

## SIEM INDUSTRIES INC. – VIOLATION OF DISCLOSURE OBLIGATIONS

### 1. INTRODUCTION

Siem Industries Inc. (the “**Company**”) is subject to the Oslo Stock Exchange Bond rules (the “**Bond Rules**”) as the issuer of an exchangeable bond (the “**Bond**”<sup>1</sup>) listed on the Oslo Stock Exchange. The Company has violated the deadlines in the Bond Rules for timely disclosure of the audited annual report for 2018, the unaudited half year report for period 1 January – 30 June 2018 (“H1-2018”) and the unaudited half year report for the period 1 January – 30 June 2019 (“H1-2019”).

The Company has an extensive history for similar violations of these deadlines which have been addressed by the Oslo Stock Exchange in bilateral letters.

The Oslo Stock Exchange considers the Company’s failure to make the audited annual report for 2018 public within four months after the end the financial year and the failure to make the half yearly financial reports for H1-2018 and H1-2019 within two months after the end of the period as material breaches to the Bond Rules. The Exchange has decided to impose a violation charge pursuant to section 8.4 (1) of the Bond Rules.

### 2. THE FACTUAL CIRCUMSTANCES OF THE CASE

#### 2.1 About the Company and the Bond

The Company is incorporated in the Cayman Islands, and has executive offices in George Town, Cayman Islands<sup>2</sup>.

The Company is a diversified industrial holding company that operates through autonomous affiliates. The Company holds interests in several industrial areas including the oil and gas services industry and renewable energy sector, ocean transportation of refrigerated cargoes and automobiles, potash-mining, shipbuilding and finance, which includes loans and guarantees, specialist credit advisory services and investments<sup>3</sup>.

The Bond was listed on the Oslo Stock Exchange 3 November 2016. The Bond is a senior secured bond exchangeable into common shares of Subsea 7 S.A, a company with listed shares on the Oslo Stock Exchange. Selected characteristics of the Bond<sup>4</sup>:

Table 1

|                        |                 |
|------------------------|-----------------|
| Issue date             | 2 June 2016     |
| Maturity date:         | 2 June 2021     |
| Outstanding balance:   | EUR 250 million |
| Denomination per unit: | EUR 100 000     |
| Coupon rate:           | 2,25 % p.a.     |

<sup>1</sup> ISIN NO 0010766546, ticker SIEIN03.

<sup>2</sup> [www.siemindustries.com/about-us](http://www.siemindustries.com/about-us)

<sup>3</sup> The Company’s annual report 2018

<sup>4</sup> Prospectus and Loan agreement:

[https://www.oslobors.no/ob\\_eng/markedsaktivitet/#/details/SIEIN03.OSE/data](https://www.oslobors.no/ob_eng/markedsaktivitet/#/details/SIEIN03.OSE/data)

The Company has been subject to the Bond Rules over a longer period of time as bonds previously issued by the Company has also been listed on the Oslo Stock Exchange. The Company has had bonds<sup>5</sup> listed on the Oslo Stock Exchange from 16 July 2007 to 7 September 2011 and from 12 September 2012 to 4 April 2017. Throughout this period, the Exchange has addressed the late financial reporting by the Company several times. See table 2 below for details.

## 2.2 The Company's financial reporting

The Company made their unaudited financial report for the six months ended 30 June 2018 public in a stock exchange announcement on 17 September 2018<sup>6</sup>. This report was made public 17 days after the expiration of the deadline, as stipulated in the Bond Rules.

The Company communicated in a stock exchange announcement on 7 May 2019<sup>7</sup> that their 2018 annual report would be made available on the Company's website on or about 30 May 2019. The audited annual report for 2018 was made public in a stock exchange announcement on 13 June 2019<sup>8</sup>, 1 month and 13 days after the expiration of the deadline, as stipulated in the Bond Rules.

As of the date of this document, the Company has not published the financial report for the six-month period ended 30 June 2019 ("H1-2019"), as required by the Bond Rules at the latest two months after the relevant period. Thus, another breach to the Bond Rules has been established and is ongoing. The Company has not communicated to the market or the Exchange when the Q2-2019 report can be expected.

