Finansinspektionen's (the Swedish Financial Supervisory Authority) General Guidelines regarding Applications to receive Authorisation as an Exchange or Marketplace or for a Licence to Conduct Clearing Operations in accordance with the Exchange and Clearing Operations Act (1992:543); **FFFS 1996:16**

decided 19 June 1996

Chapter 1. Introduction

1 § These General Guidelines pertain to the application procedure for authorisation as an exchange or marketplace (Chapters 2, 3 and 4) and a licence to conduct clearing operations (Chapters 2, 3 and 5). The General Guidelines apply in supplementation of the rules contained in the Exchange and Clearing Operations Act (1992:543) (hereinafter referred to as the Exchange and Clearing Act).

2 § Pursuant to Chapter 1, section 2 of the Exchange and Clearing Act, authorisation and a licence may be issued to Swedish limited liability companies, Swedish economic cooperative associations and foreign undertakings. Rules governing which formal authorisation and licence requirements are applicable to undertakings applying for authorisation and licences are set forth in Chapter 2, section 2, Chapter 2, section 7, Chapter 8, section 2 and Chapter 8, section 3 of the Exchange and Clearing Act. The requirements regarding sound business operations are set forth in Chapter 2, section 1, Chapter 7, section 1 and Chapter 8, section 1 of the same Act.

3 § The documents which an undertaking submits to Finansinspektionen in conjunction with an application will form the basis of any decision to grant a licence. In the event this basis changes after the licence has been granted, the decision to grant the licence may be reconsidered by the Supervisory Authority. The Supervisory Authority will conduct its supervisory activities on the basis that the information provided in conjunction with the application reflects the actual circumstances under which the undertaking conducts its operations. In the event inaccurate information is submitted, this may constitute grounds for revocation of the licence.

Chapter 2. Application procedure

Generally

1 § The application shall be submitted to Finansinspektionen and should preferably be drafted in such a manner that the documents deemed by the undertaking to be covered by confidentiality pursuant to Chapter 8, section 5 of the Trade Secrets Act (1980:100) should be submitted as appendices.

The application must be signed by authorised representatives of the undertaking. Minutes of meetings of the undertaking's board of directors should state that the application has been approved by the board of directors. A copy of the application should be sent by the auditor appointed by the undertaking and, where applicable, the auditor appointed by Finansinspektionen.

Scope of the application

2 § In the application, the undertaking shall state one or more of the business lines set forth in Chapter 1, sections 1 and 4 of the Exchange and Clearing Act to which the application pertains. In addition, it shall state whether the undertaking applies for any licence pursuant to Chapter 4, section 5, Chapter 7, section 2 and Chapter 9, section 6 of the Exchange and Clearing Act (commonly referred to as ancillary operations) or a licence pursuant to Chapter 4, section 6, Chapter 7, section 2, and Chapter 9, section 7 (commonly referred to as organisational acquisitions).

Where the applicant is part of a group, the application should contain information regarding the group's operations and be suitably clarified by means of an organisational diagram.

Registration certificate

3 § A registration certificate from the Patent and Registration Office or equivalent issued within the last two months should be appended to the application. It should be noted that, pursuant to the Exchange and Clearing Act, it is permissible to file an application notwithstanding that the undertaking is not registered (Chapter 2, section 3, Chapter 7, section 2 and Chapter 8, section 4 of the Exchange and Clearing Act). The registration certificate must, however, be submitted to the Supervisory Authority before a licence can be issued.

Articles of Association and statutes

4 § Pursuant to the Exchange and Clearing Act, Finansinspektionen shall approve the articles of association for a Swedish limited liability company or the statutes of a Swedish economic cooperative association in conjunction with the grant of a licence or authorisation (Chapter 2, section 4, Chapter 7, section 2 and Chapter 8, section 4 of the Exchange and Clearing Act). Copies of the applicable articles of association or statutes should thus be appended to the application.

The articles of association or statutes should clearly set forth which of the stated activities in Chapter 1, sections 1 and 4 of the Exchange and Clearing Act are conducted by the undertaking.

