

Finansinspektionen's Regulatory Code

Publisher: Finansinspektionen, Sweden, www.fi.se
ISSN 1102-7460



This translation is furnished for information purposes only and is not itself a legal document.

Finansinspektionen's regulations regarding investment services and activities;

decided on 26 June 2017.

FFFS 2017:2

Published on
30 June 2017

Finansinspektionen prescribes¹ the following pursuant to Chapter 6, section 1, points 8–11, 13–18, 24–28, 30–34 and 56 of the Securities Market Ordinance (2007:572).

Chapter 1 Scope

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 investment services and activities, with the exception of the provisions of Chapter 3.

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

Section 2 Swedish securities companies which conduct in the EEA cross-border operations or operations through a foreign branch shall, for their foreign operations, apply the regulations with the exception of Chapters 4 and 7, and Chapter 8, sections 1, 3 and 4.

Section 3 Swedish credit institutions authorised to conduct investment services and activities through cross-border operations or a branch in the EEA shall, for their foreign operations, apply the regulations, with the exception of Chapters 3, 4 and 7, and Chapter 8, sections 1, 3 and 4.

Section 4 Foreign undertakings in the EEA which conduct investment services and activities in Sweden through cross-border operations or a branch shall, for their Swedish operations, apply the regulations, with the exception of Chapters 3, 5 and 6, and Chapter 8, sections 2 and 9.

Section 5 In sales and when providing advice to a client regarding structured deposits, Chapters 4, 5 and 7, and Chapter 8, sections 1 and 2 apply.

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 Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

The stipulations regarding financial instruments in these provisions shall also be applied to structured deposits.

Chapter 2 Definitions

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) and Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive. In addition, terms and expressions shall have the following meaning:

1. *Remuneration committee*: the provisions of Finansinspektionen's regulations (FFFS 2011:1) regarding remuneration systems at credit institutions, securities companies and fund management companies authorised to conduct discretionary portfolio management.
2. *Qualifying money market fund*: an undertaking for collective investment which
 1. has been authorised under Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), or
 2. is subject to the supervision of and, where relevant, has been authorised by an authority under national legislation in a Member State, and satisfies the following conditions:
 - a) The undertaking's primary investment objective must be to maintain its net asset value either constant at par (net of earnings), or at the value of the investor's initial capital plus earnings.
 - b) So as to fulfil the primary investment objective, the undertaking shall
 - invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days, or
 - on an ancillary basis, invest in deposits with credit institutions.
 - c) The undertaking shall provide liquidity through same-day or next-day settlement.

For the purposes of point b), a money market instrument shall be considered to be of high quality if an undertaking which, externally or internally, manages the fund performs its own documented assessment of the credit quality of the money market instrument that allows it to consider the instrument to be of high quality. Where one or more credit rating agencies, registered and supervised by the European Securities and Markets Authority, have provided a rating of the instrument, the undertaking shall, in its internal assessment, consider such credit ratings.

3. *Risk appetite*: the provisions of Finansinspektionen's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control at credit institutions.

4. *Risk strategy*: the provisions of Finansinspektionen's regulations and general guidelines regarding governance, risk management and control at credit institutions.

5. *Executive management*: the provisions of Finansinspektionen's regulations regarding remuneration systems in credit institutions, securities companies and fund management companies licensed to conduct discretionary portfolio management.

Chapter 3 Management assessment and organisational requirements

Section 1 This chapter contains provisions regarding management assessment pursuant to Chapter 3, section 1 of the Securities Market Act (2007:528) and organisational requirements according to Articles 21–25 in the Delegated Regulation for MiFID 2.

Management assessment

Section 2 A securities company shall, when applying for authorisation pursuant to the Securities Market Act (2007:528), provide Finansinspektionen with information regarding the suitability of the following persons at the undertaking:

- chairman of the board,
- board members,
- alternate board members, and
- managing director or deputy managing director, i.e. a person serving in the managing director's stead.

The company shall also inform Finansinspektionen when the composition of such persons is altered or the number of board members is reduced or increased.

General organisational requirements

Section 3 A securities institution shall set aside sufficient resources to train its board members.

Section 4 A securities institution shall, when appointing board members, take into account a broad spectrum of qualities and expertise. To this end, the institution shall have a policy for promoting board diversity.

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

If the institution does not have a website, it shall, in alternate way, publicly provide the information specified in the first paragraph.

