

MINUTES FROM THE BOARDS MEETING 14 DECEMBER 2011

Sevan Marine ASA – Breach of the duty to publicly disclose information and late publication of an information document

1 Introduction

The case concerns the question of whether Sevan Marine ASA (“Sevan Marine” or the “company”) breached the provisions of Section 5-2 (1) of the Securities Trading Act (“STA”), cf. Oslo Børs Listing Rules, Continuing Obligations Section 3.1.1, by its failure to publicly disclose information at the proper time on anticipated cost overruns in connection with the upgrading of one of the company’s production rigs.

In addition, the case relates to the breach by Sevan Marine of Oslo Børs Listing Rules, Continuing Obligations Section 3.5.4, by its failure to comply with the deadline for public disclosure of the information document required in connection with the spin-off of Sevan Drilling ASA (“Sevan Drilling”) from Sevan Marine.

2 Summarised information on the company and its recent history

Sevan Marine designs, builds and operates offshore installations (floating production storage and offloading units - FPSOs). The company has developed a cylinder-shaped floating unit that is suitable for many types of offshore environment. FPSOs are leased to oilfield operators on long term-contracts. At the time of this case, the company had three FPSOs (FPSO Sevan Piranema, FPSO Sevan Hummingbird and FPSO Sevan Voyageur). In addition the company had three FPSOs under construction. Sevan Marine was admitted to listing on Oslo Børs in 2004, and the company’s CEO is Carl Lieungh.

At the start of 2011, Sevan Marine also had one drilling rig in operation and a further drilling rig under construction. During the course of spring 2011, the company spun off its drilling activities. This part of its business activities formed the company Sevan Drilling, which was admitted to listing on Oslo Axess on 3 May 2011. Sevan Marine currently holds approximately 28.5% of the share capital of Sevan Drilling.

3 Cost overruns in connection with the upgrade of Sevan Voyageur

3.1 Background

3.1.1 Starting point for the case

At 13:26 hours on 20 May the company published a stock exchange announcement headed “*Financial and Operational Update*”.¹ The announcement included information on the commercial uptime of the company’s FPSOs, a financial update following the spin-off of Sevan Drilling, and stated that the board of directors and management were evaluating alternatives for securing the company’s financial position, including the possibility of carrying out an increase in share capital.

The announcement also stated that the expected total cost for the upgrade of Sevan Voyageur had increased to USD 135 million. The company had previously disclosed a

¹ Stock Exchange Announcement dated 20 May 2011.

figure of USD 90 million for the expected cost of the upgrade. The cost overrun was accordingly USD 45 million, and the announcement stated that this was mainly due to "*additional steel and engineering requirements*". The company subsequently announced further cost overruns in connection with the upgrade of Sevan Voyageur.²

3.1.2 Investigations by Oslo Børs

Prior to the start of stock exchange trading on 18 May 2011, the officer at Oslo Børs responsible for contact with Sevan Marine received a telephone call from the company's Vice President Finance. She stated that the company was in the market to try to arrange an underwritten rights issue in the order of USD 200-300 million. The company had already contacted selected potential investors during the afternoon of 16 May, but at that time with a view to arranging a private placement. The investors who had been contacted were given access to information including preliminary Q1 figures for 2011, the current status in respect of the expected cost overruns on Sevan Voyageur, and the company's evaluation of its capital requirements and the consequent need to carry out a share issue. The information provided was considered to have the character of inside information, and the investors in question who had been given access to the information had accordingly been placed in the position of insiders in the company. The information was first made public by means of the stock exchange announcement issued on 20 May 2011.

The Market Surveillance Department of Oslo Børs needed further information on the process in question, and accordingly decided to contact Sevan Marine for a further conversation by telephone. During this conversation, questions were asked about who had knowledge of the process, which investors had been contacted and which advisers the company had used. Oslo Børs also asked the company to send it a copy of the company's insiders list. Against the background of this telephone conversation, Oslo Børs decided to follow up this enquiry with a written request to Sevan Marine, which included a request for the company to provide further information on when and in what manner Sevan Marine had become aware of the cost overrun for Sevan Voyageur, including a time-line description. The letter also asked for details of the persons who were aware of the cost overrun, and at what time each such person became aware of the cost overrun. Oslo Børs also asked the company to send a copy of the presentation that it had used in its contact with investors.³

Oslo Børs received a written reply from Sevan Marine on 13 June 2011.⁴ Oslo Børs then asked the company for copies of the minutes of all board meetings held over the period 1 January to 17 June 2011.