Management of the undertaking

5 § Pursuant to the Exchange and Clearing Act, an exchange or clearing organisation must have a board of directors consisting of not less than five members and a managing director (Chapter 2, section 6 and Chapter 8, section 4 of the Exchange and Clearing Act). The provisions of the Companies Act (1975:1385) or the Economic Cooperative Associations Act (1987:667) with respect to the minimum size of the board of directors and appointment of the managing director apply in respect of authorised marketplaces.

Information should be submitted regarding the composition of the board of directors, including any alternate members and the chairman of the board of directors. In addition, information should be provided regarding the home address and home telephone numbers of the undertaking’s managing director.

In order to facilitate the Supervisory Authority's assessment of whether the operations of the undertaking may be deemed to fulfil the requirements of sound business operations, information regarding the managing director, members of the board of directors and other senior executives in the undertaking should be provided with respect to whether they have duties or ownership interests in other undertakings within the financial sector. Information regarding ownership interests need, however, be provided only with respect to undertakings in which the holdings amount to three per cent or more of the total share capital or voting capital. In addition, information shall be provided in respect of such persons' previous employment and experience in exchange and clearing operations, consulting and board appointments and expertise in general. In addition, the other board appointments and important positions of the members of the board of directors during at least the most recent five years shall be stated.

Finansinspektionen has issued General Guidelines (FFFS 1994:35) pertaining to Management, Internal Information and Internal Supervision within Credit and Securities Institutions. These Guidelines state, *inter alia*, that the sound development of the operations is conditional on the institution developing and maintaining systems for monitoring and follow-up of the risks occurring in the institution's activities. The Guidelines should also be applied by exchanges, marketplaces and clearing organisations in respect of the organisation of the undertaking's own operations and in the assessment of which requirements the undertaking should impose on the organisation of the operation by members. In respect of clearing organisations, a statutory requirement is also imposed in respect of the preparation of a risk management plan, see further Chapter 5.

Auditors

6 § The application should state the name, address and telephone numbers and employment relationship of the undertaking's internal and external auditors. In the event there is an internal auditor, the instructions therefor should be appended to the application together with information regarding the auditor's place in the organisation and to whom the auditor is to report the results of his or her audit.

Shares and contributed capital

7 § Pursuant to the Exchange and Clearing Act, the undertaking shall have a share capital which, taking into account the nature and scope of the operation, is sufficient. In the event the undertaking is an economic cooperative association, comparable requirements shall pertain to the total of member and subordinated capital contributions. In conjunction with the assessment, regard shall also be given to other financial resources which the undertaking can utilise. Thus, in the application, the applicant should state the considerations which form the basis for the amount of the share and contributed capital which has been chosen for the undertaking.

Ownership and membership

8 § In the application, information should be provided regarding ownership of the limited liability company. The information should also state the name and ownership share of each owner holding more than ten per cent of the total voting

capital or total number of shares in the undertaking. An economic cooperative association should state the name and share of each member whose share exceeds ten percent of member and subordinated capital contributions or voting capital for all shares in the undertaking. The information is required for the assessment of the owners' and members' suitability which is assumed to be carried out by Finansinspektionen in accordance with the preparatory works (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 73).

Ownership or membership may be suitably clarified through an organisational diagram, whereupon the share or voting capital of each owner or member may be specifically stated.

Organisational acquisition

9 § An exchange, authorised marketplace or clearing organisation may acquire shares or participating interests in other undertakings only following authorisation by Finansinspektionen. Authorisation requires that the acquisition constitute part of the organisation of the operation. The application should state which considerations have been made as a consequence of the contemplated acquisition. The undertaking's holdings of organisational shares in other undertakings should, where suitable, be illustrated graphically.

Undertakings which, at the time of application, hold shares or participating interests in other undertakings should provide information thereon in the application. In addition, the organisational considerations underlying the holding of such shares and participating interests should be stated. No permission for existing holdings is required. The effect of existing holdings on the assessment of whether a licence may be granted shall be examined during the application procedure.

Financial position

10 § Each undertaking which has previously conducted operations should append to the application a profit and loss account and balance sheet showing the profit or loss and financial position of the undertaking as per the expiry of the most recent quarter/four months. In addition, the undertaking should submit a budget for the current financial year and a report of the outcome of the business in relation to the budget at the expiry of the most recent quarter or four-month period. In addition, information which is financially significant to the undertaking arising after the period covered by the most recent quarterly or four-monthly report should be reported. In the event the undertaking has not prepared any budget, the reasons therefor should be stated. The undertaking should also submit annual reports for the most recent three years and a financial analysis pertaining to such timeframe where such has been prepared.

