Finansinspektionen's Regulatory Code

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Finansinspektionen's regulations regarding remuneration structures in credit institutions, investment firms and fund management companies licensed to conduct discretionary portfolio management;

decided on 17 February 2011.

Finansinspektionen prescribes[1] the following pursuant to

– Chapter 5, section 2, point 4 of the Banking and Financing Business Ordinance (2004:329),
– Chapter 6, section 1, point 9 of the Securities Market Ordinance (2007:572), and
– section 1, point 8 of the Investment Funds Ordinance (2004:75).

Chapter 1 Introductory provisions

Scope

Section 1 These regulations contain provisions regarding how firms shall measure, govern, report and control the risks that may arise as a result of a remuneration system.

Section 2 These regulations apply to

1. banking companies,
2. savings banks,
3. members' banks,
4. credit market companies,
5. credit market associations,
6. investment firms, and
7. fund management companies licensed to conduct discretionary portfolio management in accordance with Chapter 1, section 4 of the Investment Funds Act (2004:46).

Section 3 A firm which in accordance with Chapter 9, section 3 of the Capital Adequacy and Large Exposures Act (2006:1371) is responsible for ensuring that the requirements for consolidated accounts are met is also responsible in accordance with Chapter 9, section 5, second paragraph for ensuring that these regulations are applied at all firms in the financial group where there is no binding foreign legislation preventing certain areas of the regulations from being applied.

[1] Cf. Directive 2010/76/EC of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (EUT L 329, 14.12.2010, pp.3–35, Celex 32010L0076).

This also applies to subsidiaries outside the EEA in accordance with section 6, first paragraph of the same act.

The responsibility at the group level does not include firms that are part of the financial group but are not subsidiaries of the responsible firm.

Definitions

Section 4 In these regulations the terms and expressions shall have the following meaning:

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 firm, e.g. business unit managers and regional managers.

2. *Significant firm:* A firm that has risk-weighted assets totalling, or exceeding, SEK 500 billion on the balance sheet date for the previous financial year.

3. *Discretionary pension benefit:* A pension benefit that a firm grants to an employee on an individual basis as part of that employee's variable remuneration package. This does not include accrued benefits earned by the employee under the terms of the firm's pension scheme.

4. *Remuneration:* All remuneration and benefits issued to an employee (e.g. cash salary and other cash remuneration, remuneration in the form of shares or share-linked instruments, pension provisions, severance payments, company cars).

5. *Remuneration policy:* The grounds and principles on which remuneration shall be based, applied and monitored, as well as on which the firm shall define which employees can impact the firm's risk level.

6. *Financial group:* Same definition as in Chapter 9, section 1 of the Capital Adequacy and Large Exposures Act (2006:1371).

7. *Control function:* The firm'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 the firm's risk level. This normally refers to employees who can enter into agreements or take positions on behalf of the firm or in any other way impact the firm's risks.

9. *Specially regulated staff:* Senior management and employees in the following categories of staff have been identified by the firm as specially regulated staff in accordance with Chapter 2, section 3:
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.

10. *Variable remuneration:* Remuneration, the amount or size of which is not determined in advance. Variable remuneration does not include commission-based salary not linked to future risk assumptions that may alter the firm’s profit and loss statement or balance sheet.

11. *Senior management:* The managing director, the deputy managing director and other members of the management group or a similar body that report directly to the board of directors or the managing director.

Other legislation

Section 5 These regulations are applied without prejudice to a firm's obligations under applicable principles of contract and labour law. These regulations also are applied without prejudice to the rights of labour market parties during collective bargaining.

Chapter 2 General requirements on remuneration policy and variable remuneration

Remuneration policy

Section 1 A firm shall have a documented remuneration policy that is in line with and promotes sound and effective risk management and counteracts excessive risk-taking behaviour. The remuneration policy shall be updated and reviewed regularly.

The remuneration policy shall encompass all employees.

Section 2 The remuneration policy shall be designed and applied in a manner appropriate to the firm's size, internal organisation and the nature, scope and complexity of the business. The remuneration policy shall also be consistent with the firm's business strategy, objectives, values and long-term interests.

