



FINANSTILSYNET
THE FINANCIAL SUPERVISORY
AUTHORITY OF NORWAY

Cazadores Investments Limited
Lansdowne House
57 Berkeley Square
London W1J 6ER
UNITED KINGDOM

OUR REFERENCE
22/13035

YOUR REFERENCE

DATE
11.09.2023

Dear Sir,

Decision on violation penalty

Reference is made to the Advance notification of violation penalty dated 28 June 2023 from The Financial Supervisory Authority of Norway ("Finanstilsynet"), letter from Cazadores Investments Limited ("Cazadores") on 15 August 2023 and other correspondence.

The case concerns Cazadores' sale of shares in Flyr AS ("Flyr") (ISIN NO0010931900) in November 2022.

Based on the information available, Finanstilsynet finds that Cazadores violated the Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps ("SSR"), cf. Section 3-5 of the Norwegian Securities Trading Act ("NSTA").

Against this background Finanstilsynet has decided to impose a violation penalty of NOK 2 000 000, cf. Sections 21-2 and 21-9 of NSTA.

1. Legal basis

SSR applies to financial instruments admitted to trading on a multilateral trading facility ("MHF") where Finanstilsynet is the *"relevant competent authority"*, cf. SSR Article 2 No 1 j). At the time Cazadores' sale of shares in Flyr took place, the shares in Flyr were admitted to trading on Euronext Growth (Oslo). SSR is thus applicable.

Article 2 paragraph 1 (b) of SSR defines "short sale" in relation to a share as *"any sale of the share which the seller does not own at the time of entering into the agreement to sell including such a sale where at the time of entering into the agreement to sell the seller has borrowed or agreed to borrow the share [...] for delivery at settlement, not including:*

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- (i) *a sale by either party under a repurchase agreement where one party has agreed to sell the other a security at a specified price with a commitment from the other party to sell the security back at a later date at another specified price;*
- (ii) *a transfer of securities under a securities lending agreement; or*
- (iii) *entry into a futures contract or other derivative contract where it is agreed to sell securities at a specified price at a future date."*

According to Article 5 of SSR, any 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 trading venue and for which Finanstilsynet is the relevant competent authority, shall in accordance with Article 9, notify Finanstilsynet of certain net short positions. The notification obligation applies if the position holder has a relevant net short position that reaches, exceeds or falls below a certain threshold (which at time of the short selling was 0,2% of the issued share capital and each 0,1% above that). The notification shall be made by filing the positions in the Norwegian Short Sale register. According to Article 9 of the SSR, the relevant time for calculation of a net short position is midnight at the end of the trading day that the position was established or changed. The notification of the net short position shall be made not later than at 15:30 CET on the following trading day.

Article 12 of SSR sets out restrictions on the uncovered short sale of shares. Article 12 no 1 reads as follows:

"A natural or legal person may enter into a short sale of a share admitted to trading on a trading venue only where one of the following conditions is fulfilled:

- a) the natural or legal person has borrowed the share or has made alternative provisions resulting in a similar legal effect;*
- b) the natural or legal person has entered into an agreement to borrow the share or has another absolutely enforceable claim under contract or property law to be transferred ownership of a corresponding number of securities of the same class so that settlement can be effected when it is due;*
- c) the natural or legal person has an arrangement with a third party under which that third party has confirmed that the share has been located and has taken measures vis-à-vis third parties necessary for the natural or legal person to have a reasonable expectation that settlement can be effected when it is due".*

Pursuant to Section 21-2, cf. Section 21-5 third and fifth paragraphs of NSTA, Finanstilsynet may, in the event of a violation of rules in the SSR on uncovered short sales, impose a violation penalty on legal entities of up to NOK 43 million, or up to 10 per cent of the total annual turnover according to the last approved annual accounts. The violation penalty can be set at twice the profit achieved or loss avoided, if this results in a higher penalty.

The conditions for imposing a violation penalty are set out in Section 21-9 of NSTA. For legal entities, reference is made to the second paragraph of Section 46, first paragraph of the Public Administration

Act. It appears in that provision that when it is laid down in law that an administrative sanction can be imposed on a legal entity, the culpability requirement is negligence unless otherwise determined. This means that a violation penalty may be imposed if a person acting on behalf of the legal entity commits the violation negligently. The culpability requirement can also be met through anonymous or cumulative fault.

