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One year with MiFID

Final report: securities regulations

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Summary

Finansinspektionen (FI) has investigated 106 investment firms during 2008 due to the new securities regulations, MiFID.[1] The purpose has been to identify problems and issues which the new regulations have brought about and to verify whether the investment firms have adapted sufficiently. FI's overall evaluation is that the investigated investment firms have actively worked to adapt to MiFID and that the majority of the firms fulfil the requirements of the regulations. All the firms, however, have received opinions in one or more areas. FI has found serious deficiencies in four of the firms which has led to a sanctions assessment.

In the cases in which the same opinions have been conveyed to several investment firms, FI has chosen to describe the current provisions in more detail and discuss their application. These include, among others:

- the importance of outsourcing agreements when outsourcing operations associated with the investment firms' licenced operations,
- the regulation function's new controlling responsibility,
- the need for a more comprehensive and critical investigation of the operations in order to identify conflicts of interest which may jeopardise having a negative impact on the client's interests,
- a lack of a documented correspondence between advice and the personal information which the client has provided,
- opinions that the investment firms' guidelines are not adapted to the organisation and operations which is a prerequisite for them to be operatively applicable and thereby constitute an effective control measure,
- a need for a further developed appropriateness assessment based on the client's background, expertise and experience,
- discussion concerning a suitability assessment of existing clients,
- a need for further developed summarised inducement information so that the client becomes aware of in which situations inducements may arise and to what extent.

FI is planning several investigations based on their results, e.g. a review of branch operations and application of the regulations' provisions regarding best order execution.

FI has previously pronounced that primary market transactions fall under the MiFID regulations. Corporate finance operations normally require a licence. A primary market transaction can, however, also encompass licenced operations in relation to the investors who subscribe in a share issue by the fact that the investment firm executes orders on behalf of the investor. This means that the MiFID regulations on client protection become applicable. A decisive factor, however, is whether the investor and the investment firm can be considered to enter into a client relationship in connection with the transaction.

[1] In this report, MiFID is used throughout as a comprehensive term for the new Securities Market Act (2007:528) and FI's Regulations governing investment services and activities (FFFS 2007:16).

Introduction

FI has investigated a large number of investment firms during 2008 due to the new securities regulations, MiFID. The purpose of the investigation has been to identify problems and issues which the new regulations have brought about and to verify whether the investment firms have adapted sufficiently. This report summarises the final result of the investigation.

One year with MiFID

The financial markets in Sweden and the EU have now lived for just over a year with MiFID, the new regulations in the securities sector. The MiFID regulations allow great flexibility on a general level, taking into account the size and complexity of the firms. At the same time, the regulations in certain respects are very precise and detailed. The adaptation to the new regulations has imposed major demands on the firms concerned. Existing procedures, instructions and computerised systems have had to be changed and updated. In many cases, new procedures and new systems have been required.

The regulations have also imposed requirements that FI's supervision shall be able to handle the flexibility that exists within the regulations and has resources to make interpretations and assessments of various issues.

It is important to focus on the amount of all detailed regulations, which can be perceived as unnecessary intervention, having the purpose to ensure that the regulations' fundamental principles are met, namely:

- that the firms shall identify and manage their risks and conflicts of interest
- that the firms shall treat their clients honestly and fairly and provide sufficient and correct information.

Due to the financial crisis, the principles and importance of their compliance have received renewed current interest.

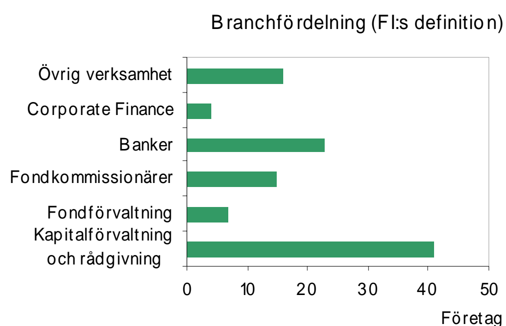
MiFID is an EU-harmonised regulatory regime and FI's interpretations and assessments are often made within the framework of the cooperation within the Committee of European Securities Regulators (CESR[2]). FI, like the other CESR members, has pledged to adhere to CESR's interpretations and recommendations, if there are no legal obstacles at a national level. This means that the interpretations and assessments that FI makes may be changed if CESR makes an EU-harmonised interpretation.

FI's report provides a snapshot of the work which the firms have carried out in order to adapt to the new regulations. The adaptation is an ongoing process which will continue, taking into consideration the opinions that FI's investigation has generated. FI hopes that this report can contribute to facilitating these efforts.

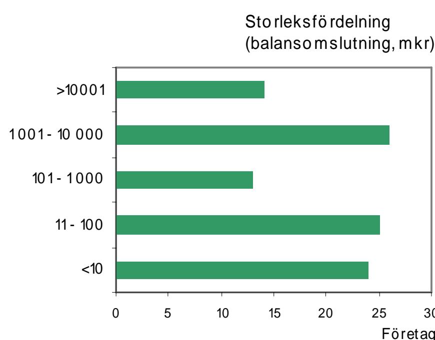
[2] CESR – The Committee of European Securities Regulators.

The investigation's method and scope

The new MiFID regulations encompass, among other things, operations which previously have not required a licence and which have also led to some changes of existing licences. In order to simplify the process for the investment firms, old licences were converted into new ones in conjunction with the new Act going into effect. However, this conversion was standardised which is why FI decided to verify and follow up on whether the investment firms and their foreign branches conduct operations corresponding to the new licences.

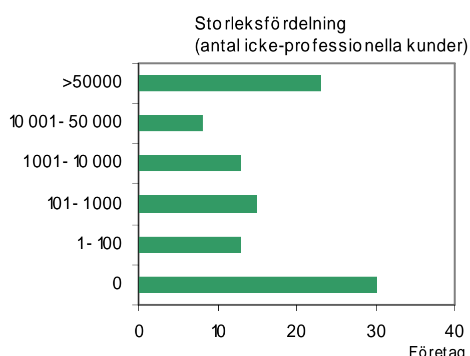


Between February 2008 and January 2009, FI has visited 106 investment firms and banks. In addition, the securities business at an additional 50 savings banks has been surveyed by means of a questionnaire.



Besides verifying licences, the survey has focused on the changes which the new regulations have brought about, for the purpose of identifying at an early stage the areas in which the regulations are interpreted in different ways or where the investment firms experience problems with the application of the regulations. The great diversification of the firms' size and focus shows that the securities business can be conducted in many forms. This requires adapted supervision and proportional regulation application which MiFID provides some scope for.

In the cases in which FI has concluded that there are deficiencies at the investment firms, an assessment has been made of whether they are serious enough to warrant imposing sanctions. Otherwise the deficiencies have been communicated in a final report, in certain cases through an appeal to the firm to submit a description of how it intends to rectify the shortcomings. FI is going to follow up the investigation at a selection of the investigated firms through onsite visits. In other cases, a follow-up will be made of the firms' handling of opinions from the investigation and these will be taken into account in the ongoing supervision.