Oslo Børs also contacted Pareto Securities, SEB Enskilda and ABG Sundal Collier, all of which had assisted the company with its work on finding solutions to its capital requirements in the period leading up to the stock exchange announcement on 20 May 2010. These investment firms were asked to provide an account of their assignment for the company and their contacts with the company, including what information the company had provided to the investment firm in question, and what information had then been provided by the investment firm to third parties that were contacted as part of the process.

² Stock Exchange Announcement dated 11 July 2011 (total cost estimated to be USD 160-170 million) and Stock Exchange Announcement dated 26 August 2011 (costs estimated to be USD 170-190 million).

³ E-mail from Oslo Børs dated 6 June 2011.

⁴ Reply from Sevan Marine dated 13 June 2011.

3.1.3 Further details of the sequence of events

On the basis of the information gathered through its investigations, Oslo Børs understands that the sequence of events was as follows:

- The board of directors was first notified about the cost overrun for Sevan Voyageur at a board meeting held on 1 May 2011. At that meeting, the chair of the board, Arne Smedal, told the board that over the course of the preceding days he had become aware of signals within the company's organisation of potential cost overruns in connection with the upgrade of Sevan Voyageur. Smedal had accordingly asked that the liquidity budgets should include a larger buffer for costs associated with the completion of the upgrade of Sevan Voyageur. The cost overruns had not previously been reported to the board, and the board instructed the company's newly-appointed CEO, Carl Lieungh, and the executive management to investigate the situation surrounding the project in further detail and to provide estimates of the increased costs.
- At the board meeting held on 3 May, the company's executive management told the board that the signals of cost overruns had substance, and that provisional estimates for the revised cost of the project ranged from USD 106 million to USD 145 million, which would represent a cost overrun of between USD 16 million and USD 55 million relative to the original budget. The board was told that work had been started on the task of quality assuring the cost estimates.
- At the board meeting held on 11 May, the company's executive management provided information on the work undertaken, and told the board that the original budget had underestimated the complexity of the upgrade to a significant extent, and that it was likely that the revised estimate of the total project cost would be at the upper end of the range notified at the 3 May meeting. Although the extent of the cost overruns had not been finally confirmed, it was anticipated that the cost overruns would be of such a significant character that the company would be required to notify the market. The executive management had established a project group to evaluate the project and determine the scale of the cost overrun. The company was preparing a stock exchange announcement to provide the market with information on the cost overrun for Sevan Voyageur and the financial status of Sevan Marine following the IPO, but it wished to quality assure the information on the expected cost overrun before releasing the information to the market.
- Over the course of the period 11 May to 16 May, various drafts of investor presentations and stock exchange announcements were circulated between the company and its advisers. All the draft stock exchange announcements and investor presentations circulated during this period included the information that the cost for the upgrade of Sevan Voyageur would be USD 135 million and not USD 90 million as previously announced. It is apparent from the correspondence that the company initially intended to issue the stock exchange announcement including information on the cost overrun on Thursday 12 May, and subsequently intended to issue the announcement on Monday 16 May before the start of stock exchange trading.
- Over the course of the period 11 May to 16 May, the company and its financial advisers have been in regular contact with the company's main shareholders to discuss possible forms of transaction for a recapitalisation of the company at the overall level. The company has notified Oslo Børs that this took place, but without any dissemination of inside information.

- On the afternoon of 16 May, the company decided to discuss a specific plan for a private placement of shares with selected investors. The final version of the investor presentation used in meetings with these investors included, in the same way as in the draft versions, an estimate of USD 135 million for the total cost of the Sevan Voyageur project. The company has stated that in its meetings/conversations with investors it clarified that the final size of this amount was still subject to quality assurance. An insider list was maintained to record the recipients of the presentation as well as persons who accepted being placed in the position of an insider.
- The minutes of the board meeting held on 17 May stated that, despite these developments, the company had decided that a stock exchange announcement with information on the Q1 figures and the cost overruns for Sevan Voyageur should not be published as planned on 16 May. The background for this decision was stated to be a lack of clarity surrounding the facts and the view that a stock exchange announcement would not have helped to resolve the uncertainty over the company's financial situation, but would be more likely to make the situation worse for the company and its owners at a critical time when work was under way to secure the support of investors for a capital raising transaction. Accordingly, with reference to Section 5-3 of the STA, the company decided not to publish a stock exchange announcement at that time.
- The company has stated that it attempted to contact the officer at Oslo Børs responsible for the company on 16 May, but found that she was not available. The company did not notify anyone else at Oslo Børs at this time. The company did make contact with the responsible contact officer at Oslo Børs and the market surveillance Department at Oslo Børs prior to the start of stock exchange trading on 18 May to give notification of the situation.
- At a board meeting held on 19 May, the executive management informed the board that it had received a fresh update from the project which served to support the previous estimate of USD 135 million for the total cost of the upgrade of Sevan Voyageur. It was recognised that there was still some uncertainty over cost overruns, but that information was now sufficiently reliable for the cost overrun to be communicated to the market.
- A stock exchange announcement including updated financial information, information on the current status of measures to strengthen the company's liquidity and the cost overrun on Sevan Voyageur was made available to the market on 20 May 2011 at 13:26 hours.

