

Finansinspektionen's Regulatory Code

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Regulations amending Finansinspektionen's regulations (FFFS 2007:16) regarding securities business;

FFFS 2014:16

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decided on 26 June 2014.

Finansinspektionen prescribes¹ pursuant to Chapter 6, section 1, points 3, 4, 10 and 11 of the Securities Market Ordinance (2007:572) concerning Finansinspektionen's regulations (FFFS 2007:16) regarding securities business

in part that Chapter 1, section 1, Chapter 2, section 1, and Chapter 3, sections 3 and 6 and Chapter 6, sections 7 and 12 shall have the following wording,

in part that section 1.5 of Appendix 3 a and sections 1.9, 4.1 and 4.2 of Appendix 3 b shall have the following wording,

in part that ten new sections shall be introduced into the regulations, Chapter 6, sections 5 a–d, 12 a and 12 b and 13 a–d, and a new heading immediately preceding Chapter 6, section 13 a with the following wording.

Chapter 1

Section 1 These regulations apply to securities institutions unless otherwise specified. Swedish credit institutions shall apply the regulations for the part of the operations that pertains to securities operations, with the exception of the provisions in the following chapters.

Chapter 6 Organisational requirements, etc.

Chapter 9 Outsourcing.

The provisions of Chapter 6 shall, in accordance with what is set forth in Chapter 3, section 4 of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968), be applied at group or subgroup level.

Chapter 2

Section 1 In these regulations, terms and expressions shall have the same meaning as in Chapter 1, sections 4 and 5 of the Securities Market Act (2007:528). In addition, terms and expressions shall have the following meaning:

1. *Distribution channel*: a channel through which information has been or probably will be available to the public. Information that will probably be available to the public refers to information that is available to a large number of persons.

¹ Cf. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338, Celex 32013L0036).

2. *Personal transaction*: trade in a financial instrument which is conducted by a relevant person or on behalf of a relevant person if at least one of the following criteria is met:

- a) The relevant person is acting outside of the scope of the activities he or she carries out in his/her capacity as a relevant person.
- b) The transaction is carried out for the account of any of the following persons:
 - the relevant person,
 - any other person with whom the relevant person has a close relationship, or with whom the relevant person has close links,
 - a person whose links with the relevant person are such that he or she 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.

3. *Remuneration committee*: The same as in Finansinspektionen's regulations (FFFS 2011:1) regarding remuneration systems in credit institutions, investment firms and fund management companies licensed to conduct discretionary portfolio management.

4. *Financial analyst*: a relevant person that carries out investment analyses.

5. *Group*: the group to which a securities institution belongs, consisting of a parent undertaking, its subsidiary undertakings and the entities in which the parent undertaking or its subsidiary undertakings hold a participation, and undertakings linked to one another within the meaning of Article 12(1) of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts.

6. *Implementing Regulation*: Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading and defined terms for the purpose of that Directive.

7. *Close relationship*: a relevant person and his/her

- a) spouse or partner,
- b) minor children under the charge of the relevant person, and
- c) other parties closely related to the relevant person who for at least one year on the date of the transaction in question have shared the same household with this person.

8. *Relevant person*:

- a) a board member, the managing director, a partner, manager or tied agent of the securities institution,
- b) a board member, the managing director, a partner or manager at a tied agent of the securities institution,
- c) an employee of the securities institution or of a tied agent of the securities institution as well as all other natural persons whose services are placed at the disposal and under the control of the securities institution or the tied agent of the securities institution and who is involved on behalf of the securities institution in the provision of investment services and activities, and
- d) a natural person who is directly involved in the provision of services to the securities institution or to its tied agent under an outsourcing arrangement for the purpose of the provision of investment services and activities.

9. *Risk appetite*: the same as in Finansinspektionen's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control at credit institutions.

10. *Risk strategy*: the same as in Finansinspektionen's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control at credit institutions.

11. *Capital Requirements Regulation*: Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

12. *Securities financing transaction*: the lending or borrowing of equities or other financial instruments, a repurchase or reverse repurchase transaction or a buy-sell back or sell-buy back transaction.

13. *Outsourcing agreement*: an agreement in any form between a securities institution and a service provider according to which the service provider performs a process, a service or an activity which would otherwise be undertaken by the securities institution itself.

14. *Durable medium*: any means which enables a client to store information addressed personally to the client in a manner accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

15. *Senior management*: the same as in Finansinspektionen's regulations (FFFS 2011:1) regarding remuneration systems in credit institutions, investment firms and fund management companies licensed to conduct discretionary portfolio management.

Chapter 3

Section 3 A list of the undertaking's direct and indirect owners shall be included in the application.

The information for the ownership assessment set out in Chapter 5 shall also be appended to the application.