FI published a partial report in December 2008 on the preliminary results of the current investigation. In the report, FI highlighted a number of issues and problems it wanted to communicate to the industry at an early stage. The industry was also invited to

provide comments and opinions on the report's contents which three stakeholders responded to. A follow-up of these is made in the section "Follow-up of the partial report" (page 19).

The final report begins with a review of the investigation's results and the areas of review which were included. After that a follow-up of the partial report is presented with a subsequent in-depth focus on the area of "Primary market transactions and MiFID" for which the industry has requested guidance from FI.

In this report, MiFID is used throughout as a comprehensive term for the new Securities Market Act (2007:528) and FI's Regulations governing investment services and activities (FFFS 2007:16). References to regulations are provided throughout the report in footnotes. In the Appendix (page 26) a description is provided of selected areas of regulation that are of importance to the report's in-depth focus.

The investigation – contents and results

The investigation encompasses a number of prioritised areas of review with a link to the key changes which the new regulations have brought about for the investment firms. In addition to these, FI has also included issues associated with regulations that directly affect the firms' securities business, such as money laundering and market abuse.

Outcome of the investigation

The concluded investigation includes 106 investment firms. FI's overall evaluation is that the investigated investment firms have actively worked to adapt to MiFID and that the majority of the firms fulfil the requirements of the regulations. All of the firms, however, have received opinions in one or more areas of which procedures and guidelines for compliance are the most common. FI has found that serious deficiencies exist in four of the firms which has led to a sanctions assessment. Three cases have been dismissed as the shortcomings were not considered as eligible for sanctions and the firms have taken measures to rectify them. In one case, FI has decided to revoke a licence which has later been converted into a warning. A few firms are still under investigation.

Continued supervision

In line with the purpose of the investigation, FI has identified several areas in which the industry has had difficulties in implementing the new regulations or where differences have existed in how the regulations have been interpreted. To the greatest possible extent, FI has handled these issues immediately in its contacts with the firms, or communicated FI's standpoints in this report. Because the investigation has continually generated new issues which FI has taken a position on, it is important that the firms take into account the opinions conveyed in this report, in spite of the statements provided in the final report. Some issues remain to be investigated and will be handled in the future on an ongoing basis and with strong links to the existing European cooperation through CESR.

The investigation shows that the investment firms often cooperate with insurance intermediaries whose regulations are not as extensive as MiFID. Therefore, FI is going to more closely review these relations within the framework of a special supervisory effort during 2009, with a focus on insurance intermediaries.

The investigation has also excluded certain areas of review in which their scope requires special efforts. For example, FI is going to more closely review the application of the regulations' provisions regarding best order execution.[3] A special review of the investment firms' branch operations within and outside Sweden is also planned.

[3] Chapter 8, sections 28-32 of the Securities Market Act.

Review results

An account of the results of the investigation is provided below, broken down into the areas of review that FI has focused on. In every area of review, an account is provided of the most common opinions that FI has communicated to the firms and a discussion on a selection of these. The share of companies without observations or opinions is illustrated in the pie chart in the introduction to every review section (shaded in green).

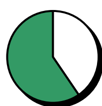
The investigation has also included a questionnaire which the investment firms have responded to. A selection of the replies is presented in the review sections.

Securities licences

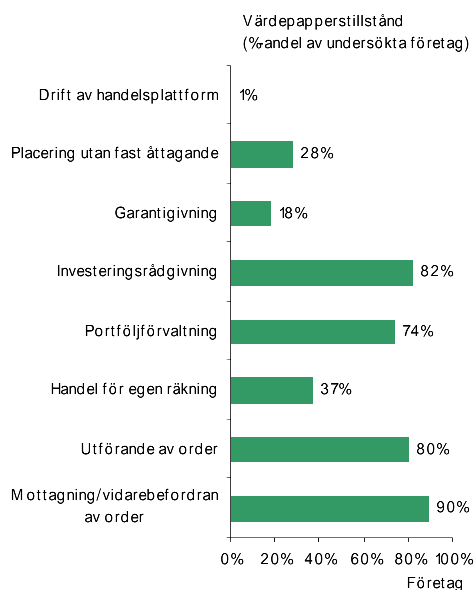
Common opinions

- The firm has primary or ancillary licences for which no operations are conducted.

Share without observations



Because the firms' capital requirements, organisation and design of routines and guidelines are often based on securities licences granted, it is important that the current operations also reflect these. FI's review of the securities licences has led to a number of firms having to apply for new licences, alternatively been encouraged to revoke licences for which operations are not conducted. In several cases, the firms have intentionally kept their licences while awaiting operations to eventually commence, which FI doesn't find suitable. The regulations impose clear requirements that licences which are not utilised shall be revoked after a certain time period.[4] This provision aims, among other things, at ensuring that stated procedures and guidelines are current and serve the intended purpose.



In some cases, the investment firms have had licences for which no operations are conducted in the Swedish parent company but in its foreign branches. FI finds that this is allowed on the condition that the majority of the licenced operations are conducted in the home Member States, i.e. the country where the licence has been granted, and that it occurs as a part of organising the firm as a larger group. By conducting the majority of the operations in branches with the assistance of licences from a non-operative parent company in the home Member State, however, is

[4] Chapter 25, section 5, points 2 and 4 of the Securities Market Act.

considered as circumventing the regulations.

Outsourcing agreements and tied agents

An investment firm can choose to outsource operations to an external party through an outsourcing agreement. In those cases in which the firms have outsourced work and functions of major significance, they shall apply MiFID's conditions for outsourcing agreements,[5] which, among other things, mean that the firm is responsible for ensuring that the service provider adheres to applicable regulations and does not worsen the quality of the firm's internal control. The review indicates that the definition of what is considered to constitute significant operations differs between the investigated investment firms. In the regulations it states that advice, without a connection to investment or ancillary services, and purchases of standardised services are not covered by the regulations governing outsourcing agreements. FI feels that these examples should be considered as exceptions. The starting point should be that all activities associated with the investment firm's licenced operations fall under the provisions of outsourcing agreements. Examples of these are:

- Obtaining and documenting client information for appropriateness or suitability assessments.
- Conducting appropriateness and suitability assessments.
- Functions for compliance and risk control.

The regulations[6] provide an investment firm with the opportunity to use client information from other investment firms, such as information on an appropriateness assessment. The investment firm which carries out a service or transaction based on such information is responsible, however, for the information being complete and that it fulfils the requirements of the regulations. The supplier of information is responsible for the information being complete and correct.

FI notes that several investment firms, with a primary focus on management of Premium Pension Authority (PPM) funds, have chosen to allow insurance intermediaries to conduct suitability assessments of new clients. FI assesses that gathering information on a client as a basis for a suitability assessment and carrying out such work of significant importance to the operation, requires outsourcing agreements between the investment firm and the insurance intermediary.

