to the Oslo Stock Exchange should have been made "immediately" after the transaction was completed on 31 October 2023.

On this background, Finanstilsynet finds that NSTA section 4-2, cf. section 4-4 subsection 1 no. 1 was infringed.

As a professional management company operating in the Norwegian securities market, Mirabella 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. The risk of erroneous data is always present, and the providers have a strong incentive to implement adequate measures to counteract this risk.

Finanstilsynet has noted Mirabella's submission that the breaches regarding NOM were caused by an error made by their third-party provider of market data. Finanstilsynet does not consider this as decisive in its overall assessment. Mirabella is identified with third parties to which it has outsourced tasks related to support of its trading activities and other business areas. This also follows from the supreme court decision Rt. 2002 s. 1312 on page 1319. Any errors conducted by third parties will therefore be considered as conducted by Mirabella itself. The third-party provider is a professional company which is expected to be well aware of the abovementioned risk. The third-party provider is therefore considered negligent when providing incorrect data to Mirabella. Under the NSTA, both anonymous and cumulative errors are sufficient in order for a company to be considered as negligent.

Finanstilsynet thus 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 overall assessment of the case in accordance with the NSTA section 21-14. Finanstilsynet has taken into consideration that one or several persons of the company and a third party have acted negligently.

The rules on disclosure obligations under the NSTA section 4-2, cf. section 4-4 subsection 1 no. 1 are meant to ensure 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 in ownership of a company listed on a regulated market can significantly influence the price of the issuer's shares in the market, as they may indicate that someone has, or no longer has, a strategic interest in the issuing company. For this reason, it is crucial that the market receives this information as soon as possible. Compliance with disclosure rules is essential to ensure that relevant information about significant changes in ownership at listed companies is disclosed to the market. This information enables investors to make well-considered investment decisions, which in turn is important to maintain confidence in the market.

Finanstilsynet has in several previous cases, imposed fines in the amount of up to NOK 150,000 on companies that have failed to disclose timely and correctly major shareholdings exceeding the 10% ownership threshold. In such cases the delay has been 1-2 business days. In the present case, the delay is one month. In Finanstilsynet's opinion, this is considered as a long delay. Finanstilsynet also considers it as an aggravating circumstance that Mirabella was previously imposed a violation penalty in Finanstilsynet's decision of 11 May 2022 for failing to meet its disclosure obligations under the NSTA section 4-2.

Finanstilsynet's assessment is therefore that a violation penalty of NOK 200,000 should be imposed and is not considered as a disproportionate.

Finanstilsynet refers to NSTA section 21-14 which states that when assessing the size of a violation penalty, importance shall be attached to the gravity and the length of the breach, as well as the degree of guilt found. Other criteria specified in the NSTA section 21-14 may also be considered 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 Mirabella. Finanstilsynet has particularly noted that one or several persons acting on behalf of Mirabella acted negligently, and that the violation of the disclosure obligations could have been prevented if Mirabella had 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.

5. Decision regarding violation penalty

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, cf. section 4-4 subsection 1 no. 1, Finanstilsynet has decided to make the following decision regarding a violation penalty:

" Mirabella Financial Services LLP is required to pay a violation penalty of NOK 200,000 (two 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

Anne Merethe Bellamy
Deputy Director General

Thomas Borchgrevink
Head of Section

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