Section 6 A securities institution shall ensure that a risk committee, as in section 10, regularly – at least annually – receives written reports on the areas covered by the provisions regarding risk management in the Delegated Regulation for MiFID 2.

The board of directors and the risk committee shall establish the nature, volume, format and frequency of the risk information they are to receive.

Risk management function

7 § A risk management function as in Article 22 of the Delegated Regulation for MiFID 2 shall

1. ensure that all material risks are identified, measured and accurately reported, and
2. actively participate in devising the securities institution's risk strategy and in all significant risk management decisions and be able to provide comprehensive opinions on all types of risk that have a bearing on the institution.

Section 8 A securities institution shall ensure that its risk management function has sufficient authority and position, as well as sufficient resources.

Section 9 A securities institution shall ensure that the person managing the risk management function is an independent senior manager with specific responsibility for the risk management function. If the nature, scope and complexity of the operations of the institution do not motivate there being a specially appointed person to this end, another senior manager at the institution may perform the task, provided that this does not pose any conflict of interest.

The person in charge of the risk management function shall, if needed, be able to approach the board of directors directly. The institution may not dismiss such a person without the approval of the board.

Risk committee

Section 10 A securities institution that is significant with respect to size, internal organisation and the nature, scope and complexity of the operations shall ensure that the board of directors has a risk committee. The risk committee shall consist of board members who are not members of the executive management of the institution. The members of the risk committee shall have appropriate knowledge and skills for understanding and monitoring the risk strategy and risk appetite of the institution.

Section 11 The risk committee shall serve as an advisor to the board of directors with respect to the present and future overall risk appetite and risk strategy of the securities institution, and assist the board of directors in its monitoring of the executive management's implementation of the strategy. The board of directors shall bear overall responsibility for risk.

Section 12 The risk committee shall ensure that the price of liabilities and assets offered to a client takes into consideration the business model and risk strategy of the securities institution. If 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 The risk committee shall, in order to assist the securities institution in the preparation of a sound remuneration policy and remuneration practice, without affecting the duties and responsibility held by the remuneration committee of the

institution, explore whether incentives in the remuneration system take account of risk, capital and liquidity, as well as the probability and timing of earnings.

Chapter 4 Requirements regarding knowledge and competence

Section 1 This chapter contains requirements regarding the knowledge and competence to be possessed by a person who provides investment advice or information regarding financial instruments, investment services or ancillary services on behalf of a securities institution as in Chapter 8, section 15 of the Securities Market Act (2007:528).

Investment advice or information about financial instruments, investment services or ancillary services

Section 2 A securities institution shall ensure that a person who, on behalf of the institution, provides investment advice or information on financial instruments, investment services or ancillary services, possesses the knowledge and competence needed in order to

1. discharge his/her duties,
2. ensure that clients' interests are safeguarded, and
3. ensure that the institution acts honourably, fairly and professionally.

Section 3 A securities institution shall ensure that a person who provides investment advice or information on financial instruments, investment services or ancillary services on behalf of the institution, in addition to the provisions of section 2, possesses knowledge and competence regarding

1. laws and rules applying to the operations,
2. the financial instruments provided by the institution,
3. conflicts of interest and risks associated with the financial instruments provided by the institution,
4. costs and fees associated with the financial instruments or services that are the object of the investment advice or information,
5. tax effects that may arise for the client when investing in the financial instruments that are the object of investment advice or information,
6. saving and investment in financial instruments, including past and expected return, the relationship between return and risk, valuation principles and portfolio theory,
7. how financial markets and individual financial instruments work and how national, regional and global events affect financial markets and individual financial instruments, and
8. the institution's internal guidelines, procedures and systems.

The knowledge and competence as in the first paragraph shall be relevant with respect to the nature, scope and complexity of the duties.

Section 4 A person providing investment advice or information on financial instruments, investment services and ancillary services on behalf of a securities institution shall undergo and pass a proficiency test regarding the requirements set out in section 3.

In the event the proficiency test is not provided by a person who is independent of the institution, an independent examiner must approve the test. Such an independent person or independent examiner shall be appropriately qualified for the task.

Section 5 A securities institution shall, at least once a year, ensure that a person who, on behalf of the institution, provides investment advice or information on financial instruments, investment services and ancillary services, possesses requisite knowledge about that which is set out in section 3.