An investment firm may also choose to allow an external party to carry out certain investment services as a tied agent.[7] A tied agent can do this within the framework of the investment firm's licence and its responsibility in relation to the MiFID regulations. The review has included a verification of whether the investment firms have registered tied agents with the Swedish Companies Registration Office and which agreements govern this relationship. It has been concluded that no serious deficiencies exist. FI notes that this type of engagement relationship has grown during 2008 and that

[5] Chapter 8, section 14 of the Securities Market Act and Chapter 9 of FFFS 2007:16.
[6] Chapter 8, section 41 of the Securities Market Act.
[7] Chapter 6 of the Securities Market Act.

several firms report that they intend to use tied agents in the future, mainly insurance intermediaries.

Parallel with the current investigation, FI has conducted a survey of the insurance intermediaries' operations and compiled the results in a report.[8] Based on this survey, FI has concluded that many insurance intermediaries receive a large portion of their revenues from promotion from investment firms. FI concludes in the report that it is difficult to draw the line between marketing and mediation. This fact, together with MiFID's requirements for a suitability assessment in conjunction with mediation, means that the insurance intermediary's role and responsibility must be clarified. FI also finds that there is an obvious risk that the marketing switches to advice when it occurs in direct client contact – in the latter case there are detailed regulations which shall constitute protection of the consumer.

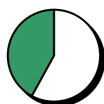
If the insurance intermediary is not a tied agent of an investment firm, then the agent is not allowed to mediate other financial instruments than fund shares [9] outside an insurance. FI clarifies and exemplifies in the report on insurance intermediaries that marketing probably turns into mediation when the insurance intermediary receives direct remuneration for a client who takes out a certain product. Because FI concludes that many investment firms use insurance intermediaries as a marketing channel, it is important to take a stand on how the insurance intermediaries use the firm's marketing material and to what extent it may risk being a matter of mediation. This particularly applies when the investment firm has signed a commission agreement with the insurance intermediary without being a tied agent.

Procedures and guidelines for compliance

Common opinions

- No written annual report has been drawn up on the regulation function's work.
- The function lacks monitoring and assessment in its work.
- The function is not sufficiently independent in relation to the investment firm's operational activities.

Share without observations (green)



An important part of the investigation has been to review the procedures and guidelines that govern the function for the compliance work in order to verify the investment firm's compliance. FI has, among other things, reviewed the function's working method and size in relation to the operations. A well-organised function with clear guidelines probably contributes to increased client protection and therefore constitutes an important part of the investment firms' organisation. The new regulations mean, among other things, that the regulation function shall be responsible for checking and regularly assessing whether the firm's measures and procedures for compliance are suitable and effective. FI assesses that this isn't possible if

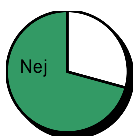
[8] Finansinspektionen's report 2009:4 "Insurance intermediaries – in the borderland between marketing and mediation".

[9] This requires a licence for ancillary operations pursuant to the Insurance Mediation Act (2005:405), Chapter 5, section 1 pertaining to fund unit brokerage mediation. The ancillary licence only covers fund units in investment funds and fund management companies pursuant to Chapter 1, sections 7 and 9 of the Investment Funds Act (2004:47).

the function's work doesn't include certain monitoring and assessment. In connection with the investigation, on several occasions FI has had opinions that this is not sufficiently clear in the function's guidelines.

The increased monitoring responsibility has also led to several firms feeling that the regulation function needs to be expanded with additional resources. The same relationship should also apply to the consultancy companies which manage compliance on behalf of smaller investment firms. FI feels that the quality of the control can be affected by the number of assignments that the consultant takes on. The investment firms should take this into account when they purchase such a service. The discussion with the industry has been constructive, however, and knowledge of the function's increased responsibility now seems to be well supported by the market players.

The questionnaire asked: Does the compliance officer participate in the operational activities?



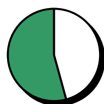
The review has also focused on the regulation function's independence from the investment firm's operational activities. The more extensive and complex the operation conducted is, the more stringent requirements are imposed for independence. FI assesses that larger banks and investment firms should have a separate unit that can focus on compliance – to also include, for example, risk control or business law in the area of responsibility can lead to the function being forced to control itself. To the extent that an investment firm, which is included in a group, chooses to use a group-wide function for this purpose, an outsourcing agreement must be drawn up. FI feels that it is unsuitable to outsource the regulation function's control activities to the internal audit function. The latter can then end up scrutinising itself because the internal audit is supposed to investigate and assess whether control mechanisms and procedures are suitable and effective.[10]

Procedures and guidelines for risk management and the internal audit

Common opinions

- No written annual report has been drawn up on the risk function's work.
- The risk function lacks monitoring and assessment in its work.
- The function is not sufficiently independent in relation to the investment firm's operational activities.

Share without observations (green)



The review has also covered the investment firms' function for risk management and the internal audit function (to the extent that the investment firms have such). In the review, FI has looked at the functions' independence, scope and to what extent the work carried out coincides with established instructions. Similar to the review of the regulation function's work, FI in several cases has had opinions about the function's independence and lack of monitoring and assessment.

This area of review has not included the four big banks because this has previously been done in separate, directed investigations.

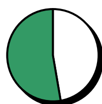
[10] Chapter 6, section 10, point 3 of (FFFS 2007:16).

Management of conflicts of interest

Common opinions

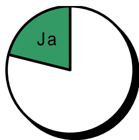
- The firm has not surveyed or documented potential conflicts of interest which have been identified in the operations.
- Information was not available on how identified conflicts of interest shall be managed.

Share without observations (green)



An investment firm shall identify and manage the conflicts of interest which may arise in the operations, especially if there is a risk that they can have a negative impact on the client's interests.[11] This is an important prerequisite in order to maintain the confidence of both the market participants and the consumers. FI therefore feels that it is important that the investment firms continuously survey and document potential conflicts of interest in the operations. In the current investigation, FI has therefore reviewed guidelines and procedures for the management of conflicts of interest and how these are communicated with the clients. To some extent, FI has also provided opinions on potential conflicts of interest which have been identified in the investigation.

The questionnaire asked: Has the firm identified any conflict of interest during the past year?



The review shows that the investments firms usually have guidelines and procedures in place but that in many cases it is difficult to see how the potential conflicts of interest have been managed in the organisation. FI concludes as well that the firms' documentation is often based on typical conflicts of interest which are particularly mentioned in legislation and regulations, such as the management of analysis activities and corporate finance activities.[12] However, sometimes a more comprehensive and operational-critical review is required in order to identify internal conflicts of interest, including those of a more indirect nature. One example of this is the management of commission-based remuneration or bonuses in the operations.

Another example is conflicts of interest in conjunction with advice which FI brought up in the partial report. How is advice provided in the cases in which the firm has an inducement to sell its own products with a higher margin compared with products from external suppliers? Even if the inducement regulations address one element of this problem, the firm should also determine how potential conflicts of interest in conjunction with the provision of advice shall be managed in relation to the clients. Even if the financial advisor does not have any direct inducement to sell the firm's own products, this can be indirectly affected by the internal marketing of products and the management's objective for these.