It follows from Section 21-14 of NSTA that when deciding whether an administrative sanction is to be imposed and in the assessment of the penalty, a number of factors may be taken into account:

1. the gravity and duration of the violation,
2. the degree of culpability of the violator,
3. the violator's financial capability, in particular overall turnover or annual income and assets,
4. profit gained or losses avoided,
5. loss inflicted on any third party as a result of the violation,
6. willingness to cooperate with the authorities,
7. previous violations,
8. conditions as mentioned in the Public Administration Act section 46 second subsection,
9. other relevant factors.

The factors in section 21-14 are supplemented by partly overlapping factors in section 46 second subsection of the Public Administration Act, which apply to sanctions against legal entities. A factor that appears in section 46, second paragraph, is whether the legal entity could have prevented the violation by means of guidelines, instructions, training, control or other measures.

2. Background

2.1 The private placement in Flyr

After a period of significant financial challenges, Flyr carried out a capital raise in the autumn of 2022. The company received new share capital through a private placement where selected investors were given the opportunity to subscribe for new shares in the company.

In a stock exchange announcement published on 10 November 2022 at 8:44 PM (CET) the company informed that through the private placement it had raised NOK 250 million by issuing 25 billion shares with a subscription price of NOK 0.01. The private placement was subject to approval by an extraordinary general meeting, which was to be held on 16 November 2022.

The stock exchange announcement stated, *inter alia*, the following:

"First day of trading of the New Shares is expected to be on or about 17 November 2022, but not before the capital increase pertaining to the New Shares has been registered with the Norwegian Register of Business Enterprises ("the NRBE").

Settlement of the New Shares is expected to take place on a delivery versus payment (DVP) basis on or about 21 November 2022. DVP settlement of the New Shares is expected to be facilitated by a

prepayment agreement between the Company and the Managers, however, the allocated New Shares will not be delivered to the relevant applicant before the registration of the capital increase pertaining to the New Shares with the NRBE has taken place. The New Shares allocated to investors will be tradeable on Euronext Growth Oslo following a stock exchange announcement by the Company announcing the registration of the share capital increase pertaining to the New Shares in the NRBE”.

In a stock exchange announcement of 16 November 2022 at 12:17:16 PM (CET), Flyr disclosed that the company's extraordinary general meeting had approved the capital increase. In a stock exchange announcement of 17 November 2022 at 10:01:27 AM (CET), Flyr announced that the new share capital had been registered in the Register of Business Enterprises.

Finanstilsynet's investigations show that, prior to the registration of the increased share capital on 17 November, 1,2 billion shares in Flyr were sold. At this time, the share capital in the company amounted to 633,019,667 shares, in other words only about half of the number of shares traded that day.

2.2 Cazadores' sale of shares

Cazadores has confirmed the allocation of 224 703 576 shares in the private placement.

Furthermore, Cazadores has attached a trade confirmation from [REDACTED] of the sale of 33 127 377 shares in Flyr on 16 November 2022.

With regard to sales made on 17 November 2022, Cazadores has attached a confirmation of sale of 191 576 199 shares from [REDACTED]. The confirmation was received at 15:36 (CET) with no visibility for Cazadores as to the exact times such trades were completed.

Finanstilsynet has identified sales orders placed by [REDACTED] and executed by [REDACTED] on Cazadores' behalf. On the basis of information provided by [REDACTED] Finanstilsynet has concluded that 54 034 355 shares were sold before 10:00 (CET) on 17 November.

Accordingly, the total number of shares sold before the publication of the stock exchange announcement about the capital increase was published (November 17 at 10:01 CET) amounts to 87 161 732.

Finanstilsynet has received no information indicating that Cazadores owned shares in Flyr at the time of the sale.

After the publication of the stock exchange announcement on 17 November about the registration of the capital increase, the price of the share fell significantly. Cazadores made a profit compared to those investors who waited to sell the shares until the capital increase had been registered.

Finanstilsynet has calculated Cazadores' profit by taking as a starting point the price observed in the market after the stock exchange announcement about the capital increase was published, which is compared with the sale price achieved by Cazadores. The volume-weighted average price (VWAP) has been used to calculate a price estimate for the trade after the announcement of the capital increase was made public. The VWAP is calculated at 0.00940. VWAP has also been calculated on the short sales that Cazadores carried out. The difference between these is multiplied by the number of shares sold to calculate the profit.

