

# Disclosure obligations in Norway concerning major holdings of shares in listed companies

Oddvar Myhren Mollerlokken and Per Morten Christiansen

*Advokatfirma Steenstrup Stordrange DA, Oslo*

oddvar.myhren.mollerlokken@steenstrup.no • per.morten.christiansen@steenstrup.no

## Introduction

Owners of shares in companies listed on a regulated market are under an obligation to disclose to the market the acquisition and disposal of shares and/or rights to shares in certain cases. The disclosure obligation depends upon the volume of shares and/or rights to shares owned from time to time. Ownership in this context includes, amongst others, transactions such as borrowing of shares and certain other transactions.

Following the Directive on Markets in Financial Instruments (MiFID), certain changes are being made to this obligation in Norwegian law which will expand the disclosure obligation as we know it today. In the following article we will briefly describe the basic rules of the disclosure obligation in Norway with special emphasis on the changes being made. The provisions are set out in the Norwegian Securities Trading Act dated 29 June 2007 (STA) sections 4-2 and 4-3. These rules will come into force on 1 January 2008. In addition, new regulations dated 29 June 2007 (the 'Regulations') have been issued with detailed rules covering, amongst others, the content of notifications and certain exceptions from the notice obligation. In this article we will not comment on the detailed provisions of the Regulations. The Regulations applicable to disclosure obligations become effective on 1 January 2008.

## Geographical extent and application

The duty to disclose in accordance with the STA is applicable to all shares listed on a regulated market when Norway is considered as the home-state of the issuer. If Norway is the host of a foreign issuer the provisions of the home country of such issuer shall govern any duty to disclose the acquisition and/or disposal of shares.

Disclosure shall be made to the Norwegian Financial Supervisory Authority (NFSA) and to the issuer of the shares. Currently, notifications are sent to the Oslo Stock Exchange and it is still somewhat uncertain if the NFSA will delegate its authority to receive notifications to the Oslo Stock Exchange, or if the notifications also

will have to be made to the Oslo Stock Exchange in addition to the NFSA.

## Volume threshold

Currently, shareholders have an obligation to disclose holdings where an acquisition of shares causes the acquirer's proportion of shares and/or rights to shares to reach or exceed 1/20, 1/10, 1/5, 1/3, 1/2, 2/3 or 9/10 of the share capital, or of shares representing an equivalent proportion of the voting rights, in a company whose shares are listed on a Norwegian stock exchange.

The same applies correspondingly to anyone who through disposal changes their proportion of the share capital or votes such that the proportion is reduced to or falls below the thresholds mentioned in the first paragraph.

Disclosure must accordingly be made if a block of shares, a block of rights to shares or the sum of a block of shares and rights to shares reaches or passes a threshold.

The new rules state that where an acquisition, disposal or other circumstance causes the acquirer's proportion of shares and/or rights to shares to reach, exceed or fall below five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 1/3, 50 per cent, 2/3 and 90 per cent of the share capital, or of shares representing an equivalent proportion of the voting rights, notification must be made. The new thresholds requiring disclosure are 15 per cent and 25 per cent.

## Calculation of volume – share capital and voting rights included

It should be noted that the thresholds in Norway refer to both share capital and voting rights, whereas the EEC legislation only refers to voting rights.

A disclosure obligation is currently not triggered if the proportion of votes or share capital passes one of the thresholds as a result of a share capital increase or reduction. This will change now as MiFID calls for an obligation to disclose if there is an event changing the number of voting rights. A disclosure obligation will now be triggered even in circumstances where

the shareholders' own actions are not the cause of the changed ownership. Such circumstances may also include, among other things, the granting or withdrawal of a power of attorney relating to voting and the entering into or cancellation of an agreement concerning financial security.

