

## Sequa Petroleum N.V. – Violation of the ABM rules – Deregistration of bonds from Nordic ABM

### 1. Introduction

The matter relates to whether the convertible bonds issued by Sequa Petroleum N.V. (the “**Company**”) are no longer suitable for listing on Nordic ABM.

The Company published the audited annual report for 2016, cf. section 3.4.7 of the ABM rules, with a delay of six months. As of the date of this letter, the Company has not published the half-yearly report for 2017, which should have been published within 31 August 2017, cf. section 3.4.6 of the ABM rules, the audited annual report for 2017, which should have been published within 30 April 2018, or the half-yearly report for 2018, which should have been published within 31 August 2018.

The question is whether this entails that the Company’s bonds are not suitable for listing and accordingly shall be deregistered from trading on Nordic ABM, cf. section 6.1 (1) and (2) of the ABM rules.

### 2. The factual circumstances of the case

#### 2.1 About the Company

The Company’s convertible bonds (the “**Bonds**”) with ISIN XS1220076779 was listed on Nordic ABM on 21 January 2016. The Bonds can be converted to shares in the Company at the conditions set out in the bond agreement. The Bonds are also trading on the Frankfurt Stock Exchange.

The Company is an oil and gas company, with its shares listed on Euronext Access Paris with the aim to create value in a cyclical industry through asset acquisition, optimization and monetization, applying both technical and financial excellence. The strategic focus is on assets with proven resources, current and near term production, and value upsides, pursuing a balanced portfolio in select areas with low marginal cost, exploiting growth potential and synergies. The Company is registered in the Netherlands, with its main office located in London.

On 14 November 2016, the Company announced that there was a delay in the payment of interest on the Bonds due to funding issues under another loan<sup>1</sup>. The Company has subsequently announced more delayed payments and several potential defaults under the Bonds, the latest on 15 May 2018<sup>2</sup>. The Company has been working on a debt restructuring since the beginning of 2017.

The Company’s Bonds were suspended from trading from 9 October 2017 pursuant to section 6.3 of the applicable version of the ABM rules at such time. The means of suspension of bonds on Nordic ABM was not passed on when changing the ABM rules in January 2018. The suspension was accordingly lifted on 3 January 2018, when the changes of the ABM rules entered into force. The Bonds were placed on special observation pursuant to section 5.3 of the ABM rules on 26 January 2018.

On 12 October 2018, the Company distributed a notice of an extraordinary general meeting to be held on 19 November 2018.<sup>3</sup> One of the matters on the agenda was a proposal to elect a new auditor for

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<sup>1</sup> <https://newsweb.oslobors.no/message/413620>

<sup>2</sup> <https://newsweb.oslobors.no/message/451405>

<sup>3</sup> [Appendix 1](#): Notice of extraordinary general meeting

the financial years 2017 and 2018. The Company states in the explanatory notes to the agenda<sup>4</sup> it is stated that the Company has not yet reached agreement with the contemplated new auditor on the terms of their engagement for the audit of the Company's annual accounts for the financial year 2017.

## 2.2 The Company's financial reporting

The Company published the audited annual report for 2016 on 31 October 2017. Pursuant to section 3.4.7 (1) of the ABM rules, the audited annual report shall be published at the latest four months after the end of the financial year. The Oslo Stock Exchange had granted the Company an extension to publish the audited annual report for 2016 of one month, i.e. the audited annual report should have been published no later than 31 May 2017. The publication of the audited annual report for 2016 was accordingly published with a six months delay pursuant to the deadline in the ABM rules and five months delay taken into account the extension granted by the Exchange.

As of the date of this resolution, the Company has not published the half-yearly report for 2017, which should have been published within 31 August 2017, cf. section 3.4.6 of the ABM rules, the audited annual report for 2017, which should have been published within 30 April 2018, cf. section 3.4.7 of the ABM rules or the half-yearly report for 2018, which should have been published within 31 August 2018.

## 3. Legal background

Pursuant to section 3.4.7 of the ABM rules, the audited annual financial report shall be made public at the latest four months after the end of each financial year. As stated in the ABM rules section 3.4.6, a half-yearly report or tertial report prepared in accordance with section 3.4.4 shall be made public as soon as possible after the end of the relevant period, but at the latest two months thereafter.