MiFID provides scope for the investment firms to carry out investment or ancillary services, despite the fact that this can lead to conflicts of interest. However, this requires that the client has been informed particularly regarding the specific conflict of interest. FI wants to emphasis, however, that this can only occur if there is no alternative management. To

[11] Chapter 8, section 21 of the Securities Market Act and Chapter 11 of FFFS 2007:16.
[12] Chapter 11, sections 8-12 of FFFS 2007:16.

intentionally refrain from managing a conflict of interest can violate the provisions that the investment firms shall make all reasonable efforts to prevent a negative impact on clients' interests. In some cases, the firm must be prepared to reconsider the way of conducting operations if it entails conflicts of interest. In a couple of cases, for example, FI has noted financial advisors who have a mainly commission-based remuneration which is directly tied to new sales and sold volume. In these cases, the conflicts of interest that arise risk ending up in conflict with the firm's obligation to safeguard their clients' interest when it conducts advising activities.

FI pointed out in the partial report that proprietary trading can end up in a conflict of interest with client-driven trading, which requires very strict procedures for its management. FI prefers that these activities are physically separated, which has already been implemented in many places. If this isn't possible, this type of trade should be followed up continuously with the aid of internal surveillance and transaction monitoring. Firms conducting corporate finance operations should also take into account the conflicts of interest which can arise by physically locating ECM operations [13] together with brokerage activities.

Inducements

Common opinions

- Information in summarised form regarding inducements is too general.
- The firm hasn't informed regarding inducements granted to a third party, only those which have been received.

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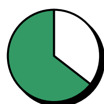
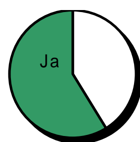


The commissions which the investment firms provide and receive can sometimes affect the firm's possibility to safeguard its clients' interests. How the inducements are recorded and in what way they are formulated is important in order for the client to be able to made an informed assessment of the product or service offered by the investment firm. This is therefore specially regulated in FI's regulations.[14]

The questionnaire asked: Does the institution handle products or services from/via a third party?



In the investigation, FI has reviewed how the investment firms inform their clients regarding inducements. In most cases, the firms have chosen to provide their clients with standardised information in summarised form. The choice of application has led to a more detailed position by FI on this issue on page 21.

The investigation has only covered an overall review of the nature and existence of the inducements. FI therefore plans to conduct a special directed investigation taking into account the work that CESR is currently conducting.

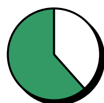
[13] Equity Capital Market – a resource which constitutes a link between corporate finance, brokerage and analysis with access to sensitive information.
[14] Chapter 12 of FFFS 2007:16.

Routines for order execution and trading

Common opinions

- Lack of guidelines for best order execution as the firm only mediates fund units.
- Lack of a list of counterparties and reliable trading venues.

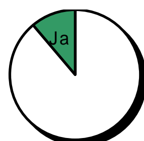
Share without observations (green)



MiFID contains new regulations regarding how the investment companies shall execute client orders in order to attain the best possible results for the client.[15] Because MiFID provides an opportunity to trade the same financial instruments on several markets, it is important that the firms both have clear routines in order to choose where the order will be executed and openly record how these routines are formulated. FI has reviewed the guidelines and procedures which the firms have in order to manage the choice of trading venue. Because there are still few alternative trading venues, FI can conclude that the implementation of the provisions has been limited. As new trading venues start operations, this will probably change, however.

In several cases, the investigation has led to opinions about the guidelines' general wording which is dealt with in more detail on page 19.

The questionnaire asked: Does the company conduct active trading and proprietary trading?



On a couple of occasions, FI has had reason to discuss how the firms handle and inform of limit orders. According to the regulations,[16] a limit order which cannot be executed, shall be disclosed immediately in a manner that makes it easily accessible to other market participants. If this is done by the order being sent to a regulated market or a trading venue for execution, the firm has fulfilled the provision. For cases in which the client has provided other instructions, the provision is not applicable. FI has seen examples in which the client's instructions are the result of his or her approval of the investment firm's guidelines regarding best order execution. In certain guidelines, it states that the investment firm doesn't need to disclose the order with reference to the client's best interest. In FI's opinion, it can be called into question whether a client can be considered to have provided instructions just by approving the firm's guidelines. FI can accept that the investment firm, in those cases where it doesn't have the opportunity for a dialogue with the client, resolves it in this manner. FI finds, however, that because it is a matter of a deviation from a rule in the legislation, requirements are imposed for detailed and clear information that is adapted to the firm's working method, regarding when and how the firm intends to deviate. The client must have the opportunity to understand that he or she has made an active choice and why.

Information to the client and complaints management

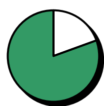
Common opinions

- The firm's product information doesn't include the financial instruments that are offered to clients.

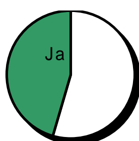
[15] Chapter 8, sections 28-29 of the Securities Market Act and Chapters 18-20 of FFFS 2007:16.
[16] Chapter 9, section 1 of the Securities Market Act.

- The firm offers no information regarding benchmarks or the equivalent to its discretionary clients.[17]
- There are no written procedures and guidelines for client classification.
- The firm has not clearly defined what constitutes a complaint.

Share without observations (green)



The investigation has included the investment firms' information disclosure to new clients, complaints management, procedures for client classification and specific client information, related to the investment and ancillary services which the firm conducts. Client categorisation constitutes the basis for MiFID's client protection, which in turn affects which information the client will receive. The investigation shows that the firms have had significant benefit from the joint work that the industry has carried out in order to standardise and assure the quality of the information. The new MiFID regulations, however, have led to increasing amounts of client information and several firms have pointed out the risk that the clients receive too much information and therefore cannot understand essential information. FI agrees that the information requirements are more extensive in the new regulations but at the same time wants to encourage the firms to take into account MiFID's focus on consumer protection – a clear and consumer-adapted disclosure of information is a part of this. Therefore, the information shouldn't be too standardised but should instead be adapted to the products and services which the firm offers.



The questionnaire asked: Have documented measures been taken as a result of complaints during the past year?

The requirement of client classification[18] doesn't seem to have involved any greater problems for the firms. Some players have chosen to consider all legal persons as professional clients without taking into consideration the criteria which in such cases must be fulfilled according to MiFID. FI notes that many investment firms choose to request to be treated as professional clients instead of equivalent counterparties in their relationship to other investment firms. This primarily applies to parties which act in their own name on behalf of a client and who want the regulations on best order execution to be applied.

Most of the firms in the investigation are assessed to have satisfactory procedures to handle complaints. FI concludes that the definition of what constitutes a complaint differs between different companies and is rarely stated in the guidelines that have been drawn up. In order for the routines to function in the organisation, it is important that this is defined and communicated in advance to the personnel so that the firm's clients are not treated differently.

Documentation and routines for other investment services than advice or discretionary management (appropriateness assessment)

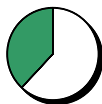
Common opinions

- The firm's procedures for an appropriateness assessment don't comply with the regulations.

