

Finansinspektionen's Regulations

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Finansinspektionen's (the Swedish Financial Supervisory Authority) Regulations and General Guidelines regarding Financial Advice to Consumers;

decided on 15 April 2004.

Finansinspektionen prescribes the following pursuant to the Financial Advice to Consumers Ordinance (SFS 2004:17).

Finansinspektionen provides *General Guidelines* following each section in the regulations.

Chapter 1. Scope

§ 1 These regulations and general guidelines contain, *inter alia*, provisions regarding the competence requirements to be imposed on persons providing advice, the manner in which what transpired when advice was provided is to be documented, exceptions applicable to the release of documentation to a consumer, and the information to be provided to consumers in conjunction with advice and generally accepted advising practices.

§ 2 These regulations and general guidelines shall be applied by undertakings under the supervision of Finansinspektionen and who provide such financial advice as referred to in the Financial Advice to Consumers Act (SFS 2003:862).

The advising activities of undertakings vary in size and character, and undertakings provide different types of financial advice. These regulations and general guidelines are intended to allow for adaptation on the basis of the size and focus of the individual undertaking as well as the focus, scope and degree of difficulty of the advising activities.

Chapter 2. Qualifications Requirement

Generally

§ 1 The undertaking shall ensure that personnel providing advice possess adequate knowledge regarding the advice given. The knowledge shall be relevant in relation to the focus, scope and degree of difficulty of the advice.

Further guidance regarding the substance of the knowledge is provided in *appendix I*.

Knowledge

§ 2 The undertaking shall ensure that personnel providing advice are familiar with the legislation and rules relevant to the focus, scope and degree of difficulty of the advice.

§ 3 The undertaking shall ensure that the personnel providing advice also understand and can fulfil the requirements demanded of the advice on the basis of the focus, scope and degree of difficulty of the advice. The knowledge shall take account of the significance of advising liability, ethics and generally accepted advising practices. In addition, the knowledge shall include the manner in which the duty of care, the duty to advise against a particular course of conduct, and the duty to maintain documentation shall be fulfilled.

§ 4 The undertaking shall ensure that personnel providing advice can also apply knowledge regarding savings and investments in financial instruments and insurance on the basis of the focus, scope and degree of difficulty of the advice.

Proficiency test

§ 5 The undertaking shall ensure that personnel providing advice fulfil the knowledge requirements in sections 1-4 by ensuring that personnel have successfully completed a suitable proficiency test. In the event the proficiency test is not provided by a party independent of the undertaking, an independent reviewer must approve the test. The reviewer shall be independent of the undertaking and possess suitable qualifications.

Updated knowledge

§ 6 The undertaking shall ensure with requisite regularity that personnel providing advice possess sufficient knowledge.

Practical experience

§ 7 The undertaking shall ensure that personnel providing advice possess suitable practical experience. Such practical experience shall, among other things, include communications between personnel and consumers.

Chapter 3. Documentation of the Advising Engagement

Information regarding the provider of advice

§ 1 The documentation shall contain information which makes it possible to identify:

- the undertaking;
- the person(s) providing advice; and
- the conditions under which the advice was given.

General guidelines

The documentation should contain specified information regarding the personnel providing advice such as qualifications and authority, and other information which is relevant to the circumstances under which the advice was

given. In addition, the types of financial products in respect of which the undertaking gives advice should be documented.

Information regarding the consumer

§ 2 The documentation shall contain information regarding the consumer's:

- name;
- experience relating to financial investments;
- financial and other circumstances;
- purpose of the investment;
- willingness to take risks; and
- primary investment focus.

If the consumer is already well known to the undertaking, the undertaking need not obtain all of the information regarding the consumer. In such cases, the undertaking shall document the reason for omitting to obtain the information.

General guidelines

In conjunction with an ongoing customer relationship between the undertaking and the consumer, the information should be regularly updated.

The consumer's financial and other significant circumstances for the advice should be documented by stating, for example, the consumer's family situation, income, assets, expenses, liabilities and insurance situation.

In conjunction with the documentation of the consumer's purpose of the investment, notes should also be made of his investment horizon.

The consumer's attitude in respect of various degrees of risk and overall willingness to take risks should be documented. Also, the consumer's knowledge of the risk associated with the recommended investment should be documented.