The rules shall secure reporting of the financial situation in the issuer to the investors and other market participants on a regular basis. Financial information is essential for the market's considerations and forms the basis for the investment decisions made by the investors and other market participants, which is reflected in the market's pricing of the relevant financial instrument. A functional financial market is dependent on a steady and diligent flow of information from the issuers to the market which again form the basis for an effective pricing of the financial instruments. The quality of the market place is accordingly affected negatively when there is a breach of the elementary rules that shall secure the market participants access to financial information on a regular basis.

The Oslo Stock Exchange may decide that bonds issued by a borrower in certain circumstances shall be deregistered from Nordic ABM, cf. section 6.1 of the ABM rules:

- (1) Oslo Børs ASA may decide that bonds issued by a borrower shall be deregistered if they no longer satisfy the exchange's conditions or if called for on other special grounds. However, Oslo Børs ASA cannot deregister a financial instrument if this can be expected to cause material disadvantage for the owners of the instruments or for the market's duties and function.*
- (2) If the borrower has grossly or repeatedly violated the provisions of these Rules, the general provisions of securities legislation or legal regulations issued pursuant to such legislation, this shall in general be regarded as a sufficient reason that may call for deregistration of the company's bonds.*

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<sup>4</sup> [Appendix 2](#): Explanatory notes to the agenda

#### 4. The Company's account of the matter

The Oslo Stock Exchange understands that the reason for the outstanding financial reporting is mainly the challenging financial situation the Company is undergoing.

The Company has stated towards the Oslo Stock Exchange that it will complete its audited annual report for 2017 before the end of 2018<sup>5</sup>. The Company is not able to advise on when the other financial reports will be published. According to the Company, this is dependent on completing the contemplated debt restructuring.<sup>6</sup>

The Company has not argued against a deregistration of the Bonds from Nordic ABM.

#### 5. The Oslo Stock Exchange's assessment

The Oslo Stock Exchange monitors the issuers' compliance with the applicable disclosure obligations on the Exchange's market places. The Oslo Stock Exchange considers this work to be of high importance for maintenance of the integrity of the market place.

Financial information is a key factor in the information regime for listed companies, and constitutes an important part of the Company's duty to provide correct and updated information to the market. Failure to comply with the financial reporting requirements is in itself considered to be a gross breach of the ABM rules, cf. section 6.1 (2) of the ABM rules.

As accounted for under section 2.2 above, the Company published the audited annual report for 2016 with a delay of six months pursuant to section 3.4.7 of the ABM rules, which the Exchange considers a significant delay. Furthermore, the publication of the half-yearly report for 2017, the audited annual report for 2017 and the half-yearly report for 2018 are still outstanding. The half-yearly report for 2017 should have been published within 31 August 2017, cf. section 3.4.6 of the ABM rules, and accordingly entails a delay of 1 year and 2 months. The audited annual report for 2017 should have been published within 30 April 2018, cf. section 3.4.7 of the ABM rules, which entails a delay of 6 months. The half-yearly report for 2018 should have been published within 31 August 2018, which entails a delay of 2 months.

Nordic ABM is not a regulated market pursuant to the Securities Trading Act and the rules for ABM are accordingly determined by the Oslo Stock Exchange. Pursuant to the ABM rules, it is not possible to impose violation charges on issuers that breach the rules. The sanctions that can be implemented are limited to criticism and deregistration. Given the long period of time with repeated violations of the financial reporting rules by the Company, and the fact that the Company is not able to advise on when the financial reporting will recommence completely, the Exchange does not consider criticism an appropriate measure in this case. The Oslo Stock Exchange therefore finds it necessary to consider whether the Company's Bonds are suitable for listing on Nordic ABM.

The breaches of the financial reporting obligations have been persistent for more than a year and the Company is not able to state when the on when it will be able correct all of the ongoing violations and recommence its financial reporting going forward, or when the contemplated restructuring will be completed. Financial information from issuers of bonds is as accounted for under section 3 above,

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<sup>5</sup> Appendix 3: The Company's comments to the advance notice of delisting of 11 September 2018

<sup>6</sup> Appendix 4: E-mail correspondence between the Oslo Stock Exchange and the Company from 6 October 2017 to 26 April 2018

considered essential and represents in many circumstances the majority of information provided by a bond issuer to the bondholders and the market. Given the long period of time the Company has not published any financial reports to the market, the Exchange considers the repeated violations of the rules as gross, section 7.1 (2) of the ABM rules.