Based on the calculation method mentioned above, Finanstilsynet estimates that Cazadores obtained the following profit by selling the shares before they were registered in the Register of Business Enterprises (in NOK):

Investor	Number of shares	VWAP before announcement	VWAP after announcement	Estimated profit
Cazadores	87 161 732	0,02047	0.00940	965 296

As set out below, Cazadores considers Finanstilsynet's calculations of the profit as incorrect.

3. Cazadores' comments

3.1 Comments in letter dated 10 May 2023

In its letter dated 10 May 2023, Cazadores informs that the sales were made under a discretionary client mandate, without any involvement from the client in either buy or sell orders. Cazadores is a limited liability company registered in England and Wales, authorised and regulated by the UK FCA as an investment manager since 2016. Cazadores does not deal with retail clients and is fixed income focused. It is a small, emerging manager with 3 portfolio managers, two in fixed income and one in equities. The equity portfolio manager comes from a UK equities background, is new to the buy side and has been with the firm for around 1 year. It has limited experience with shares listed in the Nordic countries, with number of transactions circa 30 in the past 12 months, out of 5000+ transactions in total, or 0.6% of trading volume.

Cazadores does not consider the sales on 16 November 2022 as uncovered. Firstly, Cazadores refers to article 12 no. 1(b) of SSR, pursuant to which a short sale is considered covered if the seller has an absolutely enforceable claim to be transferred ownership of a corresponding number of securities of the same class so that settlement can be effected when it is due, which will be the case if the seller either:

(A) has a claim or agreement which cover at least the number of shares to be sold short, entered into prior to or at the same time as the short sale, and specifying a delivery or an execution date that ensures settlement can be effected when due, cf. article 5(1)(f) of Regulation (EU) No 827/2012 (the "Commission Regulation"); and/or

(B) has an agreement relating to subscription rights where the seller is in possession of rights to subscribe for new shares of the same issuer and of the same class and covering at least the number of

shares proposed to be sold short provided that the seller is entitled to receive the shares on or before settlement of the short sale, cf. article 5(1)(e) of the Commission. As confirmed by ESMA in Q10.6 of its Q&A, claims to unissued shares may cover a short sale if the availability of the new shares for settlement by the arrangement is ensured when settlement is due.

Secondly, Cazadores makes a reference to article 12 no. 1(c) of the Short Selling Regulation, pursuant to which a short sale is considered covered if the seller has an arrangement with a third party under which that third party has confirmed that the share has been located and has taken measures vis-à-vis third parties necessary for the seller to have a reasonable expectation that settlement can be effected when it is due, which will be the case if the seller has, which will be the case if the seller has received a confirmation provided by the third party, prior to the short sale being entered into by the seller, that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions and which indicates the period for which the share is located, cf. article 6(2)(a) of the Commission Regulation.

It is Cazadores view that each of the above mentioned legal provisions makes the sales done prior to 10:01 (CET) on 17 November 2022 covered within the meaning of article 12 of the SSR as the combination of the allocation letter and the announcement made on 16 November 2022 regarding the resolution by the Extraordinary General Meeting to issue the shares presented Cazadores with both (i) an enforceable claim to be transferred ownership of 224,703,576 shares before settlement of the sales entered into prior to 10:01 (CET) on 17 November 2022 and (ii) an arrangement in place under which Cazadores has received a confirmation giving Cazadores a reasonable expectation that settlement can be effected before settlement of the sales entered into prior to 10:01 (CET) on 17 November 2022.

If Finanstilsynet does not agree with the above, Cazadores would like to point out that there was no intent to short sell uncovered. This can be evidenced by stock borrow requests for FLYR shares, sent multiple days before the EGM, when Cazadores was trying to obtain stock borrow and then make a covered short sale. When no stock borrow was available, no trades were made. Only once the Extraordinary General Meeting had passed and was announced, did Cazadores sell any shares as the sales were then believed to be covered as described above.