3.2 Legal background

3.1.4 Duty to provide information to the market

STA Section 5-2 (1), cf. Continuing Obligations Section 3.1.1, stipulates that listed companies must without delay and on their own initiative publicly disclose inside information which concerns the issuer directly.

Inside information is defined at STA 3-2 (1):

“Inside information’ means any information of a precise nature relating to financial instruments, the issuers thereof or other circumstances which has not

been made public and is not commonly known in the market and which is likely to have a significant effect on the price of those financial instruments or of related financial instruments."

The definition imposes three main conditions for information to be deemed to be inside information. Firstly, the information must be information of a precise nature relating to the financial instruments in question, the issuers of the instruments or other circumstances. Secondly, the information must be likely to have a significant effect on the price of the financial instruments. Finally, the definition relates to information which has not been made public and is not commonly known in the market.

The first and second main conditions for information to be deemed to be inside information (i.e. the requirements for information to be of a precise nature and likely to have a significant effect on the share price) are explained in greater detail in STA Section 3-2 (2) and (3):

"'Information of a precise nature' means information which indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur and which is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of the financial instruments or related financial instruments.

'Information likely to have a significant effect on the price of financial instruments or of related financial instruments' means information of the kind which a reasonable investor would be likely to use as part of the basis of his investment decisions."

According to the first main condition, the information must at a minimum indicate that circumstances exist or may reasonably be expected to come into existence or an event has occurred or may reasonably be expected to occur. Neither the wording of the legislation, the preparatory work on the legislation nor established practice impose any restrictions on what can actually constitute 'information', subject to the other conditions being satisfied. Pursuant to STA Section 3-2 (2), the information must be sufficiently precise for it to be possible to draw a conclusion on the possible effect of the information on the price of the financial instruments in question. According to the preparatory work on the legislation, the requirement stipulated by the wording for information to be of a precise nature is intended to exclude rumour and speculation, cf. Ot. prp. No. 12 (2004-2005) Section 4.5. In connection with the implementation of the EU Market Abuse Directive, Finanstilsynet took the view that information can be of a precise nature even if it is not complete, unambiguous, final or unconditional, so long as it is sufficiently specific.⁵

The second main condition for the definition of inside information, namely that the information must be likely to have a significant effect on the price of the financial instruments, is further clarified in the STA by the *'reasonable investor test'*, cf. Section 3-2 (3). The preparatory work for the STA set out the criteria in this connection as *"information of the type that a reasonable investor would be likely to use as part of the basis of his investment decisions"*, cf. Ot. prp. No. 12 (2004-2005) Section 4.5. The wording of the legislation does not include any condition that the information must

⁵ Consultation document dated 1 March 2004, page 15 "Partial revision of the Securities Trading Act etc. – implementation of the EU Market Abuse Directive.

actually affect the price of the financial instruments in question. Accordingly this test applies 'ex ante', i.e. in advance of the event or circumstance in question.

Evaluating whether particular information must be deemed to be inside information requires a case-by-case approach. The evaluation is relative, and may reach different conclusions for different companies and markets.

Responsibility for supervision and imposing sanctions in respect of the rules for the public disclosure of inside information set out in STA Section 5-2 and Section 5-3 is delegated to Oslo Børs, cf. STA Section 17-4 (3) third sentence and STA Section 15-2 (2), cf. Securities Trading Regulations, Section 13-1.

3.2.2 Delayed public disclosure

Public disclosure of inside information can be deferred subject to certain conditions, cf. STA Section 5-3:

“(1) An issuer may delay the public disclosure of information as mentioned in section 5–2 subsection (1) such as not to prejudice his legitimate interests, provided that such omission does not mislead the public and provided that the issuer ensures the confidentiality of that information, cf. section 3–4.