In addition, the undertaking should state in its application the manner in which the undertaking intends to address the issue of financing the operation. In this context, information should be provided, *inter alia*, regarding the contents of agreements with banks or other lenders. In addition, separate information should be submitted regarding the manner in which the undertaking will address the financing issue in the event of a liquidity crisis. Furthermore, information should be submitted regarding the goals of the operation established in the form of key ratios, e.g. concerning earnings capacity and equity ratio. Furthermore,

information should be submitted regarding other measurements benchmarks which are significant to the operation.

Finally, information should also be provided regarding other information which, in the undertaking's opinion, may be significant to an assessment of its financial position.

Ethical rules

11§ Finansinspektionen has issued General Guidelines (FFFS 1995:40) regarding Guidelines on Ethical Issues at Companies under the Supervision of the Supervisory Authority. A copy of the guidelines on ethical issues for the operations and for the employees intended to be applied by the undertaking should be appended to the application. In addition, the application should state the manner in which information regarding any ethical rules common to the industry are disseminated within the undertaking and who is responsible for ensuring such dissemination. Finally, the manner in which compliance with ethical rules is supervised within the undertaking should be stated.

Confidentiality

12 § The Exchange and Clearing Act provides that any person who is, or has been, associated with an exchange, authorised marketplace or clearing organisation may not, without proper authority, disclose or make use of any information regarding the business dealings or personal circumstances of any third party during the course of his employment or while providing services (Chapter 2, section 8, Chapter 7, section 2 and Chapter 8, section 4 of the Exchange and Clearing Act). In its application, an undertaking should therefore state which internal rules are implemented by the undertaking to handle classified information.

Criminal activity

13 § A statement regarding the measures which the undertaking has undertaken or intends to undertake to prevent crimes should be appended to the application. The undertaking should have routines for reporting discovered or suspected criminal acts directed against the undertaking or its members. The events should be reported to Finansinspektionen in accordance with its General Guidelines (FFFS 1991:5) regarding Reporting of Discovered or Suspected Criminal Acts.

Undertakings which already conduct operations at the time of application should state in the application whether the undertaking, during the last five-year period, has been subjected to criminal acts in the operations by employees as well as other parties, and whether there were suspicions of crimes during such period. In this context, it is sufficient to provide information regarding the nature of the crime, the date and time of the crime, whether a police report was made and which measures have been taken to prevent new crimes of the same type.

Pending legal or arbitral proceedings

14 § Undertakings which conduct operations at the time of application should state whether they are a party to legal or arbitral proceedings. Information should be provided as to the identity of the opposing party, which of the parties has initiated the proceedings, the nature of the dispute, the amount involved in the proceedings and when a resolution is to be expected.

Chapter 3. Business plan

Generally

1 § Pursuant to the Exchange and Clearing Act, a proposed business plan shall be attached to the application (Chapter 2, section 3, Chapter 7, section 2 and Chapter 8, section 4). The plan should contain information regarding all undertakings as set forth below in sections 2-9. In addition, Chapter 4 below provides general guidelines regarding the contents of the business plan for specific exchanges and authorised marketplaces. Chapter 5 provides comparable provisions in respect of clearing organisations.

Area of operations

2 § The undertaking should provide detailed information regarding the operations which the undertaking intends to conduct. In this context, the person or persons who are responsible for the various sub-areas within which the undertaking will operate should be stated.

Ancillary operations

3 § The Exchange and Clearing Act states that the undertaking may, in addition to the operation covered by the authorisation or licence, only conduct operations which are closely-related to the authorised operations (Chapter 4, section 5, Chapter 7, section 2 and Chapter 9, section 6). Such closely-related operations may consist, for example, in an exchange providing market information services and a clearing organisation maintaining accounts of financial instruments and safe custody services (Government Bill 1995/96:50 Clearing Operations, etc. pp. 86 and 142). The application should state the ancillary operations conducted.

