

Finansinspektionen's Regulatory Code

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Regulations amending Finansinspektionen's regulations (FFFS 2013:10) regarding alternative investment fund managers;

FFFS 2017:7

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decided on 26 June 2017.

Finansinspektionen prescribes¹ pursuant to section 4, points 3 and 7 and section 5, point 1 of the Alternative Investment Fund Managers Ordinance (2013:587) that Chapter 1, section 9, Chapter 3, sections 31 and 32, Chapter 9, section 5, and Chapter 10, section 1 of Finansinspektionen's regulations (FFFS 2013:10) regarding alternative investment fund managers 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 Alternative Investment Fund Managers Act (2013:561).

In addition, the following terms and expressions are defined as:

1. *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 AIF manager, e.g. persons responsible for portfolio management, HR, administration or marketing.

2. *Discretionary pension benefit*: A pension benefit that an AIF manager 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 AIF manager's pension scheme.

3. *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.

4. *Remuneration*: All remuneration and benefits from the AIF manager and all amounts that are paid directly by the fund (including special profit share) to an employee. Remuneration and benefits from the AIF manager refers to, for example, cash salaries and other cash remuneration, remuneration in the form of units or

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.

shares of an alternative investment fund or an instrument that achieves an equivalent common interest as units or shares of an alternative investment fund, pension provisions, severance pay or company cars.

5. *Remuneration policy*: Grounds and principles for establishing how remuneration shall be determined, applied and monitored, and for how an AIF manager defines which employees can influence the manager's and each managed alternative investment fund's risk levels.

6. *Internal rules*: Policy and governance documents, guidelines, instructions or other written documents adopted by the board of directors, or an equivalent decision-making body, or the managing director, or an equivalent member of senior management, and through which the operations are controlled.

7. *Control function*: An AIF manager's function(s) for risk control, compliance and internal audits or the equivalent.

8. *Risk-taker*: An employee belonging to a category of staff whose professional activities can have a material impact on an AIF manager's or a managed alternative investment fund's risk level. This normally refers to employees who can enter into agreements or take positions on behalf of the AIF manager or an alternative investment fund under management or in any other way impact the risk of the manager or the fund under management.

9. *Specially regulated staff*: Senior management and employees in the following categories of staff that have been identified by the AIF manager as specially regulated staff in accordance with Chapter 9, section 5:

1. employees in strategic management positions,
2. employees responsible for control functions,
3. risk takers, and
4. employees whose total remuneration is equal to or exceeds the total remuneration to any of the members of senior management.

10. *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 an AIF manager or an alternative investment fund.

11. *Senior management*: The managing director, the deputy managing director and other members of an AIF manager's governing body or a similar body that report directly to the board of directors or the managing director. For a manager which is not a limited liability company, the reference is to equivalent members of the governing body.

Chapter 3

Section 31 The business plan shall include a reference to the internal rules regarding measures against money laundering and terrorist financing that the AIF manager 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 also be specified.

Section 32 An AIF manager which engages in or intends to apply for authorisation to engage in discretionary investment portfolio management pursuant to Chapter 3, section 2 of the Alternative Investment Fund Managers Act (2013:561) shall provide a detailed description of these operations in its business plan. The description shall include:

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

Chapter 9

Section 5 An AIF manager shall analyse the risks associated with the manager's remuneration policy and remuneration system. Based on this analysis, the AIF manager shall identify its specially regulated staff. The manager shall document and specifically explain if employees in any of the categories of staff set out in Chapter 1, section 9, second paragraph, point 9 are not considered to have a material impact on the risk profile of the AIF manager or the alternative investment fund under management, and therefore shall not be classified as specially regulated staff.

Chapter 10

Section 1 An AIF manager conducting discretionary portfolio management related to financial instruments, in its management and when providing services pursuant to Chapter 3, section 2 of the Alternative Investment Fund Managers Act (2013:561), 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.

These regulations shall enter into force on 1 August 2017 in respect of Chapter 3, section 31 and on 3 January 2018 for the remaining regulations.

ERIK THEDÉEN

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