

Finansinspektionen's Regulatory Code

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Regulations amending Finansinspektionen's regulations (FFFS 2013:9) regarding Swedish UCITS funds;

FFFS 2017:6
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decided on 26 June 2017.

Finansinspektionen prescribes¹ pursuant to section 18, points 2, 29 and 30 of the Swedish UCITS Ordinance (2013:588) that Chapter 1, section 9, Chapter 2, sections 27 and 28, Chapter 8a, section 5, Chapter 22, section 1 and Chapter 31 section 48a of Finansinspektionen's regulations (FFFS 2013:9) regarding Swedish UCITS funds shall have the following wording.

Chapter 1

Section 9 Unless otherwise stated, the terms and expressions used in these regulations have the same meaning and scope as in the Swedish UCITS Act (2004:46).

In addition, the following terms and expressions shall be defined as:

1. *Absolute Value at Risk*: Value at Risk expressed as a maximum percentage of a Swedish UCITS fund's value.
2. *AIF manager*: The same as in Chapter 1, section 3 of the Alternative Investment Fund Managers Act (2013:561).
3. *General investment policy*: The same as Objectives and investment policy pursuant to Article 7 of Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.
4. *Alternative investment fund*: The same as in Chapter 1, section 2 of the Alternative Investment Fund Managers Act.
5. *Employees in strategic management positions*: Employees other than senior management who have management roles and are responsible for the day-to-day activities of the fund management company, e.g. employees responsible for portfolio management, HR, administration or marketing.

¹ Cf. Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

6. *The delegated regulation for MiFID 2:* Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

7. *Discretionary pension benefit:* A pension benefit that a fund management company grants to employees on an individual basis as part of their variable remuneration package. This does not include accrued benefits earned by employees under the terms of the fund management company's pension scheme.

8. *Personal transactions:* Trade in a financial instrument carried out by a relevant person or on behalf of a relevant person if at least one of the following criteria are met:

a) The relevant person is acting outside of the scope of the activities he or she carries out in his/her capacity of a relevant person.

b) The transaction is carried out on behalf of any of the following persons:

– the relevant person,

– another person with whom the relevant person has a close relationship or close relations,

– a person whose links to the relevant person are such that the latter has a direct or indirect material interest in the outcome of the transaction, other than a fee or commission for the execution of the transaction.

9. *Remuneration:* All remuneration and benefits from the fund management company to an employee. Remuneration and benefits from the fund management company refers to, for example, cash salaries and other cash remuneration, remuneration in the form of units of a Swedish UCITS fund or an instrument that achieves an equivalent common interest as units of a Swedish UCITS fund, pension provisions, severance pay or company cars.

10. *Remuneration policy:* Grounds and principles for establishing how remuneration shall be determined, applied and monitored, and for how a fund management company defines which employees can influence the risk profile of the fund management company and for each Swedish UCITS fund under management.

11. *Unit holder:* A natural or legal person or a Swedish UCITS fund, an alternative investment fund, a foreign collective investment undertaking or the equivalent, holding one or more units in a Swedish UCITS fund or a foreign collective investment undertaking.

12. *Trading venue:* A regulated market, a trading facility, a systematic internaliser in accordance with Chapter 1, section 4b of the Securities Market Act (2007:528), a market maker within the EEA or another person providing liquidity within the EEA or an equivalent entity to any of the above outside of the EEA.

13. *Internal rules:* Policy and governance documents, guidelines, instructions and other written documents which govern the business and which are determined by the board of directors or the managing director.

14. *Investor*: Every unit holder or presumptive unit holder.
15. *Control function*: A fund management company's function(s) for risk management, compliance and internal audit or the equivalent.
16. *Client*: A natural or legal person or a Swedish UCITS fund, an alternative investment fund, a foreign collective investment undertaking or the equivalent that provides fund-related operations, discretionary portfolio management or such services as those referred to in Chapter 7, section 1, first paragraph of the Swedish UCITS Act that are conducted by a fund management company.
17. *Liquidity risk*: The risk that a position in a Swedish UCITS fund cannot be sold, redeemed or terminated at limited cost within a reasonable period of time and, therefore, that the fund cannot observe Chapter 4, section 13, first paragraph, first sentence of the Swedish UCITS Act at all times.
18. *Market risk*: The risk of loss in a Swedish UCITS fund due to changes in the market value of positions held by the fund as a result of altered market variables, such as interest rates, foreign exchange rates, share and commodity prices or an issuer's creditworthiness.
19. *Counterparty risk*: The risk of loss in a Swedish UCITS fund due to the counterparty in a transaction not fulfilling its obligations before the transaction is settled.
20. *Operational risk*. The risk of loss in a Swedish UCITS fund due to insufficient internal procedures with regard to personnel and systems in the fund management company or external factors, and due to legal and documentation-related risks, and risks resulting from trading, settlement and valuation procedures.
21. *OTC derivative*: Such derivative instruments as referred to in Chapter 5, section 12, second paragraph of the Swedish UCITS Act.
22. *Person with whom a relevant person has a close relationship*:
- a) the spouse or co-habité of the relevant person,
 - b) minor children under the charge of the relevant person, and
 - c) other parties closely related to the relevant person that have shared a household with this person for at least one year at the time of the transaction in question.
23. *Investment strategies*: The general basis for the strategic allocation of assets and the investment techniques required to ensure that the general investment policy for each Swedish UCITS fund is implemented properly and effectively.
24. *Portfolio transaction*: A transaction on behalf of a Swedish UCITS fund carried out by a fund management company as a part of its fund operations.
25. *Relative Value at Risk*: A Swedish UCITS fund's Value at Risk divided by Value at Risk for the fund's reference portfolio.
26. *Relevant person*:
- a) a board member, co-owner, managing director or other manager at the fund management company,