Where the undertaking is part of a group or a consolidated situation in accordance with Article 18 of the Capital Requirements Regulation, the application shall include a schematic overview of the group's or consolidated situation's structure, information about the individual undertakings included therein and their share of ownership in the undertaking applying for authorisation. Information shall be provided regarding all links included in the ownership chain.

The undertaking shall state in its application if it is part of a financial conglomerate in accordance with the Special Supervision of Financial Conglomerates Act (2006:531).

Section 6 An undertaking shall submit in its application a forecast for the next three financial years. The forecast shall include

1. balance sheet and profit and loss account,

2. an analysis of own funds and other capital requirements in accordance with Articles 92–98 of the Capital Requirements Regulation, Chapter 2, section 1 of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968), the Capital Buffers Act (2014:966) and Chapter 3 of Finansinspektionen’s regulations (FFFS 2014:12) regarding prudential requirements and capital buffers, and

3. how the results of the balance sheet and profit and loss account affect the initial capital that the undertaking shall have in accordance with the Securities Market Act (2007:528) and the own funds and other capital requirements the undertaking shall have in accordance with Articles 92–98 of the Capital Requirements Regulation, Chapter 2, section 1 of the Special Supervision of Credit Institutions and Investment Firms Act, the Capital Buffers Act and Chapter 3 of Finansinspektionen’s regulations regarding prudential requirements and capital buffers.

The forecast shall specify the assumptions on which it is based.

A sensitivity analysis shall be submitted that shows the affect that modified assumptions, for example volumes, interest rate levels and interest rate margins, would have on the stated forecasts and capital requirements in accordance with the Securities Market Act, the Capital Requirements Regulation, the Special Supervision of Credit Institutions and Investment Firms Act and the Capital Buffers Act.

The undertaking shall account for the capital that will cover all of the undertaking’s risks in accordance with Chapter 8, section 4 of the Securities Market Act.

The undertaking shall account for how it intends to finance its activities.

Chapter 6

Section 5 a A securities institution shall devote sufficient resources to train the board members.

Section 5 b A securities institution shall, when appointing board members, take into account a broad set of qualities and competences and, to this end, have a policy for promoting diversity on the board of directors.

Section 5 c A securities institution shall, on its website, explain how it organises and manages the operations. The securities institution shall on the website also explain how the board of directors, board members and the managing director meet the requirements of sufficient knowledge, insight, experience and suitability.

If the securities institution does not have a website, it shall be able to provide the information in a different manner to the public.

Section 5 d A securities institution shall have a recovery plan for restoring its financial situation following a significant deterioration. A securities institution shall have procedures for regularly updating the recovery plan. The plan shall be decided by the board of directors.

The recovery plan shall be formulated with due consideration for the nature, scope and complexity of the operations and the nature and scope of its investment services and activities.

Section 7 A securities institution shall ensure that the board of directors and the managing director regularly, at least annually, receive written reports on the areas covered by the provisions in this chapter regarding compliance, risk management and internal audits. The reports shall contain information about the appropriate measures taken in the event of any deficiencies.

If a risk committee has been appointed, the securities institution shall ensure that also the risk committee regularly, at least annually, receives written reports regarding the areas covered by the provisions regarding risk management.

The board of directors, and the risk committee if such has been appointed, shall determine the nature, amount, format and frequency of the risk information they are to receive.

Section 12 A securities institution shall, where appropriate and reasonable in view of the nature, scope and complexity of the operations and the nature and scope of its investment services and activities, maintain a risk management function that operates independently.

The risk management function shall:

1. ensure that all material risks are identified, measured and properly reported,
2. implement the guidelines and procedures set out in section 11,
3. actively participate in the preparation of the securities institution's risk strategy and in all significant risk management decisions and be able to deliver a complete view of all types of risk that have a bearing on the securities institution, and
4. provide reports and advice to the board of directors and the managing director in accordance with section 7.

Section 12 a The risk management function shall have sufficient authority and position, and sufficient resources.

Section 12 b The head of the risk management function shall be an independent senior manager with specific responsibility for the risk management function. Where the nature, scope and complexity of the operations of the securities institution do not justify a specially appointed person, another senior person within the securities institution may fulfil that function, provided there is no conflict of interest.

The head of the risk management function may not be removed without the approval of the board of directors and shall, where necessary, be able to approach the board of directors directly.

Risk committee

Section 13 A securities institution that is significant with respect to size, internal organisation and the nature, scope and complexity of its activities shall ensure that the board of directors has a risk committee. The risk committee shall consist of board members who are not members of senior management of the securities institution. The members of the risk committee shall have appropriate knowledge and skills to understand and monitor the risk strategy and risk appetite of the securities institution.

Section 13 b The risk committee shall serve as an advisor to the board of directors with respect to the securities institution's overall present and future risk appetite and risk strategy and assist the board of directors in its monitoring of the

senior management's implementation of the strategy. The board of directors shall maintain overall responsibility for risks.