[17] Chapter 14, sections 19-20 of FFFS 2007:16.
[18] Chapter 8, sections 15-20 of the Securities Market Act and Chapter 13, of FFFS 2007:16.

- The firm doesn't gather sufficient detailed information regarding the client's experiences and expertise in order to be able to determine whether the product is appropriate for the client.

Share without observations (green)



With its special focus on consumer protection, MiFID contains several provisions aimed at preventing inexperienced consumers from investing in financial instruments that they don't understand. An important element is the requirement that the investment firms shall assess whether the client has sufficient expertise and experience in order to understand the risks of more complex financial products through an appropriateness assessment.[19] In the investigation, FI has reviewed the firms' routines for this and has identified deficiencies in several cases. One commonly occurring deficiency is that the questions asked are too general and therefore cannot constitute a sufficient basis to assess whether the product is appropriate for the client or not. See page 20 as well.

In the investigation, FI has also reviewed in which cases the firms categorise their financial instruments as complex or non-complex. Execution only instruments are not covered by the requirement for an appropriateness assessment.[20] Even if the regulations set clear limits for classification, there are instruments that cannot be clearly categorised. Index bonds presently constitute such a group. The industry has therefore called for guidance from FI. Efforts are currently underway at a European level, through the cooperation organisation CESR, in order to define in more detail how various financial instruments shall be categorised. FI has chosen to await this work with the intention of adapting Swedish practice to CESR's position. Until further notice, FI feels that index bonds can be difficult to understand for the consumers and that only in exceptional circumstances can they be characterised as execution only.

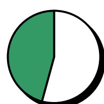
The appropriateness assessment should, in addition to the client's previous experience with specific financial instruments, also take into account at which time this experience was attained. The investment firm should therefore always ask whether the client's skills are sufficiently up-to-date.

Documentation and procedures in conjunction with discretionary management and advice (suitability assessment)

Common opinions

- The firm hasn't taken a stand on whether existing clients (prior to 1 November 2007) have submitted sufficient information as a basis for a suitability assessment.
- There is no suitability assessment – i.e. a documented link between proposed investments and the personal information that the client has provided.

Share without observations (green)



When an investment firm offers investment advice or portfolio management,

[19] Chapter 8, section 24 of the Securities Market Act and Chapter 15, sections 7-8 of FFFS 2007:16.
[20] Chapter 8, section 25 of the Securities Market Act and Chapter 15, section 11 of FFFS 2007:16.

it shall first obtain the necessary personal information about the client so that the investments which the service results in are suitable and adapted to the client's financial conditions, previous knowledge and needs.[21] Unlike the appropriateness assessment, in a suitability assessment an overall client assessment is made which is more extensive and imposes stricter requirements of the firm's ability to understand the client's needs and conditions.

On several occasions, FI has had opinions about investment firms, which gather client information for a suitability assessment, but then don't seem to draw any conclusions from this information. This becomes particularly clear when there is no documented link between advice and client information, which is a prerequisite for the actual suitability assessment. FI wants to emphasise as well the importance of also documenting advice that doesn't lead to a completed business transaction. If the client returns on a later occasion and executes transactions based on the advice provided, in some cases this should be considered as a continuation of the advice and not as a separate business transaction.

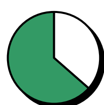
This review point is further dealt with on page 20.

Money laundering and terrorist financing

Common opinions

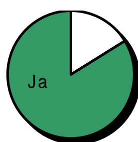
- The firm doesn't handle cash and therefore has no procedures to review other types of transactions.
- The firm's internal guidelines are not customised.

Share without observations (green)



The investigation has also included the control of the firms' routines regarding combating money laundering and terrorist financing. The investigation shows that the firms included in a banking operation generally have good procedures in place. In certain cases, however, this has meant that the procedures for the securities business in certain aspects have not been specific for the operation, but have reflected the banking operation on the whole. The smaller investment firms also have procedures in place, but they are not sufficiently customised.

The questionnaire asked: Have all employees concerned participated in training regarding money laundering and terrorist financing?



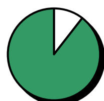
Several other deficiencies have been identified regarding, among other things, procedures for reviewing suspect transactions and reporting to the Financial Intelligence Unit (of the National Police), information about a tipping-off prohibition, procedures for monitoring sanctions lists and the archiving of documents which have been used for client identification. The assessments were made in relation to the Money Laundering Act that applied at the time (1993:768) governing measures against money laundering and FFFS 2005:5 "Regulations and General Guidelines Governing Measures against Money Laundering and Financing of Particularly Serious Crimes in Certain Circumstances". The greatest risk in terms of investment firms in relation to money laundering and terrorist

[21] Chapter 8, section 23 of the Securities Market Act and Chapter 15 of FFFS 2007:16.

financing is ignorance and a lack of understanding for how these firms can be used for the purpose of laundering money and financing terrorism.

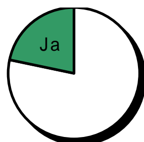
Transaction reporting (TRS) and organised trading

Share without observations (green)



MiFID prescribes that investment firms shall report all transactions of financial instruments which are admitted to trading on a regulated market.[22] In the investigation, FI has verified whether the investment firms execute such transactions which shall be reported and therefore are registered with FI as transaction reporting firms. In most cases, reporting procedures are in place, but in some cases the firms have not understood that they are expected to report, such as asset managers who execute orders in their own name within the framework of their management engagements.

The questionnaire asked: Does the company execute OTC transactions with financial instruments which are admitted to trading on a regulated market?



In a couple of cases, FI has had viewpoints about the firms' publication of exchange information. Prior to MiFID, information about rates and turnover in trading of shares was published by the exchanges. In Sweden, legislation required investment firms to report all trading to the exchanges, regardless of whether the trading occurred in the exchanges' technical systems or manually in parallel with the technical system. Another arrangement is prescribed in the new legislation. Trading that occurs on one trading venue (regulated market or MTF), in a technical trading system or manually according to its regulations, is published by the trading venue. Trading which occurs outside a marketplace (OTC trading) is published by the investment firm itself or by means of someone who provides that service. Such a service is provided by the company Markit BOAT in London. FI has learned that a substantial share of the trading of Swedish securities is allegedly reported to and published by Markit BOAT. Professional information suppliers of exchange information, such as SIX, Reuters and others, are therefore compelled to gather information from several sources than stock exchanges in order to be able to convey an aggregated picture of trading of Swedish securities.

In the English media, some criticism has been conveyed that the new order has led to quality deficiencies in terms of exchange information. This primarily applies to the information about OTC trading. In the investigation, FI has observed that the investment firms in some cases report trading both to Markit Boat and to Nasdaq OMX Stockholm. A consequence of this is that trades are reported twice, which isn't in line with the recommendations which CESR has issued.[23]

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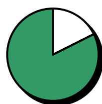
[22] Chapter 10 of the Securities Market Act.
[23] PUBLICATION AND CONSOLIDATION OF MiFID MARKET TRANSPARENCY DATA - Level 3 CESR's guidelines and recommendations for the consistent implementation of the Directive 2004/39/EC and the European Commission's Regulation no. 1287/2006.