(2) Legitimate interests as mentioned in subsection (1) may typically relate to:

- 1. Negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer.*
- 2. Decisions taken or contracts made which need the approval of another body of the issuer in order to become effective due to the organisation of the issuer, provided that public disclosure of the pending decision or contract together with the simultaneous announcement that final approval is still pending would jeopardise the correct assessment of the information by the public.”*

Where the public disclosure of inside information is delayed, the information must be kept confidential, cf. STA Section 5-3 (1) and Section 3-4. Oslo Børs imposes rules in Continuing Obligations at Sections 3.1.1 to 3.1.3 which are equivalent to STA Sections 5-2, 5-3 and 3-4.

Section 3.1.2 (3) of Continuing Obligations stipulates that where an issuing company decides to delay the public disclosure of inside information, it must on its own initiative promptly notify Oslo Børs, and the notification must include the background for the decision to delay publication. Section 5-1 of the Securities Trading Regulations imposes an equivalent duty. Giving notice to Oslo Børs makes it possible for the Oslo Børs market surveillance function to intensify its surveillance of the company's shares and to apply price quotation measures such as a matching halt or suspension if there are grounds to believe that the information is about to become known to one or more market participants.

Delayed publication is described in greater detail in Section 3.6 of Oslo Børs Circular No. 3/2005.

3.3 The company's representations

In a letter to Oslo Børs dated 21 November 2011, the company put forward its views in response to advance notification by Oslo Børs that it was considering imposing sanctions.⁶

The company does not agree that information on the cost overruns for the Voyageur project represented inside information at the time applied by Oslo Børs, namely 3 May 2011. The reasons given for this are the complexity of the evaluation and the fact that it was not possible to quantify the amount of the cost overrun at such an early stage.

The company asserts that Oslo Børs has attached too much importance in its evaluation on the wording of the 3 May 2011 board resolution. The resolution is brief and summarised, and must be read in the light of the lack of facts available to the board on the cost overruns. The following extract is taken from the company's letter⁷:

"In our view, Oslo Børs has attached too much importance to the summarised statement in the minutes of the 3 May board meeting.

The starting point must be that in terms of timing the meeting took place just two days after the board had heard for the first time of the possibility of cost overruns, and this had not been in the normal and prepared manner of information from the management, but by the report of the rumours heard by the chair of the board shortly before the board meeting. Given the complexity of the evaluation of the cost estimates, see section 2.2 above, it is apparent that the management, just two days later, would not in any way have available a more polished basis to provide any form of more qualified evaluation of the cost estimates. Minutes of subsequent board meetings also confirm that the management set in action something quite different to a 1-2 days' process. The minutes of the 11 May 2011 board meeting report that the management had established a process group to evaluate the project and to establish the scale of cost overruns. The minutes of the 19 May 2011 board meeting report that the board was given an "update" from this process group, which serves to indicate that even at this time the group was a long way from completing its work.

Accordingly, the statement in the minutes of the 3 May 2011 board meeting is not in any way some kind of result of the work of the process group that was established. Consequently, it cannot be assumed that MUSD 106-145 was some form of established range, and all that can be said is that various indications were put forward and that these varied from MUSD 106 to 145. Neither MUSD 106 nor 145 were identified as valid limits for some kind of range. Against this background, it is, in our opinion, misleading when Oslo Børs talks about "this must be the case even if Sevan Marine at the time in question did not have a full overview of the scale of the cost overruns". The company not only did not have a "full overview", but did not have any overview at all that could provide the foundation for a somewhat more precise appraisal of the cost overruns. If an announcement were to have been made at this time, the content would have been that the company feared cost overruns, but for the moment had no basis to

⁶ Letter from the company dated 21 November 2011.

⁷ Page 4, section 2.3.

confirm these fears, far less to indicate what the cost overruns, if any, might amount to. This is not precise information, and is not something that a reasonable investor would have used as part of the basis of his investment decisions.

For these reasons, the company does not agree that inside information on cost overruns for the Voyager upgrade was in existence on 3 May 2011”.

Sevan also asserts that the lack of precision meant that the company continued to be unable to notify the cost overruns to the market for the period from 3 to 20 May. At the 11 May board meeting, the board took new steps to determine the size of the cost overruns. The company asserts that even at this time it had not carried out sufficient investigations to be able to establish that there would be cost overruns of such a size that they would trigger the company’s duty to disclose information.