However, special authorisation is required for a clearing organisation which seeks to broker loans or financial instruments and provide loans against security. For applications in this respect, reference is made to Finansinspektionen's Regulations regarding Trading and Services on the Securities Market (FFFS 1995:59), Chapters 2, 7 and 8.

With respect to operations other than those which are closely-related to the operation other than those which are closely related to the operation covered by the authorisation or licence, special licence is necessary from Finansinspektionen. In order to issue such a licence, it is necessary that the undertaking be able to show special cause therefor. According to the preparatory works (Government Bill 1995/96:50 Clearing Operations, etc., pp. 86 and 142) the Supervisory Authority should, in such cases, assume a restrictive position. Furthermore, it appears that, in the case in which an undertaking conducts operations both as an exchange and clearing organisation that the scope of the contemplated ancillary operation should

be determined by the operation which is associated with the greatest risk, namely the clearing operation.

Organisational plan

4 § A schematic diagram should be appended to the application regarding the manner in which the undertaking intends to organise the operation. The organisational diagram should set forth, at a minimum:

1. the primary operation within each organisational unit;
2. the number of persons active within each unit;
3. which employees have the duty of ensuring that the undertaking and its board of directors are aware of the rules applicable from time to time to the operation conducted;
4. the employee to which a member or the public may submit complaints against the undertaking;
5. the manner in which the undertaking's board of directors will monitor that the undertaking conducts its operations in accordance with stated rules; and
6. the manner in which the undertaking intends to meet the requirements for requisite legal, financial and technical expertise.

Setting of fees by the undertaking

5 § The preparatory works (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 66) provides that there is no cause to implement formalised control over the setting of fees by undertakings, either for exchange or clearing operations. However, it is stated that Finansinspektionen shall follow the development within this area as regards the general competitive situation and thereupon pay particular attention to the setting of fees. Against this background, the undertaking should provide information in its operations plan regarding the setting of fees by the undertaking.

Ties to other exchanges, marketplaces and clearing organisations

6 § Undertakings which have an established co-operation or business relationship with other exchanges, marketplaces or clearing organisations should state this fact in the plan and describe the manner in which the co-operation is designed. In the event the undertaking is directly connected to such undertaking, the technical solution therefor should be stated in the plan.

Engagement of another party to conduct operations

7 § Undertakings which have been authorised as an exchange or marketplace or received a licence as a clearing organisation shall, as a rule, conduct the entire operation within its own organisation. However, cases may arise in which an undertaking, for various reasons, may deem it suitable to engage another party to carry out one or more of the elements included in the operation. It should be particularly noted that an engagement may at no time be arranged in such a manner that the undertaking thereby relinquishes the possibility to effect and control the operation conducted on behalf of the undertaking by the agent. It should be further pointed out that an engagement at no time entails that the undertaking waives its responsibility vis-à-vis members and other parties in respect of the operations covered by the engagement.

With respect to issues of this type, the undertaking should, in its business plan, submit a detailed report regarding the nature of the engagement, the scope of the engagement, and the circumstances forming the basis for the engagement. In this context, a special statement should be submitted as to the manner in which the interests of members regarding, *inter alia*, confidentiality will be attended to.

Information security, etc.

8 § In the preparatory works (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 59) it is stated that the technical systems of exchanges and clearing organisations must be subjected to thorough testing before they are placed into operation. New technical requirements are established in legislation taking into account rapid developments within the area. The preparatory works provide that Finansinspektionen shall examine whether the technical systems are designed so that they meet the requirements which should be imposed from time to time with respect to security. As a consequence thereof, the undertaking should provide the information deemed relevant with respect to security and supervision in the use of computer support in the operations. The information should describe the organisation and security measures within the following areas.

- *Computer configuration, network architecture and manner of connection.*

- *Administration and organisation of security work, e.g.*
  policy and rules and regulations;
  allocation of responsibility for security, e.g. between system owners and system administrators, etc;
  analyses of risk and consequences;
  dissemination of security awareness through training;
  integration and co-operation between security functions in the internal audit function.

- *Security in the development and maintenance of application systems, systems software and hardware, e.g.*
  systems development model;
  test environment and test routines, e.g. separation from production environment.