Section 3 A firm shall analyse the risks associated with its remuneration policy and remuneration structure. Based on this analysis, the firm shall identify its specially regulated staff. The firm shall document and specifically motivate if employees in any of the categories of staff set out in Chapter 1, section 4, point 9a–d are not considered to have a material impact on the firm's risk level and therefore shall not be classified as specially regulated staff.

Pension policy

Section 4 A firm applying variable remuneration that includes discretionary pension benefits shall have a pension policy. This pension policy shall be consistent with the firm's business strategy, objectives, values and long-term interests.

The firm shall transfer or pay out discretionary pension benefits in the form of shares or instruments as set out in Chapter 4, section 7.

Section 5 A firm shall ensure that discretionary pension benefits transferred to an employee in conjunction with reaching retirement shall be subject to at least a five-year retention period during which the employee may not exercise control over the instruments.

Where the firm, due to the termination of employment, transfers discretionary pension benefits to an employee before retirement, the discretionary pension benefits shall be deferred for a period of at least five years.

Variable remuneration

Section 6 A firm shall ensure that its total variable remuneration does not limit the ability of the firm to maintain, or strengthen as needed, a sufficient capital base.

Limits to guaranteed variable remuneration

Section 7 A firm may not grant guaranteed variable remuneration at any other time than in conjunction with the hiring of new staff. The firm shall limit such remuneration to the first year of employment.

Risk hedging strategies

Section 8 A firm shall ensure that its employees undertake not to use personal risk hedging strategies or insurances to mitigate or eliminate the effects of an adjusted or cancelled deferred remuneration.

Remuneration in conjunction with the termination of employment

Section 9 A firm shall ensure that remuneration paid to an employee in conjunction with the termination of employment reflects the employee's performance during the period of employment and is calculated in such a manner as not to reward unsound risk-taking.

Chapter 3 Governance and control

Governance

Section 1 A firm's board of directors shall decide on a remuneration policy. This decision shall be based on the analysis referred to in Chapter 2. The board of directors shall be responsible for the application and review of the remuneration policy.

Section 2 The board of directors shall decide on

a) remuneration to senior management,
b) remuneration to employees who are primarily responsible for any of the firm's control functions, and
c) measures to enable a review of how the firm's remuneration policy is being applied.

The decision of the board of directors shall where applicable comply with decisions made by the Annual General Meeting with regard to the firm's remuneration.

Remuneration committee

Section 3 A significant firm shall have a remuneration committee which shall conduct an independent assessment of the firm's remuneration policy and remuneration structure. A financial group may establish a common remuneration committee for all firms within the group.

The Chair and other members of the remuneration committee may not be members of the firm's senior management. The members of the remuneration committee shall have sufficient knowledge and experience in issues relating to risk management and remuneration.

Section 4 The remuneration committee shall prepare the decisions of the board of directors regarding remuneration and the measures referred to in section 2.

This decision preparation shall take into account the long-term interests of shareholders, investors and other stakeholders.

Section 5 A firm that has not established a separate remuneration committee shall appoint a specific member of the board of directors to conduct the assessment set out in section 3 and prepare the decisions set out in section 4. This member may not be a member of the firm's senior management and shall have sufficient knowledge and experience in issues relating to risk management and remuneration.

Control

Section 6 A firm shall at least annually have a control function review the firm's remuneration structure for compliance with the remuneration policy. The control function shall report the result of the review to the board of directors no later than in conjunction with the adoption of the annual report.

Section 7 A firm shall ensure that appropriate control functions participate in the assessment and evaluation process conducted by the remuneration committee or specified board member in accordance with section 3.

Section 8 A firm shall ensure that employees in control functions are independent from the business units they oversee and have appropriate authorities and resources to monitor and control the risks associated with the firm's remuneration structure.

Remuneration for employees in control functions

Section 9 Where employees in control functions receive variable remuneration, a firm shall ensure that this remuneration is based on targets linked to the control function and is independent of the performance of the business areas they control.

Chapter 4 Remuneration structure

Balance between fixed and variable remuneration

Section 1 Where a firm's remuneration contains variable components, it shall ensure that the fixed and variable components are appropriately balanced. The fixed components shall represent a sufficiently large portion of the employee's total remuneration that the variable components can be set at zero.

In its remuneration policy, the firm shall specify the maximum ratio of the variable components to the fixed components for all categories of staff eligible for variable remuneration. Exceptions to this ratio shall be approved on a case-by-case basis by the board of directors.