The board meeting held on 19 May 2011 also gives the impression that the board chose not to issue an announcement because of uncertainty over the estimates. An announcement of the cost overruns was issued to the market on 20 May, and the company points out that this was in any case premature since the estimates were subject to subsequent changes. The company maintains that in its work it clearly understood its obligations to the market, and believes that the minutes and documentation from Sevan Marine during this difficult period demonstrate this. The following extract is taken from the company’s letter⁸:

“The review of the project continued after the announcement of cost overruns was issued on 20 May 2011. The result of this review was that further changes were required to the estimated figures as early as 11 July 2011. The company then announced that the cost of the upgrade would be USD 160-170 million. With the benefit of hindsight, it is therefore perhaps more appropriate to ask whether the project review should have been allowed to progress further before any announcement was issued, rather than asking whether an announcement should have been issued earlier than 20 May, and therefore on an even weaker factual basis.

Given the complexity of the evaluation that needed to be carried out, it seems to be very harsh to question the decisions the company took in an extremely difficult situation. The documentation demonstrates that the company’s board and management were very much aware of their duties as a stock exchange listed company, and that a degree of caution needed to be applied in respect of the project review that was central to the evaluation of the information available.”

Against this background, the company is of the view that inside information was not in existence at a time that would mean that the 20 May 2011 announcement represented a breach of the company’s duty to disclose information.

Even if Oslo Børs were to conclude that inside information was in existence earlier than 20 May 2011, the company put forward as a second line of argument that it had the right to delay disclosure.⁹ The following extract is taken from the company’s letter¹⁰:

“If Oslo Børs remains of the view that inside information was in existence earlier than 20 May, and in such a case presumably from 16 May onwards, the question

⁸ Page 6, section 2.4.

⁹ STA Section 5-3, cf. Continuing Obligations Section 3.1.1 et seq.

¹⁰Page 7, section 2.5.

arises whether the company had the right to delay the disclosure of this information, see STA 5-3 and Continuing Obligations Sections 3.1.1 to 3.1.3. It is noted that on the basis of the decision it reached on 16 May, the company contacted Oslo Børs before the start of stock exchange trading on 18 May to inform the exchange of the situation”.

“At the time in question, Sevan Marine ASA found itself in an acute financial situation. The company needed to strengthen its equity in order to meet its liabilities as they fell due. The scale of the additional capital required depended in part on the scale of the costs that would be involved for the upgrade of Voyageur. Accordingly, an announcement in general terms of cost overruns without providing sufficiently well-founded figures would have looked like an announcement of an unquantified requirement for additional capital. In the company’s evaluation, supported by the dialogue that was taking place with certain of the largest shareholders and certain other potential investors, such an announcement could potentially have undermined the entire basis for raising new equity. It must therefore be reasonably apparent that issuing an announcement at an earlier date could have damaged the company’s legitimate interests.”

According to this line of argument, the company is of the view that if it did have a duty of disclosure it could not have been in breach of this duty since it would have been able to take advantage of the provisions for delayed publication. While the company accepts that it did not notify Oslo Børs until the morning of 18 May whereas the date on which such a notification should have been made was 16 May, this is not seen to be a serious breach.

3.4 Evaluation by Oslo Børs

In order to reach a conclusion on the question of whether Sevan Marine breached its duty to disclose information, cf. STA Section 5-2, it is necessary to evaluate whether the information on the cost overruns for Sevan Voyageur represented inside information as defined in STA Section 3-2 that was in existence before the situation was made public by the stock exchange announcement issued on 20 May 2011. The information on cost overruns had not been made public and was not commonly known in the market. The question is therefore whether, and if so at what time, the information represented information of a precise nature which was likely to have a significant effect on the company’s share price.

The board of directors was first told on 1 May of internal rumours within the company on potential cost overruns in connection with the upgrade of Sevan Voyageur.

At Sevan’s board meeting on 3 May, the CEO informed the board that *“the signals of cost overruns unfortunately do have substance”*. Oslo Børs is of the view that at this time the company had precise information that significant cost overruns were to be expected for Sevan Voyageur. This is necessarily the case even though Sevan Marine did not at that time have a complete overview of the scale of the cost overruns.

It should be noted here the requirement imposed by legislation for the precise nature of the information is intended to exclude rumour and speculation, and the information can therefore be of a precise nature even if it is not complete, unambiguous, final or unconditional, so long as it is sufficiently specific to draw a conclusion on the *possible* effect on the share price. There can be no doubt that information on significant cost overruns on one of the company’s FPSO could have had a negative impact on the company’s share price. Oslo Børs is of the view that on 3 May 2011 the company was no longer dealing with a rumour of cost overruns, but with the fact of cost overruns.

Uncertainty and variation in respect of the estimates of the amount of the cost overruns would be relevant to considering at what time the information became likely to have a significant effect on the share price. This question can also be formulated as a question of considering at what point in time it became likely that a reasonable investor would use the information as part of the basis of his investment decisions.