Other assessments of the operations

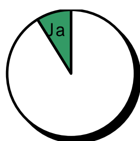
Share without observations (green)



FI has also reviewed how the investment firms handle suspected market abuse and employees' personal transactions. Most of the companies have satisfactory guidelines in place.

In several cases, FI has concluded that the investment firms with a large share of trading for custom accounts, both manual and electronic, rarely have any procedures for ongoing monitoring of trading. MiFID[24] imposes requirements for market surveillance for investment firms operating a trading venue or organising trading by accepting and transmitting orders. [25] For investment firms that provide trading via electronic trading systems (e.g. Internet brokers and banks), and thereby execute orders on behalf of a client, there is no corresponding requirement, however. Pursuant to the Financial Instruments Trading (Market Abuse Penalties) Act (2005:377), investment firms shall report suspect transactions, but at the same time there is no information regarding whether this requires an active role on the part of the investment firms.

The questionnaire asked: Has the company identified and treated cases of suspected market manipulation without it leading to a report pursuant to Section 10 of the Financial Instruments Trading (Market Abuse Penalties) Act.



All investment firms shall have procedures in order to be able to report suspect transactions which are discovered. Although neither MiFID nor the Financial Instruments Trading Act contains any implicit requirements that the investment firms shall monitor the transactions executed or transmitted on behalf of a client,[26] a sound securities business presupposes that the investment firms have control over the operations so that they don't violate applicable regulations. This also includes the services which the firm performs on behalf of a client. The firm shall also act in a manner that maintains the public's confidence in the securities market which presupposes preventive efforts so that the transactions which the firm executes on behalf of clients don't have an unduly influence on the market.[27] Pursuant to FI's regulations[28] investment firms shall have a permanent and effective function in order to monitor and regularly assess the firm's compliance in terms of the Securities Market Act and other legislation regulating the firm's activities. The firms should also take into account provisions in adjoining regulations governing the relationship with the client, e.g. the proposed Commission Act.[29] In the Act on Measures against Money Laundering and Terrorist Financing (2009:62) it states that the investment firm shall review the transactions which the clients execute through the firm.

FI recommends that all investment firms impose blocks that prevent a client from trading with himself or herself between two custodian accounts within the firm, alternatively to be able to discover such transactions retroactively. The reason that the firm should do this is that such transactions violate the Swedish exchanges trading regulations, that there is a risk that the transactions are a violation of the Financial Instruments Trading (Market

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[24] Chapters 5-6 of FFFS 2007:17.
[25] Chapter 8, section 13 of the Securities Market Act.
[26] The exception of the securities business which is covered by Chapter 8, section 13 of the Securities Market Act.
[27] Chapter 8, section 1 of the Securities Market Act.
[28] Chapter 6, section 9 of FFFS 2007:16.
[29] This matter is currently a Council on Legislation exposure draft, http://www.regeringen.se/sb/d/10024/a/109518.

Abuse Penalties) Act as they may affect the price, turnover or mislead the market's buyers and sellers, and that these transactions may constitute a risk for money laundering, because it is only a matter of transferring securities and money and no actual transactions.

Follow-up of the partial report

FI published a partial report in December 2008 on the preliminary results of the current investigation. In the report, FI highlighted a number of issues and problems it wanted to communicate to the industry at an early stage. The industry was also invited to provide comments and viewpoints on the report's contents which three stakeholders responded to. Portions of the report's contents are discussed below, taking into account the viewpoints expressed. To the extent that FI has understood that the industry shares FI's position, the assessments published in the partial report remain. These are summarised in the section regarding the contents and result of the investigation.

Guidelines in general – for whom and why?

FI concluded in the partial report that the investigated investment firms' guidelines in many cases are not adapted to the firms' organisation and operations which is a prerequisite for them to be operatively applicable and thereby constitute an effective control measure. One reason for the lack of appropriate guidelines seems to be that the documents are standardised and adapted for general publication with external stakeholders as target groups. FI also noted that many firms provide overall guidelines to the client which is not an implicit requirement in the legislation.

The industry feels that the need for transparency differs depending on the character of the guidelines and the requirements imposed in the legislation. Examples mentioned include guidelines for best order execution which the clients are supposed to approve according to the law, which presupposes that the client is informed of these in their entirety. FI naturally feels that it is positive that the firm is open about its operations and chooses to publish its guidelines. However, the regulations impose requirements that the firms have guidelines with a primary purpose of serving as internal policy documents.[30] The consequence of the firm choosing to publish guidelines may never be a detriment to the appropriateness and contents, for example by their becoming too general in order to be able to act as policy documents for the operations. FI feels that the example concerning the guidelines for best order execution, where the legislation requires approval by the client, cannot affect this fundamental requirement. FI is of the opinion that the client should first approve the guidelines regarding best order execution by receiving readily-understandable information about these.[31] The regulations specify which further information the client should be informed of.[32]

In many cases it has not been clear whether the investment firms' guidelines are adopted by the board of directors. It is the board of directors' responsibility to ensure that the guidelines are in place and review and evaluate them on a regular basis. In light of this, FI feels that the guidelines should be adopted by the board of directors. The board of directors may,

[30] Chapter 8, section 9 of the Securities Market Act. See the Appendix as well.
[31] Chapter 8, section 22 of the Securities Market Act.
[32] Chapter 18, section 7 of FFFS 2007:16.

however, delegate this task to the Managing Director, for example, which should be clearly stated in the board of directors' formal work plan.

Appropriateness assessment – what is referred to?

FI concluded in the partial report that the procedures for an appropriateness assessment differ between the firms in the investigation. FI felt that an appropriateness assessment should be based on the client's background. One basic condition is therefore that the firm first gathers information about the client's present expertise and experience. The scope of information may be adapted to the individual product's or service's characteristics and nature. Only after that can the appropriateness assessment be conducted, based on this information. If the client lacks sufficient experience and expertise, the firm must take a stand on whether to advise against it, i.e. inform the client that the product or service isn't appropriate.

After the appropriateness assessment is conducted, there is room to "heal" the client's lack of expertise by offering him or her information about the product's characteristics and risks and then confirming that the client has read and understood the information. When the client has received the information, the firm can then assess whether the service or product in question is appropriate. It is FI's opinion that this is only suitable for less complex products or where the lack of expertise is assessed as insignificant.

FI hasn't received any viewpoints from the industry that differ from the above. One market participant, however, points out that it should be possible to overcome smaller expertise and experience gaps with the aid of relatively standardised information material. This presupposes that the investment firm's products are characterised based on their complexity and that the client can benefit from his or her previous expertise when taking the step to the next product category. It is harder to overcome larger expertise or experience gaps and it requires more than just standardised information – in certain cases, it may not be possible to overcome the gap at all when the client wants to take steps that are too large.

FI agrees in principle, but wants to emphasise that each individual financial instrument must be assessed based on its special characteristics. It isn't always the case that division into product categories is sufficient. Even if a client believes that he or she knows how a warrant works, it isn't certain that he or she is familiar with the conditions for the warrants available on the market.