The Company has stated towards the Oslo Stock Exchange that it will complete its audited annual report for 2017 before the end of 2018. However, the Company has not stated any specific date for the publication and has not given any guidance as to when the other reports will be published.

The Exchange understands that the Company has been in a challenging financial situation that has contributed to the lack of financial reporting. However, the rules for timely financial reporting in the ABM rules apply regardless of the type of situation the relevant issuer is in. While the potential upside in a bond loan is limited to the conditions of the bond agreement, the downside of the issuer not being able to repay the loan in accordance with the agreed terms will always be present. The Exchange is therefore of the opinion that the financial reports of an issuer in financial distress in many circumstances have more information value than from an issuer that regularly complies with its obligations under the bond agreement.

Pursuant to section 6.1 (1) second sentence of the ABM rules, the Exchange cannot delist a financial instrument if this can be expected to cause material disadvantage for the owners of the instruments or for the market's duties and function. This implies that a wide discretion has to be made as to the reasons for and against deregistration when making the assessment of deregistering a bond loan. The interest of the Exchange and the market in being able to delist issuers which repeatedly and grossly violate key reporting rules must be weighed against the bondholders' interest in a continued listing.

An important part of a listing is the publication of financial information from the Company to its investors, which in this case are the bondholders. The release of financial information from a company with listed securities must be organized and predictable. When the Company fails to comply with the regulatory framework that is intended to regulate such timely flow of financial information, this contributes to a reduced value of the listing for the shareholders. Given the Company's outstanding and delayed financial reporting, the listing does not provide the bondholders with the protection it is intended to give.

In addition, there have been no trades in the Bonds registered in the systems of the Oslo Stock Exchange since its date of registration on Nordic ABM on 21 January 2016. This implies a low interest in the registration on Nordic ABM among the bondholders. Furthermore, the Company's Bonds are also listed on the Frankfurt Stock Exchange, such that the bondholders are able to trade the Bonds on another market place if the Bonds are deregistered from Nordic ABM.

Based on the above, the Oslo Stock Exchange considers that a deregistration of the Bonds is not expected to cause material disadvantage to the Company's bondholders.

Over the past years, deregistration has been carried out in several cases with similar characteristics to this case.

In March 2016, bonds issued by Otium AS were deregistered due to failure by Otium AS to publish its financial reports in accordance with the deadlines in the ABM rules. The company's annual reports had been delayed with 3 and 9 months, respectively and its half-yearly reports with 4 and 2 months, respectively.

In November 2017, bonds issued by Iona Energy Company (UK) Ltd. were deregistered from Nordic ABM after several delays of financial reporting on Nordic ABM. The company's last published annual report was published with a delay of nearly 1 year and several financial reports were outstanding.

Based on the above, the Oslo Stock Exchange considers that a deregistration of the Bonds will not cause any material disadvantage for the bondholders or for the market's duties and function, cf. section 6.1 (1) second sentence of the ABM rules.

Following an overall assessment of the above, the Oslo Stock Exchange considers that the Bonds are no longer suitable for listing on Nordic ABM. The Company has for a long period of time repeatedly violated the rules on mandatory financial reporting and the violations are still ongoing. Furthermore, the Company is not able to advise on when it will be able correct the ongoing violations and recommence its financial reporting going forward. As stated above, the Exchange also considers that a deregistration of the Bonds will not cause any material disadvantage for the bondholders or for the market's duties and function.

The Oslo Stock Exchange has accordingly reached the conclusion that the Bonds are not suitable for listing on Nordic ABM. The Oslo Stock Exchange has on 2 November 2018 therefore made the following decision:

*"The Oslo Stock Exchange considers that the convertible bonds issued by Sequa Petroleum N.V. with ISIN XS1220076779 are not suitable for listing due to repeated and ongoing violations of the ABM rules on financial reporting. The Oslo Stock Exchange has decided to deregister the bonds from Nordic ABM pursuant to section 6.1 (1) and (2) of the ABM rules with effect from 30 November 2018. The last listing date will be 29 November 2018."*