- *Protection against unauthorised access, etc.*
  organisation of the administration of authorisation;
  applied access rules for internal and external users;
  control and follow-up of unauthorised access protection;
  protection against changes and disclosure of communicated data.

- *Security in computer operation, etc.*
  own or computer service firm operational organisation;
  any operational agreements regarding security;
  follow-up and reporting of incidents;
  surrounding environment;
  premises design;
  fire and water protection;
  protection against unauthorised access;
  protection in on-hand archives and security archives.

- *Management of outages and disasters, e.g.*
  outage and disaster plans;
  reserve routines, backup of data communications networks and power sources;
  routines for testing and maintenance of plans;
  information regarding whether reserve systems exist at a location other than the normal operations and the speed at which these reserve systems may be placed into operation.

Complaints

9 § The preparatory works (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 138) provide that the undertaking should have satisfactory routines for addressing complaints from members and the public. In addition, it is stated that it is incumbent upon Finansinspektionen to assess whether the undertaking fulfils such requirements. Undertakings which apply for authorisation or a licence in accordance with the Exchange and Clearing Act should submit information regarding the person who is responsible for complaints. In addition, the undertaking should report its routines in the handling of complaints.

Chapter 4. Exchanges and authorised marketplaces specifically

In addition to the provisions of Chapter 3, the business plan for an exchange and authorised marketplace should include the following.

Trading rules

1 § Chapter 4, section 2 of the Exchange and Clearing Act provides that an exchange shall maintain appropriate rules and regulations which govern trading on the exchange. The provision is also applied with respect to an authorised marketplace. The preparatory works (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 183) state that it is necessary that the rules governing trading be clear and well adapted to the trading system applied to the individual exchange. In addition, it is stated that the exchange's internal rules and regulations governing trading shall be carried out in compliance with the principle of soundness and the other requirements imposed by the Act for exchange operations. Trading rules and regulations must have been drawn up when an undertaking applies for authorisation, and a review of the rules and regulations on the basis of the primary criteria shall be included in the authorisation examination. These rules and regulations should be available in written form. As a consequence thereof, one copy of the undertaking's trading rules and regulations should be appended to the application.

Breakdown of lists

2 § The preparatory works (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 85) provide that there should be a requirement that the exchange, in various ways, provides information regarding, or otherwise clarifies the differences which may exist with respect to, the securities listed on the exchange. In addition, it is stated that Finansinspektionen, both in conjunction with authorisation and in day-to-day supervision, should consider whether the

exchange, in a suitable manner, fulfils such requirement. Accordingly, the undertaking should provide information regarding the requirements applicable to listing of traded securities which are not registered pursuant to Chapter 6, section 1 of the Exchange and Clearing Act. In addition, information should be provided with respect to the requirements applicable to listing of options, futures and other financial instruments. Undertakings which apply for authorisation as a marketplace should provide comparable information as above with respect to exchanges.

Reporting routines

3 § Chapter 4, section 4 of the Exchange and Clearing Act provides that an exchange member shall report any transactions which the member has executed outside the securities exchange on its own account or on behalf of a third party involving financial instruments which are listed on the exchange. Reporting shall take place following the procedures, and to the extent determined by the exchange. The preparatory works (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 106) states that it is the task of Finansinspektionen to, *inter alia,* verify, in conjunction with the authorisation examination, that the reporting routines are satisfactory from a market viewpoint. Undertakings which conduct exchange operations shall therefore report their reporting rules.

Chapter 7, section 3 of the Exchange and Clearing Act prescribes that an authorised marketplace on which traded securities are listed which are registered on a securities exchange shall report any and all transactions involving such traded securities which are executed on the marketplace or which are reported to the marketplace. The preparatory work (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 110) state that the marketplace, in conjunction with an application for authorisation, should state which reporting requirements the undertaking intends to apply. As a consequence thereof, an authorised marketplace should also state its reporting rules.

Information obligation of issuers

4 § Undertakings which obtain authorisation or a licence should obtain from issuers a written undertaking by which the issuer undertakes to comply with Finansinspektionen's Regulations (FFFS 1995:43) with respect to the obligation to provide information. However, the undertaking shall at all times impose exacting requirements on the issuer. A copy of existing agreements should be appended to application.