The Oslo Stock Exchange has in previous correspondence with the Company addressed their overdue historical financial reporting, as summarized in table 2. This is exemplified in the publication "Decisions and Statements 2016"<sup>9</sup>.

Table 2

| Financial report | Disclosure date | Overdue   |
|------------------|-----------------|-----------|
| FY 2017          | 12.06.2018      | 43 days   |
| H1 2017          | 25.09.2017      | 25 days*  |
| H1 2016          | 01.09.2016      | 1 day     |
| FY 2015          | 02.05.2016      | 2 days    |
| H1 2015          | 04.09.2015      | 4 days    |
| H1 2014          | 15.09.2014      | 14 days** |
| H1 2013          | 09.09.2013      | 9 days    |

\*The Company's office building was closed due to hurricane/flooding in Houston

\*\* The deadline is prolonged due to 31 August being a Sunday.

The Exchange has also addressed similar breaches by the Company before 2013. However, for the purposes of this case we limit the summary of historical breaches to the period presented in Table 2.

<sup>5</sup> ISIN NO 0010372766, ticker SIEIN01 and ISIN NO 0010657968, ticker SIEIN02.

<sup>6</sup> <https://newsweb.oslobors.no/message/459612>

<sup>7</sup> <https://newsweb.oslobors.no/message/476208>

<sup>8</sup> <https://newsweb.oslobors.no/message/479236>

<sup>9</sup> [https://www.oslobors.no/ob\\_eng/Oslo-Boers/Regulations/Decisions-and-statements](https://www.oslobors.no/ob_eng/Oslo-Boers/Regulations/Decisions-and-statements) - Circulars, decisions and statements 2016, section 4.4.4, p. 176

### 3. LEGAL BACKGROUND

According to the Bond Rules section 3.6.2 (1) a borrower must make public annual reports in accordance with Section 5-5 of the Securities Trading Act and related regulations and in accordance with the provisions laid down in the Bond Rules. Section 3.6.2 (2) of the Bond Rules states that a borrower must make public a half-yearly report for the first six months of the financial year in accordance with Section 5-6 of the Securities Trading Act and related regulations and in accordance with the provisions laid down in the Bond Rules. The third subsection of this provision states that the first and second paragraph shall also apply to a borrower that only issues bonds with denomination per unit of at least EUR 100 000, which is the case for the Company.

Pursuant to the Bond Rules section 3.6.5 (1) the half yearly financial report shall be made public as soon as possible after the end of the relevant period, but at the latest two months thereafter. According to section 3.6.5 (3) of the Bond Rules an exemption from the first paragraph, first sentence, may be granted for a borrower that only issues bonds with denomination per unit of at least EUR 100 000 or the equivalent amount in another currency.

Pursuant to the Bond Rules section 3.6.6 (1) the annual financial report shall be made public at the latest four months after the end of each financial year. Section 3.6.6 (2) states that the annual financial report shall be made public immediately it has been approved by the board of directors or equivalent corporate body. The Oslo Stock Exchange may grant an exemption from the first sentence if called for by special circumstances.

The Bond Rules section 3.6.5 (1) and 3.6.6 (1) are equivalent to similar provisions in the Securities Trading Act.

According to the Bond Rules section 8.4 (1), in the event of breaches to these provisions of the Bond Rules, the Norwegian Financial Supervisory Authority (Nw: Finanstilsynet) may impose a violation charge when the borrower has at least one loan listed with denomination per unit below 100 000 euro. Oslo Stock Exchange may impose violation charge in the event of breaches to the same sections of the Bond Rules in cases where the borrower only has listed loans with a denomination per unit of at least 100 000 euro.

According to the Bond Rules section 8.4 (3) a violation charge shall be fixed in accordance with the following rules:

1. The charge imposed on a borrower or a guarantor may not exceed 10 times the annual listing fee for each violation which may attract a violation charge, calculated on the basis of the latest invoiced total annual listing fee for the bond loan to which the violation refers.
2. The borrower or guarantor shall be informed that the imposition of a violation charge is under consideration and of the circumstances on which this is based. The borrower or guarantor shall have at least one week to give its views before Oslo Børs reaches a decision.

