

Everfuel A/S

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12 April 2021

## Everfuel A/S – Violation of the duty to promptly notify Oslo Børs of decision of delayed disclosure of inside information

### 1. Introduction

Reference is made to the stock exchange announcement (**the “Announcement”**) released by Everfuel A/S (the **“Company”**) on 28 December 2020 regarding the acquisition of Danish Hydrogen Fuel A/S (**“DHF”**) to strengthen their position as the leading hydrogen fuel company in Scandinavia. The Company has handled the process leading up to the Announcement as inside information, and Oslo Børs share the view that this process constituted inside information, cf. section 3-2 of the Securities Trading Act<sup>1</sup>. Further, Oslo Børs is of the opinion that the Company has violated the duty to promptly notify Oslo Børs of any decision of delayed disclosure of inside information, cf. Euronext Growth Oslo Rulebook Part II 3.8.2 (3)<sup>2</sup>. Oslo Børs will elaborate on its view and the circumstances in this letter.

### 2. The factual circumstances of the case

The Company was admitted to trading on Euronext Growth Oslo on 28 October 2020.

The Company published the Announcement on 28 December 2020 at 15:30<sup>3</sup>. The Announcement stated that the Company had entered into an agreement to acquire 100% of the shares in DHF. The terms of agreement were not disclosed in the Announcement, but the transaction was expected to be completed during the coming week. The CEO of the Company stated that the acquisition was an important strategic step for the Company, cementing their position as market leader in Denmark and Scandinavia. The Announcement was categorized by the Company as inside information.

On 28 December 2020, immediately before the release of the Announcement the Everfuel shareprice was NOK 118,70 and the share price fluctuated between NOK 112,80 and NOK 121,50 in the minutes following the Announcement, before the share closed at NOK 121,20 this day. Trading volumes were also the highest this day in the 30 minutes period following the release of the Announcement with approximately 62,000 shares traded and 294 trades.

On 7 January 2021, Oslo Børs asked the Company for an account of the process leading up to the Announcement, and the Company’s considerations with regards to whether the process constituted

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<sup>1</sup> The legal reference at the time of this case (November/December 2020), This reference has later been changed in relation with the implementation of the Market abuse Regulation in Norwegian legislation on 1 March 2021.

<sup>2</sup> All references to Euronext Growth Oslo Rulebook part II in this document are to the rules as they were on the date of the Announcement.

<sup>3</sup> <https://newsweb.oslobors.no/message/521743> - link to the Announcement

inside information and whether the rules for delayed disclosure of inside information was complied with, cf. Euronext Growth Oslo Rule Book Part II section 3.8.1 (2) and section 3.8.2.

The Company responded on 11 January 2021 and confirmed that there had been an informal dialogue with shareholders of DHF which materialized in the second half of November 2020. On 29 November 2020, the Company considered that the process had progressed sufficiently to be considered as inside information as the Company estimated that a deal possibly could be closed before Christmas. An insider list was established by the Company as of this date. The CEO and CFO of the Company also decided delayed disclosure of inside information on the same day. Negotiations between the parties were then ongoing until a signed share purchase agreement was in place on 28 December 2020.

The Company was of the opinion that a qualified reason for delayed disclosure was in place as negotiations were in course and that an early publication of the matter would possibly affect timing and price of the transaction as well as attract competitive interest.

### **3. Legal basis**

Pursuant to Euronext Growth Oslo Rulebook Part II section 3.8.2 (3), the Issuer must, on its own initiative, promptly notify Oslo Børs of any decision of delayed disclosure of inside information, including the background for the decision to delay disclosure.

The guidance to the provision states that notification of a decision to delay publication must be given to the Market Surveillance and Administration Department of Oslo Børs by telephone. If an Issuer decides to delay public disclosure outside the trading hours of Euronext Growth Oslo, it is sufficient to notify Oslo Børs of the decision prior to the opening for trading on the following trading day.

The purpose behind the duty to notify Oslo Børs of a decision of delayed disclosure is for surveillance purposes, enabling Oslo Børs to intensify the surveillance of financial instruments during periods when there exists price-sensitive information that has not been publicly disclosed.

### **4. Oslo Børs' assessment**

The main intention behind the provision referred to in chapter three above is to enable Oslo Børs to intensify surveillance activities in instruments when there is undisclosed inside information and where there is an increased risk of market abuse, for example insider trading and unlawful disclosure of inside information. The Company has failed to notify Oslo Børs about their decision to delay disclosure of inside information to Oslo Børs and hence Euronext Growth Oslo Rulebook part II 3.8.2 (3) is violated.

A notification about the decision to delay disclosure of inside information allows Oslo Børs to quickly use operational measures such as trading suspension if there is reason to believe that anyone is trading on the basis of the inside information which has been delayed from disclosure. By quick implementation of a trading suspension less damage is caused to all market participants in situations with suspicion of market abuse.

The Company has provided Oslo Børs with their insider lists drawn up in relation with the process leading to the acquisition of DHF. Based on the correspondence with the Company, it is the impression of Oslo Børs that the Company has been aware of parts of their regulatory duties when inside information occurs. The Company has used the MAR template for insider lists, and the Company has considered that the said information constituted inside information at an earlier time than the announcement and resolved delayed disclosure.

However, the Company did not comply with the obligation to notify Oslo Børs of this decision. The Company has stated that they did not realize that they were required to do this, as they claim they had

the understanding that this was done when establishing the insider list in their Insider list tool. Oslo Børs would like to point out that the Company's shares were admitted to trading on Euronext Growth Oslo only two months before the inside information in this case occurred. In the process before a company's shares is admitted to trading, all companies must participate in a mandatory course organized by Oslo Børs which is largely focused on handling of inside information and procedures for decisions of delayed disclosure.

The failure to notify Oslo Børs is considered increasingly serious when taking into consideration the relatively short period of time from this course and until the Company should have notified Oslo Børs. As a consequence of the process between Oslo Børs and the Company leading up the publication of this letter, Oslo Børs expects that the Company has become fully aware of their duties in accordance with the Euronext Growth Oslo Rule Book Part II regarding notification of Oslo Børs when inside information occurs and the Company decides to delay disclosure.

On this basis, Oslo Børs is of the opinion that the Company has violated Euronext Growth Oslo Rule Book Part II section 3.8.2 (3) by not notifying Oslo Børs when they resolved delayed disclosure of inside information about the process leading to the acquisition of DHF on 29 November 2020. Oslo Børs has decided not to challenge the Company's considerations about when inside information occurred in this specific process and the grounds for delayed disclosure.

On a general basis, Oslo Børs would like to stress the importance of the listed companies' disclosure obligations and related provisions, including the notification obligation, which contributes to a well-functioning market which is in the interest of all market participants. However, this is only achievable if the companies have sufficient competence about the rules, so they are complied with at all times. Oslo Børs expects that the Company takes the actions considered necessary to increase competence on this area to avoid similar future situations.

After an overall assessment of the case, where Oslo Børs has emphasized the relatively short period as a listed company and the fact that certain regulatory duties regarding the decision to delay disclosure of inside information has been followed, Oslo Børs is of the view that the violation of Euronext Growth Oslo Rulebook part II section 3.8.2 (3) should be sanctioned by Oslo Børs by imposing public criticism to the Company, cf. Euronext Growth Oslo Rule Book Part II section 3.17.4 (1).

Kind regards,  
OSLO BØRS ASA