Suitability assessment of existing clients?

When an investment firm offers investment advice or portfolio management, it shall first obtain the necessary information about the client so that the investments which the service results in are suitable and appropriate for the client's financial conditions, previous knowledge and needs. FI concluded in the partial report that the documentation, which has been established for clients before the new legislation entered into force, in many cases was not updated and therefore didn't fulfil the requirements contained in the new

regulations. If a client has not provided information that constitutes a sufficient basis for the suitability assessment, the firm must supplement earlier information before the investment service can be provided.

This is relatively simple to administer for advisory clients where the information can be updated in conjunction with each upcoming occasion during which advice is provided. One market participant feels that the investment firms, in conjunction with providing ongoing advice, fulfil the regulations by urging the client to inform the firm if anything has changed in the client's situation that can call for a new assessment on the firm's part. FI feels that this possibility is based on overall data having been established in conjunction with the client relationship entered into. It is still the investment firm's responsibility to ensure that the overall data fulfil the requirements of the new regulations before new advice is provided.

As for discretionary portfolio management, FI feels that it is the investment firms' responsibility to review old asset management agreements and to assess whether the client information is sufficient in order to fulfil the requirements contained in the MiFID regulations. If an update is necessary, it should be done before portfolio changes are made on behalf of the client. The industry has pointed out that a discretionary portfolio assignment is usually based on a mandate or a management instruction which the manager shall adhere to. As long as the firm executes transactions on behalf of the client in accordance with the mandate/instructions, no new suitability assessment should be needed. FI feels that a clear management mandate can contribute to the investment firm adapting its management to the conditions that the client reported in conjunction with the commencement of the management service. To what extent the firm can make changes in the client's portfolio without assessing the suitability depends, however, on the scope and restrictions of the mandate. A broad mandate presupposes that the investment firm continually assesses that the changes which are made are suitable for the client. This isn't possible if the investment firm doesn't have sufficient information regarding the client's financial conditions, previous knowledge and needs.

Inducements – what information shall the client receive?

In conjunction with the investigation, FI has been informed of the investment firms' procedures for managing and informing regarding inducements. A clear majority has chosen to utilise the regulations' opportunity to provide more general information to their clients, usually via their website. The contents of the information varies, but is often standardised information regarding the existence of the inducement, linked to the financial instruments which the investment firm offers.

FI is of the opinion that the EU Commission's Implementing Directive,[33] which FI's regulations are based on, is primarily based on the investment firms providing complete information regarding the nature and amount of the inducements, linked to the specific product or service which the client is

[33] The Council's Directive (EC) 2006/73.

offered.[34] The opportunity to inform the clients in a summarising form may therefore not affect the client's opportunity to decide on the product or service in connection with the offer. We share CESR's opinion that this can only be attained if the investment firms cover all significant conditions for inducements which can be linked to the specific product or service which the client can decide on.[35] A general description relating that the investment firm can end up receiving or paying inducements in different situations cannot be considered to correspond to this. It is most important that the client is clearly aware of which situations in which inducements may be considered so that he or she can find out more about the exact wording of the inducement for the product or service offered. An opinion about the nature and size of the inducement probably contributes as well to the client requesting more information. The contents of the summary should therefore be adapted to the complexity of the firm's inducement structure. Suitable information includes, e.g.:

- which products or services are covered by inducements and which types of inducements are associated with these,
- the parties from which the investment firms receive or provide inducements,
- clear terms for how the inducements are usually calculated with the aim that the client should be able to personally estimate the scope of the inducement,[36]
- any deviations from the above.

The summary shall always contain clear wording that the client has the right to receive exact information regarding inducements from the investment firm.[37]

During the autumn of 2009, CESR is going to publish a report concerning the inducement regulations for the purpose of clarifying the regulations and highlighting good practice in the area, together with proposals for improvements. The arguments above can therefore be further clarified in the future.

[34] The Council's Directive (EC) 2006/73, article 26 b (i).
[35] CESR/07-228b Inducements under MiFID.
[36] For example, conditions for calculation can be stated, e.g. if remuneration is calculated by incremental volume targets.
[37] Chapter 12, section 2 of FFFS 2007:16.

Primary market transactions and MiFID

Summary
FI has previously pronounced that primary market transactions fall under the MiFID regulations. Corporate finance operations normally require a licence. A primary market transaction can, however, also encompass licenced operations in relation to the investors who subscribe in a share issue by the fact that the investment firm executes orders on behalf of the investor. This means that the MiFID regulations on client protection become applicable. A decisive factor, however, is whether the investor and the investment firm can be considered to enter into a client relationship in connection with the transaction.

Background

Primary market transactions can occur in two forms, both as a preferential share issue, when existing investors subscribe for shares in a limited liability company, and non-preferential share issues, where investors are invited to subscribe in a share issue of financial instruments. Non-preferential share issues can entail a diversification of ownership to the public in combination with the shares being admitted to trading on a regulated market or a trading venue.

FI has previously assessed that primary market transactions fall under the MiFID regulations. The licenced operations include, just as in the past, the investment firm's relationship to the issuer when he or she undertakes to invest, guarantees and to some extent administers and provides advice concerning the issue.[38] FI also feels that primary market transactions can also include licenced operations in relation to the investors who subscribe in the share issue. The position is based, among other things, on a statement in the Government bill[39] where it states that an investment firm should be considered to provide the execution of orders service in conjunction with primary market transactions. An example provided is the case in which a firm receives and executes client orders for subscription of shares in a share issue. In the earlier legislation there was no direct equivalent to the current provision.

If the investment firms can be considered to execute client orders in conjunction with a primary market transaction, MiFID's regulations for client relationships are applicable. The provisions include, among other things, a requirement for customer due diligence, client information and various protection regulations in conjunction with the transaction, e.g. requirements for an appropriateness assessment in certain cases. FI feels that this is especially important in conjunction with the offers which include complex financial instruments, e.g. several structured products and unlisted shares.

FI's position has been questioned by the industry, through the Swedish Securities Dealers Association, which points out that it is first when a client

[38] Licences pursuant to Chapter 2, section 1, points 6-7 of the Securities Market Act and section 2, points 3 and 6.
[39] The Government bill 2006/07:115, page 303 (part 1).

relationship arises between an investment firm and an investor that MiFID's regulations can be applicable. The Association doesn't feel that a client relationship arises when the investors send in their subscription form and the investment firm only administers these on behalf of the issuer. In the Association's opinion, FI's position also has legal and practical consequences for the industry which risks limiting the opportunity for the public to participate in larger share issues and offers. The Association also feels that the prospectus regulations provide similar protection for the investors as MiFID provides to the investment firms' clients.