Market information

5 § Finansinspektionen has issued Regulations (FFFS 1995:43) regarding information regarding prices and turnover information and publication. The application shall state whether dispensation is desired from the stated minimum requirements with respect to information to be published and, where such is the case, the reasons therefor.

Market monitoring

6 § Chapter 4, section 2, second paragraph of the Exchange and Clearing Act provides that the exchange shall supervise trading and price formation on the

exchange and ensure that trading is carried on in compliance with the Exchange and Clearing Act and other legislation and in accordance with sound trading practices on the securities market. The preparatory works (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 183) state that an important element of this supervision is monitoring insider dealing, and that effective supervision of trading and price formation on the exchange enhances the possibilities to discover quickly suspected insider dealing. In addition, it is stated that one element of Finansinspektionen's authorisation examination should include a review of the manner in which the applicant undertaking contemplates satisfying its price monitoring obligation. Compare also the preparatory works to the Insider Dealing Act (Government Bill 1990/91:42 regarding insider dealing, p. 65). The provision also applies to an authorised marketplace pursuant to Chapter 7, section 2 of the Exchange and Clearing Act. In its application, the undertaking should submit a detailed statement as to the manner in which monitoring of trading will be carried out and the number of personnel who will be assigned to market monitoring. In addition, an undertaking should provide information regarding the contemplated routines for contacts with Finansinspektionen and for connection to the Supervisory Authority's computer system for market monitoring.

Membership requirements

7 § Chapter 3, section 1 of the Exchange and Clearing Act states which undertakings may be members of an exchange. In addition, it is stated that it is assumed that a member will have sufficient financial resources and otherwise be suitable to participate in trading. According to the preparatory works (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 80) the examination of the applicant's suitability shall take place on objective and factual grounds.

As a consequence thereof, an undertaking should state the requirements imposed for exchange membership. In addition, information should be provided as to whether the undertaking has established rules for pursuing its own disciplinary measures and sanctions against members and other parties participating in exchange trading, the identity of persons taking decisions with respect to such issues, and the manner in which any disputes are to be resolved. A copy of the membership agreement should be appended to the application.

No comparable rule regarding membership in order to participate in trading on an authorised marketplace is imposed by the Exchange and Clearing Act. Accordingly, it is the marketplace itself which should determine the conditions applicable for participation in trading. However, the preparatory works (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 113) state that the criteria imposed for participation must be based on factual and objective grounds. Against this background, the undertaking should provide information comparable to that regarding exchanges in the preceding paragraph.

Disciplinary measures against issuers

8 § The preparatory works (Government Bill 1991/92:113 New Exchange Legislation, etc. p. 137) state that sanctions, in addition to deregistration, should

be regulated in agreements. As a consequence thereof, the undertaking should state whether such agreements exist and, where such is the case, also which sanctions are provided for in the agreements. In addition, the undertaking should provide information regarding the identity of persons who take decisions regarding disciplinary measures and sanctions against issuers and the manner in which any disputes shall be resolved.

Chapter 5. Clearing organisations specifically

Risk management plan

1 § According to Chapter 8, section 4, second paragraph of the Exchange and Clearing Act, a clearing organisation shall describe the primary risks which are associated with the business operations and the manner in which such risks shall be managed (risk management plan). The risk management plan should be appended to the application and contain the following items.

- *Risk analysis.* Existing risks arise, *inter alia*, due to the manner in which clearing and settlement are organised and the structure of the specific market, e.g. the type of instrument, trading, rate of turnover, price movement (volatility), liquidity, credit facilities and the types of players. In the analysis, risks should be identified, measured and valued. The analysis should contain a description of the manner in which the risk management system is set up in order, where applicable, to prevent and limit the market, credit, liquidity and operational risks existing in conjunction with settlement and to obviate any risk to the stability of the financial system (systems risk) in conjunction with clearing and settlement.