The STA also mentions certain voting rights which shall be included in the calculation. This includes voting rights on the basis of a financial security agreement where the secured party declares that he will exercise voting rights connected to the pledged shares, voting rights on the basis of a power of attorney which does not include voting instructions from the shareholder or voting rights based on the situation where a person disposing of shares has agreed with the person acquiring the shares that they will exercise the voting rights until these have passed on to the acquirer.

**Securities to be included in the calculation of volume**

Certain securities must be included when calculating the volume. This is mainly due to the fact that such securities give the holder potential influence in the company.

Among the rights that must be included in the calculation are convertible loans, subscription rights, options on the purchase of shares and equivalent rights. The right must be regarded as a binding commitment for the party holding the right in order to be included in the volume calculation. Rights to shares including options which are conditional may in certain circumstances be disregarded for the purpose of the volume calculations. Of importance in this context is if the conditions are outside the control of the holder of the right, for instance necessary public approvals, and/or if the holder has the right to waive the conditions. An individual assessment of the applicable facts will need to be made.

Borrowing of shares and return of shares to the lender is regarded as an acquisition and disposal for the purposes of the disclosure obligation. It should be noted that this only refers to a duty to disclose for the borrower. However, it must be considered on a case by case basis whether the lender should also disclose his or her lending of shares as a disposal.

**Companies/clients included in the calculation of volume**

Shares (or securities) held or acquired or disposed of by close associates are considered equal to the acquirer's or disposer's own shares or rights to shares and shall be included in the calculation of the volume threshold.

Section 2-5 of the STA contains a list of the persons/companies to be regarded as close associates. If the shareholder is an individual, the spouse or a person with whom the shareholder cohabits in a relationship akin to marriage are close associates, the same are the shareholder's under-age children, and under-

age children of a person as mentioned above with whom the shareholder cohabits. If the shareholder is a company or a similar undertaking within the same group as the shareholder it is considered as a close associate, furthermore an undertaking in which the shareholder or a person as mentioned above exercises influence as the following is also a close associate. A parent company is to be regarded as a close associate if it has a controlling interest in another company as a result of an agreement or through the ownership of shares or units in the company. A limited company (public or private) shall always be regarded as having a controlling interest if the company:

- owns so many shares or units in another company that it represent the majority of the votes in the other company; or
- is entitled to elect or remove a majority of the members of the board of directors in the other company.

A party, with whom the shareholder must be assumed to be acting in concert with regarding the exercise of ownership rights accruing to the owner of a financial instrument, is considered a close associate.

The accompanying legislation introduced is limiting the obligation to include close associates in the calculation if the holder is a foreign investment firm according to the terms set out in MiFID.

**The content of the notice**

The notice must be sent both by the person/company who acquires and the person/company who disposes of the shares and/or rights to shares. A joint notice can be sent.

The notice shall be sent as soon as a binding agreement for the triggering transaction is entered into. Failure to send a timely notice may result in a fine.

The notice should include the following information:

- the name of the issuer of the shares;
- the date when the holding of shares reached, passed or fell under the limits stated in the STA, section 4-2, second paragraph;
- the name of the person/company obliged to disclose, including the name of the shareholder;
- the number of shares encompassed by the notification;
- the percentage of the shares and votes in the company the party in question holds after the acquisition or disposal which activates the notification requirement;
- the percentage of the shares and votes in the company the party in question holds in the form of rights to shares after the acquisition or disposal which activates the notification requirement;
- the situation creating the duty to disclose, and whether the circumstances relates to the notifier or to a close associate as mentioned in the STA, section 2-5;

## DISCLOSURE OBLIGATIONS IN NORWAY

- the number of controlled entities through which the shares or rights to shares are owned; and
- if the notification relates to rights to shares as set out in STA, section 4-2, fifth paragraph, the notice shall in addition include a description of the rights, including information as to when the rights may or will be exercised and the expiry date.

### Conclusion

The new rules regarding disclosure of major holdings are to a large extent based on the existing regime. The main change is that additional thresholds are introduced, new events/circumstances trigger disclosure and certain exceptions from the disclosure obligation are introduced.