Performance assessment and risk adjustment

Section 2 A firm's performance assessment used to calculate variable remuneration components shall primarily be based on risk-adjusted profit measures. Both current and future risks shall be taken into account. The firm shall also take into account in its assessment the actual costs of the capital and the liquidity required for its business activities.

Where a firm adjusts its performance for risk using subjective assessments, the considerations that serve as the basis for the adjustment shall be well balanced and documented.

Section 3 A firm's performance assessment shall be set in a multi-year framework in order to ensure that the assessment process is based on long-term, sustainable results and that the firm's underlying business cycle and business risks are taken into account when paying performance-based remuneration.

Section 4 A firm shall base variable remuneration to specially regulated staff on both the employee's performance and the overall performance of both the business unit and the firm. Both financial and non-financial criteria shall be taken into account in the assessment of the employee's performance.

The financial and non-financial criteria used by the firm as a basis for remuneration decisions shall be specified and documented.

Information for employees

Section 5 A firm shall inform its employees about the criteria that govern their remuneration and how their performance will be assessed. The assessment process and the remuneration policy shall be accessible to all employees.

Deferral

Section 6 A firm shall ensure that at least 40 per cent of the variable remuneration to specially regulated staff, whose variable remuneration over a period of one year totals at least SEK 100,000, is deferred over a period of not less than three to five years before it is paid or the right of ownership passes to the employee. The firm shall take into account the business cycle, the risks of the business, the employee's responsibility, the employee's tasks and the size of the variable remuneration when determining the portion of the variable remuneration that will be deferred and the length of the deferral period.

The firm shall defer at least 60 per cent of the variable remuneration for members of senior management and other employees belonging to the firm's specially regulated staff with particularly high amounts of variable remuneration.

A firm may pay deferred remuneration once a year evenly distributed over the period of time that the remuneration was deferred (pro rata). The first payment may be made at the earliest one year after the decision to grant variable remuneration.

Shares and other instruments

Section 7 A significant firm shall ensure that at least 50 per cent of the variable remuneration to a member of senior management consists of

a) the firm's shares, participations or instruments linked to the firm's shares or participations, or
b) other instruments that fulfil the conditions for Tier 1 capital contributions as set out in Chapter 7, section 16a of Finansinspektionen's regulations and general guidelines (FFFS 2007:1) regarding capital adequacy and large exposures, that adequately reflect the creditworthiness of the firm as a going concern.

Where appropriate and possible, the firm shall allow the variable remuneration components within the meaning of the first paragraph to consist of a combination of instruments in a and b.

The first paragraph shall be applied to both the deferred portion of the variable remuneration and the portion not deferred.

Section 8 A significant firm shall ensure that the shares, participations and other instruments referred to in section 7 are subject to restrictions such that the employee may not exercise control over the instruments for at least one year, or longer depending on the firm's long-term interests, after the ownership rights to the instrument have passed to the employee. This applies regardless whether the variable remuneration has been deferred or not.

The remuneration policy shall contain rules governing the shortest period of time the employee may not exercise control over variable remuneration paid as shares, participations and other instruments.

Loss of remuneration

Adjustment of deferred remuneration

Section 9 A firm shall ensure that deferred variable remuneration components are only paid or passed to the employee to an extent justifiable by the firm's financial situation and the performance of the firm, the business unit in question and the employee. The deferred portion of the remuneration shall also be able to be cancelled in full for the same reasons.

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1. These regulations shall enter into force on 1 March 2011, whereupon Finansinspektionen's regulations and general guidelines (FFFS 2009:6) regarding remuneration policies in credit institutions, investment firms and fund management companies shall be repealed.

2. A firm shall apply these regulations to remuneration resulting from contracts entered into prior to 1 March 2011 that were decided or paid after this date, and to remuneration earned during 2010 that was decided but not yet paid prior to 1 March 2011.

3. The provisions contained in Chapter 4, section 7 do not need to be applied to variable remuneration earned prior to 1 March 2011 that was decided or paid prior to 1 July 2011.

4. A firm shall notify Finansinspektionen no later than 31 August 2011 if the firm still has remuneration obligations that do not comply with these regulations.

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