FI's view of primary market transactions

FI is aware of the problems which the previously communicated position entails for the industry. The issue is complicated and can therefore require further investigation in order to guarantee an application of the regulations which is very compatible with the requirements for client protection in both the EU as well as in Sweden. FI, however, maintains its original position but agrees with the Association that the investment firm's obligations to a great extent depend on whether a client relationship arises in conjunction with the transaction. A decisive factor is whether the investor perceives that he or she has entered into a client relationship with the investment firm when he or she subscribes for shares through payment or sends in an application to acquire financial instruments in a primary market transaction. It is up to the investment firm to assess when a client relationship[40] arises, for example by taking into account:

- the existence and nature of any commitments which the respective party expects to fulfil in relation to each other.
- to which extent the investment firm is expected to act on behalf of another party in a transaction or to represent the party in any other way.
- to what extent the communication between the parties gives the impression of occurring within the framework of a client relationship.
- to what extent the investment firm has characterised the investor (non-professional/professional).
- to what extent it appears that the investment firm provides a financial service to the investor.

Based on the positions above, FI wants to clarify the following concerning in which cases primary market transactions are viewed as a transaction within the framework of a client relationship. The examples discussed are not exhaustive; a special assessment may therefore be needed in each individual case.

The investment firm's own clients
To the extent that the investment firm administers a share issue or an offer which is entirely or partially aimed at its own existing clients constitutes an existing client relationship. This means that MiFID's regulations regarding client protection should be applicable and therefore apply in spite of what is stated below.

[40] Client refers to every natural or legal person to whom an investment firm provides investment services and/or ancillary services. MiFID (2004/39/EG) Art. 4.10.

The investment firm assists an issuer to administer a preferential share issue.
FI feels that the investment firm normally doesn't have a client relationship with the investors who subscribe in the share issue pursuant to preferential rights. If the firm offers advice in conjunction with the transaction or actively markets the share issue, a client relationship can nevertheless arise.

The investment firm assists an issuer to administer a non-preferential share issue.
FI has observed that the client relationship in most non-preferential share issues exists by the offer being aimed at existing clients.

In other situations, FI feels that the investment firm in most cases doesn't enter into a client relationship with investors who subscribe for the share issue if no marketing occurs that could lead to a client relationship in accordance with the points above. This presupposes, among other things, that the issuer markets the offer in an independent manner and that the investor is not just referred to the investment firm in order to obtain a prospectus or application forms.

Corresponding arguments can be applied in offers for acquisition of existing shares or other financial instruments.

The investment firm markets and distributes structured products [41] or other complex financial instruments
FI feels that if the investment firm has an active role in the offer by marketing it in its own name or as an organiser/distributor, the starting point should be that the investors are considered as clients of the firm. This applies regardless of whether it is the organiser of the offer and/or the issuer of the financial instrument which the offer pertains to.

The obligation to inform of client relationships
In the cases in which an investor subscribes for a share issue or an offer, without becoming a client of the firm, the investor must be informed, in particular that no client relationship exists. Such information itself isn't a factor that affects the assessment of whether a client relationship has arisen or not.

[41] FI feels that most structured products can be considered complex financial instruments.

Appendix – an in-depth look at regulations

Formulation of guidelines

Provisions regarding guidelines are contained in several places in the regulations for the securities business. Chapter 8, section 9 of the Securities Market Act (2007:528) deals with the fundamental requirement for guidelines which are supplemented by specific provisions in the Securities Market Act and FI's regulations in terms of content and use. Among other things, requirements are imposed for guidelines for internal control and risk management (Chapter 8, section 8 of the Securities Market Act, Chapter 6, section 11 of FFFS 2007:16), compliance (Chapter 6, section 8 of FFFS 2007:16), conflicts of interest (Chapter 11, section 3 of FFFS 2007:16) and for best order execution (Chapter 8, section 29 of the Securities Market Act, Chapter 18, sections 6-7 and Chapter 19, sections 3-4 of FFFS 2007:16). There are also areas in which there is no implicit requirement but where the firm must take similar measures. Such an example is client categorisation where the firm shall establish "internal regulations and procedures" for categorisation of clients (Chapter 8, section 15 of the Securities Market Act).

Appropriateness assessment

Pursuant to Chapter 8, section 24 of the Securities Market Act, a non-professional client shall provide sufficient information in order for the investment firm to be able to assess whether the product or service is appropriate for the client. The assessment shall be made based on the client's expertise and experiences, the amount of information that the firm needs to obtain depends on the complexity of the product or service in question. If the firm doesn't feel that the product or service is appropriate for the client, then the client shall be informed of this. The client can, however, decide to complete the transaction even if the investment firm has advised against it.

In the cases in which the client doesn't provide sufficient information for an appropriateness assessment, the firm shall inform the person that it isn't possible to determine whether the product or service is appropriate for the client. An appropriateness assessment needn't be made if the exemption regulations in Chapter 8, section 25 of the Securities Market Act regarding non-complex financial instruments is applicable.

Examples are provided in Chapter 15, section 8 of FI's regulations (FFFS 2007:16) of information that is suitable to obtain from the client. This includes information regarding which products and services the client is familiar with, when and to what extent the client has executed transactions in instruments and which education and professional experience the client has.

Suitability assessment for existing clients

In Chapter 8, section 23 of the Securities Market Act, it states that a securities institution shall obtain information on the client in order to be able to assess whether a management service or advice is suitable in relation to the client's knowledge and experience and whether it corresponds to the client's wishes regarding performance and willingness to take risks. In Chapter 15 of FFFS 2007:16, it states which type of information should be obtained in order to fulfil the requirements in section 2, in other words that the investment is suitable for the client.

The requirements have previously existed in a somewhat simplified form in terms of advice but are new regarding what applies to assessment management services. There is no clear exception for existing client relations. The EU's Implementing Directive [42] provides some relief for securities institutions in terms of appropriateness assessments of existing clients. According to this provision, the client may be assumed to have the necessary experience and expertise in order to assess the risks of a product or service if the client has previously executed transactions. No corresponding provision concerning suitability assessments exists, however. CESR[43] feels that an investment firm should continuously update its client documentation taking into account changed circumstances for the client or in the business relationship with the client. The firm should therefore encourage the client to inform of relevant changes that affect his or her investment objective, risk profile, financial situation, etc.

Inducements

In Chapter 12, of FFFS 2007:16, there are provisions regarding when and how an investment firm may receive a commission in connection with the provision of investment and ancillary services. Those provisions also regulate which information the client shall receive in terms of indirect compensation, for example sales commissions for the investment firm from a third party [44] (referred to as "an inducement" from now on). The information shall be provided in a comprehensive, correct and easily comprehensible manner and provide information about the existence, nature and amount of the fee, commission or benefit, or if the amount cannot be established, the method for calculating the amount. The information shall be provided to the client before the product or service is provided. The investment firm may summarise for the client the basic terms such as fees, commissions or non-monetary benefits. However, the investment firm shall be prepared to provide details about the inducement upon the client's request.

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[42] Reason 59, Implementation Directive 2006/73 EC
[43] CESR/08-266
[44] This type of inducement may only exist if it is designed to enhance the quality of the relevant service for the client and not prevent the firm from fulfilling its obligation to safeguard the interests of the client pursuant to Chapter 12, section 1, point 2b (FFFS 2007:16).