Furthermore, Cazadores takes the view that there were no net short positions to be reported. As the sales were done after the announcement by Flyr regarding the issuance of the new shares on 16 November 2022, Cazadores was of the view that the share capital, including the shares resolved to be issued by the EGM of FLYR and as announced on 16 November 2022 was to be taken into consideration when calculating the net short position of Cazadores. It was therefore Cazadores view that the net short position when selling 33,127,377 on 16 November 2022 was approximately 0.129% and that Cazadores therefore had no net short positions to be reported. The confirmation of the sale of 191,576,199 shares on 17 November 2022 was received at 15:36 (CET), with no visibility for Cazadores as to the exact times such trades were completed. This was after the announcement was made on 17 November 2022 at 10:01 (CET), and Cazadores consequently had no net short position due to these shares.

Following the request from Finanstilsynet, Cazadores has learned that the share capital was not automatically increased on 16 November 2022 and that the net short position of Cazadores when selling 33,127,377 on 16 November 2022 was approximately 5.23% of the share capital of 633,019,667 shares at that date. Cazadores very much regret that no notification was made to the Norwegian Short Sale register. Appropriate updates to the internal policies and procedures of Cazadores have been made to ensure no such non-compliance will occur in the future.

3.2 Comments in letter dated 15 August 2023

In the comments to Finanstilsynet's Advance notification of violation penalty, Cazadores does not agree with Finanstilsynet's preliminary opinion that Cazadores violated the prohibition against uncovered short selling. In case Finanstilsynet maintains its preliminary opinion set out in the Advance notification, Cazadores is of the view that the proposed violation penalty of NOK 2 million must be significantly reduced as it is not in accordance with Sections 21-2 and 21-9 of the NSTA.

Cazadores states the following:

"Cazadores is very much aware that Finanstilsynet may, in the event of a violation of rules in the SSR on uncovered short sales, impose a violation penalty on legal entities of up to NOK 43 million, or up to 10 per cent of the total annual turnover according to the last approved annual accounts, alternatively, that the violation penalty can be set at twice the profit achieved or loss avoided, if this results in a higher penalty.

By proposing a violation penalty of NOK 2,000,000 Cazadores is, however, of the strong opinion that (i) Finanstilsynet has wrongfully categorised the alleged violation as gross negligence, (ii) Finanstilsynet has not taken into consideration the rather limited annual turnover of Cazadores, (iii) Finanstilsynet calculates the profit from the transactions incorrectly as only estimates are used and (iv) Finanstilsynet has not assessed and emphasized the various factors in Section 21-14 of the Norwegian Securities Trading Act in a correct manner, resulting in a disproportionate high penalty fine".

Cazadores does not agree that the conduct deviates significantly from the normal prudent course of action for a professional investor in the securities market, and that such behaviour constitutes gross negligence. As explained in the letter dated 10 May 2023, Cazadores had absolutely no intent to short sell uncovered. Cazadores states the following:

"It's very surprising for Cazadores that Finanstilsynet categorises an alleged first-time offender, with limited experience with shares in the Nordics, as showing gross negligence when it has presented evidence that it in no way intended to even be close to non-compliance with Finanstilsynets interpretation of the SSR. This is also supported by the fact that that at least six other investors have already been fined by Finanstilsynet for the same conduct, evidencing that such interpretation is not

unique enough to deviate significantly from the course of other investors. It's Cazadores' clear view that Finanstilsynet should reserve such categorisation for the conducts of more severe conduct.

Cazadores urge Finanstilsynet to reconsider and, at least, categorize Cazadores' conduct as simple negligence, not gross negligence".

Furthermore, Cazadores considers that any violation penalty should be reduced to reflect Cazadores' limited turnover. Cazadores states in this regard:

"In the Advance Notification, Finanstilsynet emphasizes Cazadores' considerable financial strength when proposing a violation penalty of NOK 2,000,000. The financial strength is, according to Finanstilsynet, evidenced by the fact that Cazadores was approached in the private placement as well as the number of allocated shares.

This is not an appropriate categorisation as Cazadores is a small, emerging manager with only 3 portfolio managers, with only one in equities. The turnover of Cazadores was only GBP 513,002 or NOK 6.7 million in the approved annual accounts for 2022 (...).

Pursuant to Section 21-5(3), cf. Section 21-2, of the Norwegian Securities Trading Act, a fine pursuant to the alternative of up to 10 per cent. of the total annual turnover would consequently lead to a fine of up to approx. NOK 670,000, which is significantly lower than the fine proposed by Finanstilsynet".