According to the Bond Rules section 8.4 (4) a borrower or guarantor upon which a violation charge is imposed shall be notified in writing of the decision, and the grounds for the decision shall be set out in the notification. Moreover, information shall be provided on the right to appeal to the Stock Exchange Appeals Committee, the time limit for making an appeal and the procedure for appeal.

#### 4. THE COMPANY'S ACCOUNT OF THE MATTER

In the process of investigating the breaches of the Bond Rules related to the late publication of the H1-2018 and H1-2019 reports and the annual audited report for 2018, the Oslo Stock Exchange has received two accounts of the matter from the Company. The Company's first account is a letter dated 19 June 2019<sup>10</sup> and is a response to e-mails from the Exchange of 4 June and 19 June 2019<sup>11</sup> where the two breaches are initially addressed. The Company's second account is a letter dated 1 September 2019<sup>12</sup> and is a response to the Exchange's notification that the imposition of a violation fee is under consideration<sup>13</sup>, cf. the Bond Rules section 8.4 (3) no.2. The Company's two accounts focuses on the following reasons for the late publications:

- The Company has a complicated consolidation process which presents a number of technical accounting issues which require assessment and resolution and acceptance by the auditors.
- The Group Accounting function has not expanded at the same rate as the number of subsidiaries and the complexity of the accounting structure. The hiring of a former PwC partner is an attempt to remedy the situation.
- The Company purchased the German shipyard Flensburger Schiffbau – Gesellschaft mbH & Co. KG ("FSG") in 2014, and it became a significant subsidiary for one of the subsidiaries of the Company. Since then, the times has been financially challenging and the Company has injected substantial amounts in equity and loans to maintain operations, and this has caused delays in the reporting of the financial accounts from FSG to the Company.
- Furthermore, the Company argues that there have been many factors beyond their control that have caused the delayed financial reporting. In this regard, the Company refers to:
  - change in auditor
  - creditors not willing to renew guarantees on loan facilities
  - processes related to bringing in new investors in FSG.
- PwC became the new auditor for the fiscal year 2018, and the Company believes that this appointment will over time improve the accounting and audit function of FSG in the long term.
- During the process of consolidating the 2018 accounts, many reconciliations issues came up as a result of PwC's many requests for information related to both German statutory reporting requirements and IFRS reporting requirements.
- Due to the uncertainty about the ability of FSG to continue as a going-concern and major losses indicated in preliminary calculations for several projects, there have also been significant delays in the financial reporting by FSG to the Company in 2019.

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<sup>10</sup> Attachment 1: Siem Industries Inc. letter dated 19 June 2019 and corresponding e-mail.

<sup>11</sup> Attachment 2: E-mails from the Oslo Stock Exchange to Siem Industries Inc. dated 4 and 19 June 2019 "2018 annual report"

<sup>12</sup> Attachment 3: Siem Industries Inc. letter dated 1. September 2019 "Re: Siem Industries Inc.- Waiver in relation to imposition of a violation fee for the late submission of the annual report for 2018" and corresponding e-mail

<sup>13</sup> Attachment 4: E-mails from the Oslo Stock Exchange to Siem Industries Inc. dated 16 and 23 August 2019 "Siem Industries Inc – Advance notification of possible violation fee for breaches to the Oslo Stock Exchange Bond Rules", including the Company's response by e-mail on 23 August 2019.

- The Company sold its remaining 24% ownership interest in FSG in August 2019. The Company is exposed to the risk of a potentially significant difference between the Company's reported figures for the First Half Report 2019 and the actual figures for FSG which will be reported at a later stage. The Company is diligently working to minimize such risk so that their representations and warranties to the buyer remain intact and valid. Accordingly, the delay in the reporting of the financial accounts of FSG for the six months ended 30 June 2019 is delaying the Company's reporting of the first half 2019 financial accounts.
- As the ownership in FSG was sold in August 2019, the Company argues that there should not be any future delays to the reporting of the Company's annual accounts for 2019 in relation to FSG going forward.
- The Company has requested that the Exchange exercise its discretion and grant a full waiver of any violation fee due to the late submission of the Annual Report for 2018 and the First Half report for 2019.
- The Company's Board of Directors and Management and the Group Accounting function have determined that the Company's required reporting will not be late again. A program has been commenced to push down consolidation reporting schedules to subsidiaries and associates so they can help in the Group Accounting consolidation effort.