Oslo Børs takes the view that the company's strained financial situation at the time in question is directly relevant to the consideration of this question. The company had already recognised at a board meeting on 27 April that it needed additional capital in the order of USD 200-300 million following the failure of the planned distribution sale of Sevan Marine's shares in Sevan Drilling in connection with the IPO of Sevan Drilling. Sevan Marine was in crisis. The board was informed on 1 May of potential cost overruns on Sevan Voyageur, which were quantified at the board meeting on 3 May to be in the order of USD 16-55 million, and Oslo Børs is of the opinion that at this time a circumstance had arisen that was of such a character as made it necessary for the information to be notified to the market.

In view of the company's financial situation other than the cost overruns, Oslo Børs is of the opinion that even if the amount of the cost overruns were to have proved to be at the lower end of the scale indicated, this would still have been material and likely to have a significant effect on the pricing of the company's shares.

Accordingly, Oslo Børs believes that the company was in possession of inside information on the cost overruns as at 3 May 2011 that should have been disclosed to the market. This is the case even though the company did not at that time have full information on the final scale of the costs involved. It is noted in this connection that the company similarly did not have full information in this respect at the time of the stock exchange announcement issued on 20 May. At that date, the amount disclosed for the cost overruns was USD 45 million.

The scale of the cost overruns increased considerably in subsequent announcements to USD 80-100 million.¹¹ This serves to demonstrate the challenge of determining the final scale of the cost overruns.

Oslo Børs notes that just a short time after 3 May, and more than two weeks before its confidential notification to the exchange and the subsequent public disclosure of inside information, the company was operating with a figure for cost overruns at the upper end of the range of estimates notified to the 3 May board meeting. The draft stock exchange announcement and draft investor presentation under consideration from 11 to 12 May did include information on a cost overrun for Sevan Voyageur of USD 45 million, which is identical to the amount presented in the stock exchange announcement on 20 May. It is also the case that the company recognised at the board meeting held on 11 May that the cost overrun would be significant, and of such a character that it would have to be notified to the market. Oslo Børs accordingly finds grounds to believe that, for some time prior to the stock exchange announcement on 20 May, the company had a clear indication that the cost overrun would amount to around USD 45 million, even if the actual amount had not been confirmed.

Oslo Børs observed a relatively sharp fall in the company's share price over the period from 27 April to 20 May 2011, i.e. the date on which Sevan Marine published an update

¹¹ Stock Exchange Announcement dated 11 July 2011 (which states that total costs are estimated to be USD 160-170 million) and Stock Exchange Announcement dated 26 August 2011 (in which costs are estimated to be USD 170-190 million).

on the circumstances of the cost overruns and the proposed share issue. Publication of the announcement caused the share price to fall a further 28.6% from the opening price, giving a fall of 27.8% from the last traded price on the preceding day. Slightly more than 100 million shares changed hands on 20 May, compared to trading volumes of between 4 and 24 million shares per day for the period from 1 May until 20 May.¹²

While the criteria "*likely to have a significant effect on the price*" does not constitute a requirement for the effect on share price to actually take place, Oslo Børs nonetheless takes the view that the marked change in share price supports the view that the information on cost overruns was of a significantly price-sensitive nature.

At the board meeting on 16 May, the company resolved to delay publication of information on the cost overruns on Sevan Voyageur pursuant to STA Section 5-3. The company attempted to notify the officer of Oslo Børs responsible for contact with the company on 16 May, but did not succeed in making contact and did not try to contact anyone else at Oslo Børs. However, Oslo Børs was subsequently informed of the decision prior to the start of stock exchange trading on 18 May.

The board made its decision on delayed publication almost 2 weeks after the time at which Oslo Børs believes that inside information on the cost overruns was in existence, i.e. 3 May at the latest. Oslo Børs is not aware of any decision by the company on 3 May to delay publication, and no notification that it had made any such decision was received from the company at the time. Accordingly, in evaluating whether the company was in breach of its duty to disclose information pursuant to STA Section 5-2, Oslo Børs does not consider it necessary to form a view on whether the criteria for delayed publication were satisfied at the time at which, in the view of Oslo Børs, inside information on the cost overruns for Sevan Voyageur came into existence, cf. STA Section 5-3.

4 Late publication of the information document

4.1 Further information on the duty to publicly disclose an information document

Section 3.5.1 of Continuing Obligations stipulates that if a company enters into an agreement for a transaction that represents a change of more than 25% in relation to certain specific criteria, the company must publish an information document. The document must provide a description of the company and of the transaction and the business or asset that is the subject of the transaction. In addition, the document must provide an account of the significance of the transaction for the company's earnings, assets and liabilities. This information is considered to be important for the company's shareholders and for the market in general.