Cazadores considers that Finanstilsynet's calculations of the profit is incorrect and states:

"We note that Finanstilsynet are only estimating the profit of Cazadores, by using VWAP calculations. While Finanstilsynets calculation is based on 87,161,732 shares and a VWAP of 0.02047, the actual blended price of trades made by Cazadores was 0.018920599 which gives a gross profit of NOK 830,224".

Furthermore, Cazadores refers to Finanstilsynet's conclusion that 54 034 355 shares were sold before 10:00 on 17 November.

"This means that of the total number of shares sold by ████████ of 191,576,199 needs to be adjusted to reflect the fact that 137,541,844 of these shares were sold after 10:00 (CET) on 17 November and therefore should not be included in the calculation.

(...)

The actual total gross profit for the sales done prior to 10:01 (CET) on 17 November 2022 was NOK 772,456, which is lower than the estimated NOK 965,296 by Finanstilsynet in their letter.

Pursuant to Section 21-5(5), cf. Section 21-2, of the Norwegian Securities Trading Act, a fine pursuant to the capped alternative of two times profit would consequently lead to a fine of up to approx. NOK 1,544,912, which is significantly lower than the fine proposed by Finanstilsynet".

Cazadores has argued that the factors to be taken into consideration when assessing the size of the penalty indicates a much lower penalty. Cazadores states in this regard:

"As shown above, the fine should be limited to no more than NOK 670,000 when considering the turnover of Cazadores and no more than NOK 1,544,912 when considering the profit made by Cazadores. This is obviously quite disproportionate and different from the proposed fine of NOK 2,000,000, especially taking into consideration that Cazadores is a small manager with only one portfolio manager in equities and with a turnover of no more than NOK 6.7 million in 2022.

A significant reduction in the violation penalty is also supported by the fact that each of the factors in Section 21-14 of the Norwegian Securities Trading Act indicates a penalty in the lower end of the range, if any. We have addressed each of these factors below:

- ***The gravity and duration of the alleged violation*** is minimal, noting that the duration of the alleged violation was no more than 1 day, and as evidenced by the stock borrow requests for FLYR shares, sent multiple days before the EGM, Cazadores did not trade until the EGM was announced and gave Cazadores a strong reason to believe that any subsequent sales were covered.
- ***The degree of culpability*** is no more than negligence, at most (...)
- ***The violator's financial capability*** indicates a penalty in the lower end, if any. Reference is made to section 2.3 above.
- ***Profit gained*** is also limited to NOK 772,456, which must be seen as a rather modest profit. (...)
- ***Loss inflicted on any third party*** is highly uncertain and close to impossible to calculate, and therefore also not a factor permitted to emphasize in the assessment, as it's impossible to predict the various counterparties' reason and intention with their transactions.
- ***Willingness to cooperate with the authorities*** must be a factor in Cazadores' favour, noting that Cazadores has provided all the information requested by Finanstilsynet in a timely and proper manner, regardless of the difference of opinion regarding the interpretation of the Short Selling Regulation.
- ***Previous violations*** must also be a factor in Cazadores' favour as this is a first time offence, in any jurisdiction.
- ***Conditions as mentioned in the Public Administration Act section 46 second subsection***, most notably whether the legal entity could have prevented the violation by means of guidelines, instructions, training, control or other measures, must be assessed as neutral at most. Cazadores did have procedures in place to ensure compliance with the Short Selling Regulation, but, unfortunately not procedures complying with the interpretation provided by Finanstilsynet in the Advance

Notification. However, Cazadores has updated its internal procedures and training program to ensure no similar situations will occur in the future, in Norway or elsewhere."

4.Finanstilsynet's assessment

4.1 Calculation of the profit

With regard to the calculation of the profit from the transactions, Cazadores has stated that the profit, as a starting point, should be calculated on the basis of the "*actual blended price of trades made by Cazadores*" (0.018920599) instead of the VWAP of 0.02047. According to Cazadores, this would give a gross profit of NOK 830 224 (instead of NOK 965 296).