On 11 September 2019, the Exchange decided to include the Company's failure to publish the H1-2019 report within the deadline stipulated in the Bond Rules in this case. The Company was notified about this decision on the same date and the Company confirmed by phone on 12 September that they had no further comments than what had already been presented in this case.

## 5. THE OSLO STOCK EXCHANGE'S ASSESSMENT

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 companies with listed securities on a regulated market, and constitutes an important part of the Company's duty to provide correct and updated information. Moreover, financial information is essential for the market's considerations and forms the basis for investment decisions made by investors. Therefore, the publication of financial information from a company must be organized and predictable. When a company fails to comply with the rules governing the timing of financial information, this contributes to a reduced value of the listing for bondholders and other market participants. The listing ends up not providing its intended protection for bondholders. In the opinion of the Oslo Stock Exchange, the quality of the market place is also affected negatively when there is a breach of the elementary rules that shall secure the market participants access to financial information in a timely manner.

As accounted for in section 2.2 above, the Company published the audited annual report for 2018 with a delay of one month and 13 days pursuant to the deadline stipulated by section 3.6.6 of the Bond Rules. The Company has provided a comprehensive account of the circumstances that resulted in the delay of audited annual report, as described in section 4 above, but the Exchange considers that the responsibility for the breaches still rests with the Company.

Furthermore, the unaudited H1-2018 report was published 17 days after the deadline stipulated in section 3.6.5 (1) of the Bond Rules, as pointed out by the Exchange when collecting information about the late publication of the annual report for 2018. The H1-2019 report has not been published yet, as of the date of this document.

The three delays are considered significant by the Exchange and must be seen in relation with historical delays, as accounted for in table 2 above, which in almost all the cases have been explained by internal circumstances. Reference is also made to the previous correspondence between the Exchange and the Company regarding these historical delays, latest addressed in the letter of 29 June 2018<sup>14</sup>. In all the concluding letters, the Exchange has emphasized that the Company must review and reassess its internal routines. The Company has on several occasions assured the Exchange that it would do so in order to prevent further delays. It appears to the Exchange as few of the measures implemented by the Company to prevent further delays have been successful.

As mentioned in section 3 above, the Exchange may grant exemption from the deadlines in the Bond Rules for the publishing of audited annual report and half yearly report. However, it is also stated in the guidance to these provisions that the Exchange will take a strict approach in exercising its authority to grant such exemptions. Regardless of this, the Exchange has not received any applications for such exemptions from the Company, and it is doubtful and hypothetical whether the Company would be granted such an exemption.

The Oslo Stock Exchange considers the Company's stock exchange announcement of 7 May 2019 stating the new anticipated date for publication of the audited annual report for 2018 as an intended orderly communication to the market. At the same time, we must point out that the new date was presented one week after the deadline in the Bond Rules. It is also noted that the Company failed to publish the report at the date set by themselves without providing the market with updated guidance on a new date. Nevertheless, the Exchange's primary concerns in this case is the Company's failure to comply with the reporting deadlines of the Bond Rules, despite that the Exchange has addressed this on several occasions.

In the Exchange's follow up of the Company's late publication of the audited annual report for 2017, it was decided not to impose a violation charge due to a somewhat unclear legal basis in the Bond Rules. The Company was also notified that the Exchange would initiate a process to clarify the legal basis for imposing sanctions and that future breaches might result in a violation charge or delisting. In the event of future breaches, the Exchange stated that previous breaches and warnings issued by the Exchange would be taken into consideration when determining an appropriate sanction.