- *Description of the manner in which risks shall be prevented.* How are losses and liquidity problems limited as a consequence of the fact that a clearing member or another party cannot fulfil its undertakings? How can settlement be assured at the appointed time? If a clearing organisation intends to prevent risks by allowing losses to be covered by other participants in the clearing operation, how can this be assured? How will a clearing organisation inform members of the risks associated with participation in the clearing operation? How are the systems (e.g. data and communications systems) designed to ensure the critical functions of the clearing operation? How is the ongoing supervision of the position of clearing members and other parties and exposures set up? How are regularly occurring financial and operational problems monitored?

- *Measures in the event of a crisis situation.* Which measures are to be taken in a crisis situation and how quickly can they be placed into motion; routines for the settlement process, revocation by a clearing member or another party, decision-making, etc. In addition, confidentiality issues relating to a crisis situation should be illuminated. Agreements and member terms and conditions setting forth the authority possessed by the clearing organisation vis-à-vis defaulting participants and the conditions which must exist in order for recourse to be taken to security or a guarantee should be appended to the application.

- *Responsibility for the risk management system.* How is the responsibility for risk management and crisis situations between the clearing organisation and its members and between the members allocated? In addition, information should also be provided regarding the allocation of responsibility within the clearing organisation. What authority is possessed by the responsible unit within the organisation? Which employees of the clearing organisation and members have responsibility during a crisis situation for ensuring that necessary measures are taken? In the assessment of the manner in which these issues shall be addressed, it is appropriate to examine whether the unit at the clearing organisation which is responsible for risk management should be separate from the business units. (Compare Chapter 2, section 5, final paragraph).

- *Management and internal information.* According to Government Bill 1995/96:50 Clearing Operations, etc., p. 83, important decisions concerning the organisation of the clearing operation and routines for risk management are to be taken by the board of directors. Accordingly, minutes which show that the board of directors have taken a decision to establish a risk management plan should be appended to the application. The risk management plan should state the manner in which the board of directors will regularly ensure the acquisition of information regarding the operation.

Payment liability

2 § Pursuant to Chapter 8, section 5 of the Exchange and Clearing Act, a clearing organisation shall, through its capital, guarantees, or insurance or in any other similar manner possess sufficient resources to fulfil any payment obligations which the organisation may incur as a consequence of the clearing operations. Government Bill 1995/96:50 Clearing Operations, etc., p. 81 states that the issue regarding financial strength must be subjected to special consideration in conjunction with a licence examination and that the examination shall take place taking into account the risks faced by the operation. Accordingly, a statement regarding the manner in which the organisation has assessed the issue regarding the financial strength needed by the organisation in order to meet any payment demands should be appended to the application. In addition, an assessment should be made of the extent to which security arrangements, insurance and similar agreements cover any claims for compensation. In its application, the clearing organisation should state information regarding which compensation situations any insurance policy covers and the amounts which may be payable in different situations. (Compare Chapter 2, section 7).

Security requirements

3 § Pursuant to Chapter 9, section 2 of the Exchange and Clearing Act, a clearing organisation which becomes a party to a transaction or which guarantees obligations shall ensure that, upon clearing, sufficient security is provided for obligations incurred and that such security is maintained during the entire duration of the obligation. In conjunction with other clearing operations, the clearing organisation shall ensure that security is provided for obligations incurred to the extent required. Accordingly, a statement should be appended to the application regarding the security requirements imposed by the clearing organisation for participation in the respective operation. The statement should contain information regarding the type of security which may be approved with special

emphasis on the assessment of the quality, liquidity and accessibility of the security. In addition, the time at which the security is to be provided should be stated.

Rules for the clearing operation

4 § Pursuant to Chapter 9, section 1 of the Exchange and Clearing Act, a clearing organisation shall maintain appropriate rules and regulations which govern clearing via the organisation. A statement of these rules should therefore be appended to the application.

Membership requirements

5 § Chapter 8, section 6 of the Exchange and Clearing Act states that clearing members shall possess a sufficient capital strength, a suitable organisation for the business, requisite risk management routines, secure technical systems and shall otherwise be deemed to be suitable to participate in clearing operations. A copy of the membership agreement and the clearing organisation's sanction rules should be appended to the application and supplemented with a statement as follows.