Firstly, Finanstilsynet understands that Cazadores does not seem to allege that the volume of the uncovered short selling is incorrect. For the sake of completeness, information about the number of shares sold before 10:01 on 17 November (54 034 355) has been provided by [REDACTED] which executed sales orders placed by [REDACTED] on behalf of Cazadores. The information provided by [REDACTED] seems to be consistent with transaction data reported to Finanstilsynet by investment firms in accordance with the transaction reporting provisions in Article 26 of MiFIR. It is Finanstilsynet's understanding that Cazadores has received documentation of the total number of shares sold, however with no visibility for Cazadores as to the exact times such trades were completed. Thus, Finanstilsynet maintains that the volume of the uncovered short selling on 17 November is 54 034 355 shares.

As regards the VWAP which is the basis for Finanstilsynet's calculation of the profit, it should be noted that has been calculated on the short sales that Cazadores carried out on 16 and 17 November, multiplied by the number of shares. To Finanstilsynet, the basis for the "*actual blended price of trades...*" of 0.018920599 referred to by Cazadores is it not clear. As Cazadores has not explained the assumptions for the calculation, Finanstilsynet cannot see that there is any basis for adjusting the profit calculation. Furthermore, it seems that Cazadores' calculation is based on sales of 191 576 199 shares on 17 November. As set out above, the calculation has only taken into consideration the shares sold before 10:01 (54 035 355) on 17 November, as well as 33 127 377 shares sold on 16 November.

Cazadores has stated that the calculation of the profit needs to be adjusted to reflect the fact that of the shares sold on 17 November, 137 541 844 of these shares were sold after 10:00 on 17 November and should therefore not be included in the calculation, which would result in a profit of NOK 772 456. However, as explained above, Finanstilsynet's profit calculation has only taken into consideration the shares sold before 10:01 (54 035 355) on 17 November.

Finanstilsynet's conclusion is that the profit calculation is maintained at NOK 965 296.

4.2 The conditions for imposing a violation penalty

The objective conditions

Uncovered shortselling

According to SSR Article 12 no 1, a natural or legal person may carry out a short sale of a share that is listed on a trading venue if the conditions in points a) to c) is fulfilled. If any of the conditions are not met, the short sale is prohibited.

Initially, a decision must be made as to whether there was a short sale.

As mentioned above, in Article 2 no. 1 b) of SSR "*short sale*" is defined as any sale of a share which the seller does not "*own*" at the time the sale agreement is entered into.

When assessing whether there is a short sale, it is necessary to identify the point in time when the seller "*owns*" the shares. Sales made prior to this stage are considered short sales.

The time when the investor becomes the "*owner*" of the shares is not regulated in the SSR. It follows from Commission Delegated Regulation No. 918/2012, cf. the Norwegian Securities Trading Regulations Section 3-7, that this would be subject to national law.

Finanstilsynet considers that the term "*owner*" must be interpreted on the basis of the purpose of the provision. The assessment in connection with new issues will be that the shares "*exist*", i.e. that they are registered in the Register of Business Enterprises, and that there is sufficient evidence that the share ownership is such that rights can be exercised and that timely delivery can take place.

Various circumstances may indicate that an investor becomes "*owner*" of the shares at a later time than the time of registration. Finanstilsynet cannot see that there are any such circumstances in this case.

Finanstilsynet therefore considers that Cazadores became "*owner*" of the new shares when the capital increase was registered in the Register of Business Enterprises, i.e. immediately prior to the publication of the stock exchange announcement on 17 November at 10:01 AM.

Sales of new shares in Flyr made before this point in time must therefore be regarded as short selling.

Cazadores does not consider the short sales to be uncovered.

Finanstilsynet's starting point in the assessment, is that the regular settlement for shares traded on Euronext Growth Oslo is T+2. The question is whether Cazadores had sufficient security for T+2 delivery of the shares that were sold.

As mentioned above, Flyr had informed the market that they "*expected*" the first day of trading of the new shares "*on or about*" 17 November with "*expected*" settlement on 21 November, however conditional upon registration of the new shares were registered in the Register of Business Enterprises. In Finanstilsynet's assessment, it seems clear that Flyr had not legally committed themselves to deliver the new shares on 17 November.

Accordingly, before the registration of the new share capital on 10:01 CET on 17 November, the information provided to the market and to the investors did not provide sufficient security for Cazadores' timely delivery of the shares. Hence, Finanstilsynet considers that Cazadores did not have an "*absolutely enforceable claim...*" pursuant to SSR Article 12 no. 1(b) of SSR or that Cazadores had a "*reasonable expectation that settlement can be effected when it is due...*" according to SSR article 12 no. 1(c) of SSR.