Section 13 c The risk committee shall ensure that the price of liabilities and assets offered to customers takes into account the business model and risk strategy of the securities institution. Where prices do not accurately reflect risks in accordance with the business model and risk strategy, the risk committee shall prepare an action plan for the board of directors.

Section 13 d In order to assist in the establishment of a sound remuneration policy and sound remuneration practice, the risk committee shall, without affecting the duties and responsibility of the securities institution's remuneration committee, examine whether incentives in the remuneration system take into account risk, capital, liquidity and the likelihood and timing of earnings.

These regulations shall enter into force on 2 August 2014.

ANNIKA ZERVENS

Anna Persson

Appendix 3 a

1.5. Append a description or outline of any insurance group or consolidated situation in accordance with Article 18 of the Capital Requirements Regulation after the acquisition.

The number of participations shall be stated as a percentage of the number of issued participations. If the number of voting rights differs from the number of participations, also state the number of votes as a percentage of the total number of voting rights.

Also, list owners that in any other way have significant influence over the target company. Also, indicate which undertakings are under the supervision of Finansinspektionen or an equivalent foreign authority.

For each undertaking that is part of such a group, state if it is

- an insurance holding company,
 - a financial holding company,
 - a mixed financial holding company,
 - under the supervision of Finansinspektionen or an equivalent foreign authority,
- or
- not subject to such financial supervision.

Appendix 3b

1.9. Append a description or outline of any insurance group or consolidated situation in accordance with Article 18 of the Capital Requirements Regulation after the acquisition.

The number of participations shall be stated as a percentage of the number of issued participations.

If the number of voting rights differs from the number of participations, also state the number of votes as a percentage of the total number of voting rights.

Also, list owners that in any other way have significant influence over the target company. Also, indicate which undertakings are under the supervision of Finansinspektionen or an equivalent foreign authority.

For each undertaking that is part of such a group, state if it is

- an insurance holding company,
 - a financial holding company,
 - a mixed financial holding company,
 - under the supervision of Finansinspektionen or an equivalent foreign authority,
- or
- not subject to such financial supervision.

4.1 Information when ownership involves control

An acquirer has control over the target company if the acquirer directly or indirectly receives the majority of the votes or shares. Furthermore, an acquirer has control over the target company if the acquirer is a shareholder, and

– has the right to appoint or dismiss a majority of the members of the target company's administrative, management or supervisory bodies, or

– via agreements with other owners in the target company has access to more than half of the votes for all shares or participations.

Business plan

If the undertaking's ownership signifies control, append a business plan that includes the following:

1. A *strategic development plan* that includes a description of

a) the purpose and objective of the acquisition and how these will be achieved,

b) planned changes to the business of the target company, e.g. products, customers and any reallocation of assets,

c) planned integration of the target company with the acquiring undertaking's group, and

d) information about the acquirer's intention and ability to contribute capital to the target company if needed.

2. A *solvency or capital adequacy calculation* at the time of the acquisition or

at the time of the most recently adopted figures before the acquisition, if the acquisition will entail that the target company and the acquirer will become part of an insurance group or a consolidated situation in accordance with Article 18 of the Capital Requirements Regulation.

3. A specified list of the large exposures held by the acquirer at the time of acquisition if the acquirer is a financial institution.

4. *Forecasts* for the target company for the coming three years. If the acquisition entails that the target company and the acquirer will become part of an insurance group or a consolidated situation in accordance with Article 18 of the Capital Requirements Regulation, forecasts shall also be submitted for the group.

The following information shall be included in the forecasts:

- a) balance sheet and profit and loss account,
- b) important key ratios, and
- c) solvency or capital adequacy calculations.

5. A description of how the acquisition will impact the governance and organisation of the target company. In particular, specify if the acquisition will affect:

- a) the composition of the board of directors and company management,
- b) the organisation's operational structure (append an organisational diagram), and
- c) outsourcing.

4.2. Information when ownership does not involve control, but totals 20 per cent or more

If the acquisition does not involve control of the target company, but the holding totals 20 per cent or more, the following information about the acquisition shall be appended:

- 1. information about whether the acquirer intends within the foreseeable future to increase or reduce its holding in the target company,
- 2. if the acquirer intends to actively attempt to exercise influence over the undertaking (and specify the circumstances related thereto),
- 3. a solvency or capital adequacy calculation at the time of the acquisition or at the time of the most recently adopted figures before the acquisition, if the acquisition will entail that the target company and the acquirer will become part of an insurance group or consolidated situation in accordance with Article 18 of the Capital Requirements Regulation, and
- 4. a specified list of the large exposures held by the acquirer at the time of the acquisition, if the acquirer is a financial institution.