The information document must be published as soon as possible after the agreement has been entered into, and in any case no later than before the start of stock exchange trading on the 20th trading day after this date, cf. Continuing Obligations, Section 3.5.4. Oslo Børs may in special circumstances agree to an extension of the deadline for the publication of some or all of the information that is required in the information document, cf. Section 3.5.4 (2), cf. Section 3.4.3 (3). No such extension to the deadline was granted in this case.

¹² Printout from SMARTS.

4.2 Further information on the sequence of events

Following the spin-off of its drilling activities, Sevan Marine had a duty to publish an information document as soon as possible and in any case no later than before the start of stock exchange trading on the 20th trading day after the "Agreement on the spin-off of the drilling activities" was entered into. The company's own view, as expressed by its legal advisers, was that the starting point for the deadline was 27 April, i.e. the date on which the Board of Directors of Oslo Børs approved the admission to listing of shares in Sevan Drilling, and accordingly the deadline for publication of the information document expired on 26 May. Oslo Børs was in agreement with this view. The deadline was clearly communicated to the company and to its advisers several times during the processing of the case, and no extension the deadline was either sought or granted. Even so, the information document was not completed and publicly disclosed by means of a stock exchange announcement until 18 July 2011, i.e. almost 8 weeks after the expiry of the deadline.¹³

4.3 The company's representations

In respect of the public disclosure of information document, the company agrees with the key data presented by Oslo Børs and acknowledges that it missed the deadline by a not insignificant margin. However, the company maintains that the requirements for the information document were repeatedly changed and this made publication difficult. The following extract is taken from the company's letter¹⁴:

"As is apparent from the above, it was not at all the case that the company ignored its duty to publish the information document. The company's particularly difficult financial situation caused continuous changes in the situation which made it necessary to repeatedly carry out new evaluations in respect of the content of the information document. This related in particular to financial information, including the situation in respect of terms and conditions for the company's borrowings etc."

4.4 Evaluation by Oslo Børs

Oslo Børs is of the view that exceeding the deadline for publication of the information document by seven and a half weeks represents a significant breach of the Oslo Børs Continuing Obligations. The question of whether continuing changes in the situation should be included does not represent an interest that is sufficient to set aside the company's duty to publish the information document, and this duty is particularly important in a situation where a company is in a difficult financial position and is undergoing restructuring. It is noted in particular that even though Oslo Børs repeatedly drew attention to the deadline, no application for extension was ever received.

5 Sanctions

Oslo Børs is entitled to impose a violation charge for breach of the company's ongoing duty to disclose information pursuant to STA Sections 5-2 and 5-3, cf. STA Section 17-4 (3) third sentence and Section 15-1 (2), cf. Securities Trading Regulations Section 13-1. Violation charges accrue to the Norwegian Treasury, cf. STA Section 17-4 (4), second sentence. Pursuant to Section 31 of the Stock Exchange Regulations and Section 15.4 of Oslo Børs Continuing Obligations, Oslo Børs may resolve to impose a violation charge in the event of a material breach of its rules, including a breach of the duty to publish an information document in a timely manner in accordance with Section 3.5.4.

¹³ Stock Exchange Announcement dated 18 July 2011.

¹⁴ Page 9, section 3.

In its consideration of the sanctions to apply and the scale of such sanctions, Oslo Børs has taken into consideration decisions in similar cases relating to the breach of the duty to disclose information. In Case 32/2008 Global Geo Services ASA (Decisions and Statements 2008, page 64) the company incurred a violation charge equivalent to two times its annual listing fee for a breach of the duty to disclose information and the duty to prepare a prospectus, and incurred a violation charge equivalent to two times its annual listing fee for a temporary breach of the provisions of the Oslo Børs Issuer Rules, including the duty to notify Oslo Børs in confidence of delayed disclosure of inside information. The decision in this case attached considerable importance to the fact that GGS had breached a number of its legal duties as a listed company, and that the company had been subject to sanctions on two previous occasions for breaches of Continuing Obligations.

The Board of Directors of Oslo Børs resolved on 23 April 2008 to impose a violation charge on Fast Search & Transfer ASA equivalent to four times the company's annual listing fee for breaches of the Issuer Rules, including a failure to notify Oslo Børs of delayed publication of inside information. The decision on the size of the violation charge in this case attached considerable importance to the fact that the breach of the duty to give notice in confidence of delayed publication continued over an extended period of two months.