For the sake of good order reference is made to the guidance to section 8.1 of the Bond Rules which states that if a borrower has grossly or continuously violated the provisions of the Securities Trading Act or the rules of the Exchange this may result in a delisting. Taking into consideration the Company's number of violations of the reporting deadlines of the Bond Rules over the past few years, it might be questioned whether the Bonds are suitable for listing on a regulated market. As no violation charge has been imposed on the Company yet, and a potential delisting is likely to be seen as unfortunate for the bondholders, the Exchange considers a violation charge as the most appropriate mean of sanction for this case.

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<sup>14</sup> Attachment 5: Oslo Stock Exchange letter of 29 June 2018 "*Siem Industries Inc. – The obligation to make public annual financial reports*"

## 5.1 Violation charge

The Exchange has not imposed a violation charge on any issuer with only bonds listed, and with no listed shares, over the past ten years due to breaches of the financial reporting obligations in the Bond Rules. Hence, there are no previous cases to refer to when determining the size of the violation charge.

As referred to in section 3 above, the Bond Rules section 8.4 (3) states that a violation charge may not exceed 10 times the annual listing fee for each violation which may attract a violation charge, calculated on the basis of the latest invoiced total annual listing fee for the bond loan to which the violation refers.

As mentioned above, the Company has an extensive history in violating the deadlines for financial reporting in the Bond Rules. The Exchange has addressed these violations on a bilateral basis to the Company several times and even communicated that future similar breaches would result in a formal sanction. This has not led to a timely financial reporting from the Company, and it appears that the Exchange's warnings have been without the intended effect. Hence, a decision to impose a violation charge is in line with and a consequence of previously communicated warnings from the Exchange.

The Company has presented the background for the delays, cf. section 4 above, and the Exchange has a certain understanding for the practical arguments presented. However, the impact of these arguments on the Exchange's decision to impose a violation charge is limited. It is of importance to the Exchange when a violation charge is considered if the breaches are repetitive or stand-alone incidents and the length of the period before breaches are corrected.

The Bond Rules does not have any provisions providing leeway for issuers on the reporting deadlines when there are operational, financial or other circumstances causing delayed financial reporting. The Exchange expects the issuers with listed bonds on a regulated market to have sufficient capacity to handle their financial reporting within the frames of the Bond Rules regardless of the difficulties faced by the Company. The Exchange would argue that the importance of timely financial reporting increases when an issuer or subsidiaries are in a situation as presented by the Company, i.e. having financial difficulties or are in the process of being divested. However, the Exchange might take a different approach in force majeure situations, which e.g. was the case in connection with the Company's delayed H1-2017 reporting.

The Exchange realizes that the trading in the Bond is limited. The Exchange has not concluded that the content of the delayed financial reports constituted inside information, cf. the Securities Trading Act § 3-2, for which would have made the breaches more aggravating. However, the deadlines for financial reporting in the Bond Rules applies regardless of whether the reports constitute inside information or not. In cases where inside information is subject to the same delays in terms of repetition and length as in this case, it would require even stricter enforcement from the Exchange.

When considering the appropriate sanction, the Exchange has considered the risk of future similar violations. In previous cases, the Company has stated that it would improve their compliance with the future reporting deadlines, without achieving this. On this basis, the Exchange can not rule out new future violations. However, the Exchange also acknowledge the sale of FSG as an important step towards a more streamlined financial reporting from the Company, which can imply that the Company will publish their future financial reporting within the deadlines of the Bond Rules. Hence, the Exchange has not as for now decided to delist the Bond issued by the Company. However, future similar violations of the financial reporting deadlines of the Bond Rules might lead to a delisting of the Bond.



After an overall assessment, the Exchange has decided to impose a violation charge of NOK 159 810,- the equivalent of three times the annual listing fee for the Bond.

Oslo Stock Exchange has on 23 September 2019 passed the following resolution:

*“A violation charge in an amount of NOK 159 810,- is hereby imposed on Siem Industries Inc. for repetitive and significant breaches of the Oslo Børs Bond Rules section 3.6.5 and 3.6.6, cf. section 8.4 of the Bond Rules, cf. section 12-9 of the Securities Trading Act.”*