b) an employee of the company and any other natural person who performs services for the fund management company, or is under the control of the company and is involved in conducting fund operations on behalf of the company, and

c) a natural person who, under an outsourcing contract, conducts parts of the fund operations on behalf of the fund management company.

27. *Risk limit system*: A documented system of appropriate internal investment limits for a Swedish UCITS fund. The system is designed to manage all of the fund's material risks and to ensure that fund management is in compliance with the law, other regulations and the fund's rules.

28. *Risk-taker*: An employee that belongs to a category of staff whose professional activities can have a material impact on the risk profile of a fund management company or a Swedish UCITS fund under management. This is usually the case for employees who can enter agreements or take positions for the fund management company or a Swedish UCITS fund under management, or otherwise influence the fund management company or the risk of the Swedish UCITS fund under management.

29. *Variable remuneration*: Remuneration, the amount or size of which is not predetermined. Variable remuneration does not include commission-based salary not linked to future risk assumptions that may alter the profit and loss statement or balance sheet of a fund management company or a Swedish UCITS fund.

30. *Synthetic risk and reward indicator*: The same as the synthetic indicator pursuant to Article 8 of Commission Regulation (EU) No. 583/2010.

31. *Specially regulated staff*: Senior management and employees in the following categories of staff and which have not been exempted pursuant to Chapter 8a, section 5:

a) employees in strategic management positions,

b) employees responsible for control functions,

c) risk takers, and

d) employees whose total remuneration is equal to or exceeds the total remuneration to any of the members of senior management.

32. *Value at Risk*: A measure of the highest expected loss at a given confidence interval during a certain period characterised by normal market conditions.

33. *Durable medium*: A medium that

a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information, and

b) allows the unchanged reproduction of the information stored.

34. *Senior management*: The managing director, the deputy managing director and other members of a fund management company's governing body or a similar body that report directly to the board of directors or the managing director.

Chapter 2

Section 27 The business plan shall include a reference to the internal rules regarding measures against money laundering and terrorist financing that the fund management company shall have pursuant to The Money Laundering and Terrorist Financing (Prevention) Act (2017:630) and Finansinspektionen's regulations (FFFS 2017:11) regarding measures against money laundering terrorist financing. Information about who is centrally responsible for the function in these issues shall be specified.

Section 28 A fund management company which conducts or intends to apply for authorisation to conduct discretionary portfolio management for financial instruments pursuant to Chapter 1, section 4 of the Swedish UCITS Act (2004:46) shall provide a detailed description of this in its business plan. The description shall include:

1. the categories of financial instruments covered by the management,
2. how the company divides its clients into retail and professional categories and how this division affects the treatment of clients in each category,
3. how the company informs clients in accordance with Articles 45.1 and 45.2 of the delegated regulation for MiFID 2,
4. whether the company treats certain professional clients as equivalent counterparties, and
5. a reference to the internal rules the company applies to the allocation of orders in accordance with Article 68.1c in the delegated regulation for MiFID 2.

Chapter 8a

Section 5 A fund management company shall analyse the risks associated with its remuneration policy and remuneration system. Based on this analysis, the fund management company shall identify its specially regulated staff. The fund management company shall document and specifically explain if employees in any of the categories of staff set out in Chapter 1, section 9, second paragraph, points 31a–d do not have a material impact on the risk profile of the fund management company or the Swedish UCITS funds under management, and therefore shall not be considered to be included in the fund management company's specially regulated staff.

Chapter 22

Section 1 A fund management company conducting discretionary portfolio management related to financial instruments, in its management and when providing services pursuant to Chapter 7, section 1, first paragraph of the Swedish UCITS Act (2004:46), shall apply Chapter 4, Chapter 5, sections 17–25, Chapters 6 and 7 and Chapter 8, sections 1 and 3 of Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities.

Chapter 31

Section 48a The annual report shall contain disclosures about

1. the number of employees that received fixed or variable remuneration paid out during the financial year,
2. the total remuneration amount paid out to specially regulated staff during the financial year broken down into the categories of employees set out in Chapter 1, section 9, second paragraph, point 31, and
3. how remuneration and benefits for employees have been calculated.

These regulations shall enter into force on 1 August 2017 in respect of Chapter 2, section 27 and on 3 January 2018 for the remaining regulations.

ERIK THEDÉEN

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