This is illustrated by the fact that the "*new*" shares could not be delivered until 21 November. The "*new*" shares sold on 16 November could not be delivered within due time (T+2).

Furthermore, Cazadores has not made reference to any agreements or any other measures which, at the time of entering into the sales agreement, could provide sufficient evidence for the shares to be delivered on time. Based on the information provided, it seems clear that Cazadores intended to fulfill its delivery obligations with the "*new*" shares.

Finanstilsynet's conclusion is therefore that the conditions in SSR article 12 a) to c) were not met. Consequently, the sales must be considered uncovered short sales in violation of Article 12.

The objective description in SSR Article 12 is thus fulfilled.

Violation of the reporting obligation

Finanstilsynet's assessment is that Cazadores had a net short position of 33 127 377 shares in Flyr as of 16 November 2022. This amounted to approximately 5,23 % of the issued share capital in Flyr, based on the fact that the share capital at the time was NOK 1 266 039,33 distributed on 633 019 667 shares. This position should have been reported to Finanstilsynet by 15:30 on 17 November. Furthermore, Finanstilsynet's assessment is that the position fell below 0.2% on 17 November 2022. This should have been reported to Finanstilsynet on 18 November. It is thus clear that the positions were not reported in accordance with SSR Articles 5 and 9, cf. NSTA Section 3-5. It is Finanstilsynet's understanding of the comments provided that Cazadores acknowledges that the reporting obligation was violated.

The subjective conditions

As mentioned in section 1 above, when imposing a violation penalty on a legal entity, the requirement is that the person or persons who have acted on behalf of the entity have shown negligence, cf. Section 46 first paragraph of the Public Administration Act. The culpability requirement may be met regardless of whether there is negligence or a qualified degree of culpability (gross negligence or intent). The degree of guilt may, however, be taken into consideration when assessing the size of the violation penalty, cfr. Section 4.2 below.

Finanstilsynet considers that it was clearly communicated to the market in a stock exchange announcement from the issuer that the shares would only be tradable if registered in the Register of Business Enterprises. The conditions for the tradability of the new shares were also communicated to

the investors by the bookrunners in the private placement. This information implied that Cazadores had to make sure that the shares were registered before placing orders for the sale of the shares.

The starting point of Finanstilsynet's culpability assessment is that Cazadores is a professional operator in the securities market. It must be expected from such an investor, when subscribing shares in a private placement, to obtain knowledge about factual circumstances concerning the tradability of the shares. Professional investors must, as a minimum, familiarize themselves with information from the issuer communicated to the market and to the investor.

In addition to this general starting point, Finanstilsynet considers that account must be taken of specific circumstances in the case. The fact that 25 billion shares were issued in the private placement suggests that investors had to understand that there would be significant selling pressure – with potentially considerable price decrease – when the new shares were tradable. This meant that investors who wanted to sell the new shares had to ensure that the shares were actually tradable when placing a sales order.

Finanstilsynet takes the view that it must be expected that a professional investor, albeit with limited experience with shares listed in the country at issue, abide by the legislation applicable in the jurisdictions it performs trading activities.

Cazadores makes a reference to the fact that at least six other investors have already been fined by Finanstilsynet for the same conduct, evidencing that such interpretation is not unique enough to deviate significantly from the normal course of action. In this regard, Finanstilsynet notes that in its investigations, Finanstilsynet has identified only 7 investors who sold shares before the publication of the stock exchange announcement on 10:01 on 17 November. Against all of these investors, now including Cazadores, Finanstilsynet has adopted violation penalties. The fact that the vast majority of investors aligned themselves loyally with the regulations illustrates that Cazadores' conduct deviates significantly from the normal prudent course of action for a professional investor in the securities market.

Finanstilsynet has no reason to believe that Cazadores committed the violation of the prohibition of uncovered short selling intentionally. However, in Finanstilsynet's opinion, the behaviour constitutes gross negligence. Finanstilsynet's conclusion is that one or more persons acting on behalf of Cazadores acted with gross negligence. Finanstilsynet therefore considers that the subjective conditions for a violation penalty for a breach of SSR Article 12 have been met.