- *Financial strength.* Council Directive 93/22/EEC on investment services in the securities field (ISD) requires that the financial requirement for investment firms and credit institutions within the EEA be determined by Council Directive 93/6/EEC on capital adequacy of investment firms and credit institutions (CAD) and that the home member state authorities monitor compliance with these requirements. With respect to these undertakings and institutions, a host country may impose additional capital requirements only in those respects not governed in CAD. the Capital Adequacy and Large Exposure (Credit Institutions and Investment firms) Act (1994:2004) and Finansinspektionen's regulations issued pursuant to the Act (FFFS 1995:59 regarding Trading and Services on the Securities Market and FFFS 1995:51 regarding the Calculation of the Capital Base and Financial Requirements for Market Risks) apply to Swedish investment firms and credit institutions. With respect to other institutions considered for clearing membership and which are not covered by CAD, the Directive should serve as guidance regarding which capital requirements may be imposed on the member.

  The financial requirement may be effected by netting agreements entered into by the clearing member. In conjunction with the membership examination, a clearing organisation which applies netting procedures must ensure that netting is sustainable in the country in which the applicant undertaking is established. Accordingly, the provisions of Finansinspektionen's Regulations FFFS 1996:10 regarding Netting Agreements may serve as guidance.

  The application should state the basis of assessments for financial requirements. In addition, it should also state which additional requirements have been imposed on the clearing member, e.g. security requirements, guarantees, contributions, liability for losses or entry fees. In the event the organisation offers credit facilities or loans of financial instruments to members and thereby imposes special requirements, such should be stated in the application.

- *Suitable organisation of the operation*. The application should state the requirements on the organisation of the operations of clearing members as the clearing organisation deems necessary for participation in a clearing operation. The organisation should impose requirements for training and experience amongst the personnel of the clearing member which is responsible for the clearing operation. In addition, the organisation should impose appropriate security requirements on the division which administers clearing issues, normally back office, with respect to necessary resources and routines and access in order to be able to handle problems and risks which arise. (Compare Chapter 2, section 5, last paragraph).

- *Necessary risk management routines.* In order to handle and limit the problems and risks which may arise in conjunction with clearing and settlement, there is a requirement that the players involved have a risk management system which is adapted to the operation and documented. These systems shall be designed to prevent and limit the credit, market, liquidity and operational risks existing in conjunction with settlement and to prevent a risk to the stability of the financial system (systems risk) in conjunction with clearing and settlement. The basis for such a risk management system is an analysis of which risks exist in conjunction with the participation by members in the clearing operation. What these risks are and the extent to which the individual player is exposed to such risks is, to a certain extent, dependent on the participant's activity as a clearing member. The primary risks should be identified, measured and valued and documented in a plan for managing the significant risks. The application should state the clearing organisation's requirements imposed on members with respect to the content of the aforementioned plan.

- *Secure technical systems* The application should contain a statement regarding the requirements imposed by the clearing organisation on the data and communications systems of clearing members. The requirements on the organisation and the security measures in conjunction with the use of computer support can be specified in respect of the areas described in Chapter 3, section 8 of these General Guidelines.

These regulations shall enter into force on 1 July 1996, at which time Finansinspektionen's General Guidelines (FFFS 1992:21) concerning applications for authorisation as an exchange or marketplace or licences to conduct clearing operations pursuant to Exchange and Clearing Act (1992:543) shall cease to apply.

CLAES NORGREN

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(Securities Market Division)

For information to

The Ministry of Finance
Sveriges Riksbank [Swedish Central Bank]
Statistics Sweden, SCB
The Swedish Securities Dealers' Assocation
The Swedish Bankers' Association
The Swedish Bankers' Association, Finance Houses Division
Sparbanken Sverige AB
The Association of Swedish Finance Houses
Försäkringsbranschens Service AB FSAB
The Swedish Investment Fund Association
The Swedish Insurance Federation
The Confederation of Swedish Industries
Utländska Försäkringsbolags Förening (The Confederation of Foreign Insurers)
Värdepapperscentralen VPC AB (the Central Securities Depository and Clearing Organisation)
OM Stockholm AB
Stockholms Fondbörs AB
Penningmarknadsinformation PmI AB
Bankgirocentralen BGC AB
Konungariket Sveriges stadshypotekskassa
The General Mortgage Bank of Sweden
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The Swedish Organisation of Swedish Banking Institutions
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