In the event the undertaking and the consumer have agreed on limits for the consumer's investment focus or if the undertaking proposes certain investment focus, e.g. to invest only in funds with a certain emphasis, investing in shares and in interest-bearing securities with a certain percentile breakdown or investments in derivative instruments, such investment limits should be noted.

In the event the consumer does not wish to provide information regarding himself, such fact should also be noted.

Information regarding the circumstances under which the advice was given

§ 3 The documentation shall contain information regarding:

- date and time of the advice;
- what advice was given; and
- if the consumer has been advised against a certain investment.

General guidelines

The advice given should be specified as to the type of product to which the advice pertains, the quantity, and other circumstances relevant to the advice. The basis for the advice should be documented through a notation of any background factors such as relevant analyses and recommendations.

When documenting advice against a certain investment, the basis for such advice should be noted. Note should also be made of the fact that the consumer, notwithstanding the advice against a certain investment, chooses to carry out the investment against which he or she was advised if such fact is known to the person providing the advice.

Performance of documentation

§ 4 Information regarding the circumstances under which the advice was given pursuant to section 3 shall be documented in conjunction with the provision of advice and by the person providing the advice. Documentation of information in accordance with sections 1 and 2 may be carried out by a person other than the person providing the advice and at an earlier time.

§ 5 The documentation in accordance with sections 1 and 3 may be in the medium of choice provided that the documentation in respect of each occasion in which advice is given is easily identifiable and easily searchable.

Release of documentation to the consumer

§ 6 The documentation of information pursuant to sections 1-3 shall be provided to the consumer on the first occasion during which advice is given or in close connection therewith. The release shall take place without unnecessary delay.

§ 7 In the event advice to the same consumer is also provided on subsequent occasions, documentation of the information pursuant to section 1 and 2 only need be provided at the request of the consumer in conjunction with or after the provision of advice, provided that the information is not significant to the advice.

§ 8 In the event advice provided to the same consumer is also provided on a subsequent occasion, the documentation of information pursuant to section 3 need only be provided upon request by the consumer in conjunction with or after the provision of the advice, provided that the consumer's primary investment focus is unchanged and that documentation takes place by recording of telephone conversations between the consumer and the undertaking.

Exceptions to the release of documentation shall be documented.

§ 9 The undertaking shall inform the consumer regarding the latter's possibility to request such documentation that the undertaking is only required to provide upon the consumer's request.

§ 10 Where special cause exists, Finansinspektionen may, following an application of an undertaking, grant additional exemptions from the release of documentation.

Archiving

§ 11 Documents and information constituting documentation shall be archived in a secure and permanent manner and shall be readily searchable also after the occasion on which advice is given.

Chapter 4. Guidelines for Advising Activities and Information

General guidelines

Guidelines

1. The undertaking should have guidelines for the manner in which advising activities are to be administered. The guidelines should contain rules of conduct to ensure that the advising activities are at all times conducted within the framework of applicable rules and regulations and in accordance with generally accepted advising practices. The guidelines should also contain provisions as to the manner in which the undertaking verifies and follows up that personnel providing advice comply with external and internal rules and regulations governing the advising activities.
2. The undertaking should identify in the guidelines where in the organisation, and by which media, the advice will be provided and state the manner in which documentation shall take place in such cases.
3. The undertaking should establish in the guidelines the qualification requirements for personnel who provide advice on the basis of the focus, scope and degree of difficulty of the advice and which personnel are subject to such requirements.

Information to the consumer in conjunction with advice

4. The undertaking should, in contacts with consumers, clearly distinguish between investment advice and marketing or products information.
5. The undertaking should inform the consumer regarding the latter's rights pursuant to the Financial Advice to Consumers Act (SFS 2003:862).
6. The undertaking should inform the consumer which products and services are provided by the undertaking and other circumstances of essential significance to the advice.
7. In the event the undertaking is of the opinion that the consumer requires additional advice or information, the consumer should be notified thereof. In the event the person providing advice wishes to refer the engagement to another undertaking, this should also be clarified for the consumer.
8. The undertaking should inform the consumer that the consumer's choice not to provide information regarding himself may affect the scope and content of the advice.

These regulations and general guidelines enter into force on 1 July 2004. The provisions of Chapter 2, section 5 shall be applied commencing 1 July 2005.

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