As regards the breach of the reporting requirement in SSR Articles 5 and 9, Finanstilsynet considers that professional operators in the securities market must be expected to have routines for identifying net short positions in a correct manner, so that time-critical reporting obligations are met. Against this background, Finanstilsynet's assessment is that one or more persons acting on Cazadores' behalf have acted negligently. Finanstilsynet therefore considers that the subjective condition for violation penalties for breaches of SSR Articles 5 and 9 has been met. Finanstilsynet's assessment is that both the objective and subjective conditions for violation penalties have been met.

Finanstilsynet therefore considers that the subjective conditions for a violation penalty for a breach of SSR Article 5 and 9 have been met.

Finanstilsynet's conclusion is that both the objective and subjective conditions for violation penalties have been met.

4.3 Assessment of whether a violation penalty shall be imposed and the size of the penalty

NSTA Section 21-14 and the Public Administration Act section 46 second subsection provide a number of various factors that may be taken into consideration when assessing whether a violation penalty shall be imposed and the size of the penalty. The overview of factors is non-exhaustive. Under any circumstances, the assessment must be made based on an overall evaluation in the specific case.

When assessing whether a violation penalty should be imposed, cf. NSTA Section 21-14, Finanstilsynet believes that the size of the trade and the degree of negligence indicate that a violation penalty is a proportionate and adequate response. Emphasis has also been placed on the fact that an illegal act was carried out at the same time as the vast majority of other investors loyally aligned themselves so that the newly issued shares could not be traded until they were registered in the Register of Business Enterprises. Such behavior is likely to undermine confidence in the integrity of the securities markets. In this context, the Finanstilsynet refers to the purpose of the Act to facilitate safe, orderly and efficient trading in financial instruments and investor protection, cf. NSTA section 1-1.

It cannot be considered disproportionate that a violation penalty is imposed in this case. Finanstilsynet's assessment is therefore that a violation penalty should be imposed.

With regard to the criteria in NSTA section 21-14, Finanstilsynet considers that Cazadores obtained a profit through the illegal act, cf. the calculation above.

In its assessment, Finanstilsynet has also noted the size of the transaction. In addition, Cazadores carried out illegal actions at the same time as the vast majority of investors were loyal to the regulations. Such behavior may undermine confidence in the securities market. Thus, Finanstilsynet does not agree with Cazadores that the gravity of the violation is minimal.

Furthermore, Finanstilsynet has taken into consideration that gross negligence was shown in connection with the uncovered short sales. It is also emphasized that Cazadores, as a professional operator, must be expected to prevent such violations through internal routines, guidelines or other relevant measures.

It is also emphasized that uncovered short sales were already made on 16 November. Uncovered short sales made at this time entailed a higher risk that timely settlement could not take place. This is

illustrated by the fact that the "new" shares could not be delivered until 21 November 2022. Furthermore, the fact that the company has failed to fulfill the reporting obligation in SSR Articles 5 and 9 is a factor.

Finanstilsynet also takes into consideration Cazadores' financial strength. When considering the proportionality of the violation penalty, Finanstilsynet agrees that Cazadores' turnover or annual income is relevant in the assessment. Turnover and income will however vary. Finanstilsynet considers that it must be relevant to place emphasis on other circumstances in the assessment of the violator's financial strength, including the number of allocated shares. Furthermore, Finanstilsynet notes that a violation penalty pursuant to the alternative of up to 10 percent of the total turnover would lead to a penalty of NOK 670 000, an amount considerably lower than the profit Cazadores obtained from the uncovered short selling transactions. This suggests that the violation penalty must be set higher.

Finanstilsynet cannot see that the fact that Cazadores has provided information requested by Finanstilsynet and the fact that this would be a first time offence, could justify a reduction of the penalty amount. On the other hand, in case Cazadores had been unwilling to cooperate, or had previously committed similar violations, these would be factors that could have resulted in a higher violation penalty.

Finanstilsynet's conclusion based on the above, and an overall evaluation of all relevant factors, is that the violation penalty should be set at NOK 2 000 000.

5. Decision on violation penalty

Based on the circumstances above, Finanstilsynet has decided to impose a violation penalty of NOK 2 000 000 on Cazadores Investments Limited for breaching the prohibition against uncovered short sales in SSR Article 12 and the reporting obligation in SSR Article 5 and 9, cf. NSTA Section 3-5.

The basis for imposing a violation penalty is NSTA Section 21-2 first paragraph.

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
Director

Thomas Borchgrevink
Head of Section

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