The Board of Directors of Oslo Børs resolved on 16 June 2010 to impose a violation charge on PA Resources equivalent to the company's annual listing fee for a breach of the duty to notify Oslo Børs in confidence of the delayed publication of inside information. The decision in this case attached importance to the fact that a significant time lapse between the breach and the imposition of the sanction.

While the cases involving Fast Search and Transfer ASA and PA Resources ASA involved sanctions for failure to give notice to Oslo Børs in confidence of the delayed publication of inside information, the facts of these cases are comparable to the current case. Accordingly, the scale of the sanctions imposed in these cases provides guidance in respect of the size of the violation charge for the current case.

Bionor Pharma was sanctioned in 2011 for breaching the duty to disclose inside information as a result of a step-wise process. The company incurred a violation charge equivalent to twice its annual listing fee. The decision on the size of the violation charge in this case paid attention to the fact that the case related to particularly price-sensitive information. However, mitigating factors were the extreme complexity of the facts of the case, and the fact that the latest date at which Oslo Børs considered inside information to be in existence meant that the company was in breach of the duty of disclosure for a relatively short period.

A factor that points to a stricter response in the current case is that Sevan Marine was sanctioned earlier in 2011 for a breach of the duty to disclose information in a similar case. The earlier case related to the public disclosure of information on downtime at one of the company's drilling units. The Board of Directors of Oslo Børs resolved on 16 February 2011 to impose a violation charge on Sevan Marine equivalent to twice the company's annual listing fee for a breach of the duty to notify inside information to the market. The current breach of the duty to disclose information in question relates to early May 2011, which is a short time after the imposition by Oslo Børs of the previous sanction in relation to the company's management of information to the market. Considerations of preventative measures at both the individual and general levels justify a strict response to repeated breaches.

Oslo Børs observed a relatively sharp fall in the share price of Sevan Marine¹⁵ in the period following the announcement on 25 March 2011¹⁶ of the spin-off of Sevan Drilling. Following the disclosure to the market on 20 May of the cost overruns and the processes underway in relation to raising new capital, Oslo Børs considered necessary to review trades carried out in advance of the announcement. This resulted in a report to Finanstilsynet in respect of suspicions of illegal insider trading. Oslo Børs also notes that the lists maintained by the company and its advisers of those with access to inside information included 150 names that were added to the list during the period before the market was notified of the cost overruns and the work underway on raising capital. Oslo Børs is of the view that giving such a large number of individuals access to inside information on the company creates the risk of leaks of information.

During the period in question, the company was in an extremely challenging financial situation, with the characteristics of crisis management. Oslo Børs would like to point out that it is precisely in such situations that it is critically important that stock exchange listed companies comply with the requirements for the management of inside information. It is of crucial importance for the integrity of the market that issuers comply with their duties for the timely public disclosure of inside information.

In determining the scale of the sanction for the breach of Oslo Børs Continuing Obligations Section 3.5.4 by failing to publish the information document relating to the spin-off of Sevan Drilling ASA ("Sevan Drilling") from Sevan Marine at the proper time, Oslo Børs notes that this relates to a breach of a clearly communicated and pre-agreed deadline, and that the breach persisted for a long time. Oslo Børs has imposed sanctions on an issuer for a breach of Section 3.5.4 of Continuing Obligations in one earlier case. On 23 April 2008, The Board of Directors of Oslo Børs imposed a violation charge on Copeinca ASA equivalent to twice the company's annual listing fee for a breach of the duty to disclose information, delayed publication of a prospectus and two breaches of the duty to publish a detailed announcement and information document. A mitigating factor in respect of the latter two breaches was the consideration that the rules on public disclosure of a detailed announcement and information document were relatively new at the time the transactions in question were carried out.

Based on overall assessment, the appropriate sanctions are judged to be as follows:

1. A violation charge for a breach of the company's ongoing duty to publicly disclose information pursuant to Sections 5-2 and 5-3 of the Securities Trading Act, cf. Securities Trading Act, Section 17-4, third paragraph and Section 15-1, cf. Securities Trading Regulations, Section 13-1, equivalent to 6 times the annual listing fee of NOK 205,325, i.e. NOK 1,231,950.
2. A violation charge for a breach of the duty to publish an information document before the stipulated deadline, cf. Continuing Obligations, Section 3.5.4, cf. Section 15.4, and Stock Exchange Regulations Section 31, equivalent to 1 times the company's annual listing fee, i.e. NOK 205,325.

¹⁵ Printout from SMARTS.

¹⁶ Stock Exchange Announcement dated 25 March 2011.