The institution shall also ensure that the person has requisite knowledge when needed due to changes

- to the laws and rules governing the operations and the financial instruments provided by the institution,
- on the financial markets on which the financial instruments are traded, or
- which affect the operations due to other circumstances.

Section 6 A securities institution shall ensure that a person who, on behalf of the institution, provides investment advice or information on financial instruments, investment services or ancillary services, meets the requirements regarding competence as in section 3

- by means of work conducted previously, or
- by means of the person discharging his/her duties under the supervision of another person who fulfils the requirements as in section 3 and who takes full responsibility for the execution of the services during a period equalling six months' full-time work at minimum.

Chapter 5 Product governance

Section 1 This chapter contains provisions regarding product governance as in Chapter 8, sections 13 and 14 of the Securities Market Act (2007:528).

Product governance for producers

Section 2 A securities institution shall, when producing a financial instrument, appropriately and proportionately follow sections 3–16 with regard to the nature of the financial instrument, investment service and the financial instrument's end client target group.

Producing a financial instrument comprises creating, developing, designing and issuing the financial instrument.

Section 3 A securities institution shall, when producing a financial instrument, ensure that it is consistent with the requirements of prevailing laws and rules

regarding managing conflicts of interest. In this context, the institution shall ensure that the design and characteristics of the financial instrument do not have an adverse impact on an end client.

Section 4 A securities institution shall, when producing a financial instrument, ensure that the financial instrument does not

- adversely affect the integrity of financial markets,
- prevent financial markets from functioning correctly, or
- pose a threat to the stability of financial markets.

Section 5 A securities institution shall, for each individual financial instrument that it produces, specify at a sufficiently detailed level a target group of end clients for whom the financial instrument is intended, with due consideration for the needs, characteristics and objectives of the end clients (target group). The institution shall also specify the client groups for which the financial instrument is not intended with due consideration for the needs, characteristics and objectives of each client group. The institution shall, in this context, proceed on the basis of its knowledge about and experience of the financial instrument concerned or similar financial instruments, as well as the financial markets.

If the institution produces a financial instrument jointly with another securities institution or another undertaking as in section 15, only one target group shall be specified.

Section 6 A securities institution shall, when assessing an end client's needs, characteristics and objectives, consider whether the end client is a non-professional client, a professional client or an equivalent counterparty, as well as the end client's

- risk tolerance,
- capacity for bearing losses,
- knowledge and experience, and
- investment objective.

Section 7 A securities institution shall, when producing a financial instrument, perform a scenario analysis for each financial instrument with a view to assessing the risk of a poor outcome for an end client posed by the financial instrument and in which circumstances such an outcome may occur.

In this context, the institution shall assess the financial instrument under negative conditions, covering what would happen in the event of

1. a deterioration in financial markets,
2. the institution or a third party experiencing financial difficulties or other counterparty risk transpiring,
3. the financial instrument failing to become commercially viable,

4. demand for the financial instrument being much higher than anticipated, in turn putting a strain on the institution's resources or the market of the underlying instrument, or

5. any event transpiring other than those set out in points 1–4 that could have an adverse impact on the financial instrument.

Section 8 A securities institution producing a financial instrument shall, when setting the charging structure of the financial instrument, ensure that

1. costs and fees are compatible with the needs, characteristics and objectives of the target group,

2. the fees do not undermine the financial instrument's return expectations,

3. the charging structure is appropriately transparent for the target group, and

4. the charging structure is also appropriate for the target group in respects other than those set out in points 1–3.

Section 9 A securities institution that appoints another party to distribute a financial instrument produced by the institution shall, besides the provisions of Chapter 8, section 14 of the Securities Market Act (2007:528), ensure that information on the financial instrument provided to such a party contains information on appropriate distribution strategies for the financial instrument.

The quality of the information shall be such that the party distributing the financial instrument understands it and can properly distribute it.

Section 10 A securities institution shall regularly review each financial instrument that it produces and, in this context, consider all events that could materially affect the risk to a target group.

The institution shall consider if the financial instrument remains compatible with the needs, characteristics and objectives of the target group. The institution shall also consider if the financial instrument is being distributed to the target group, and that it is not reaching clients with whose needs, characteristics and objectives it is not compatible.

Section 11 A securities institution shall specify in its internal guidelines and procedures the way in which and the frequency at which it shall perform a review of the financial instruments produced by the institution, as well as the events that could prompt a review. In this context, the institution shall consider the complexity and innovative nature of the financial instrument, as well as events that could affect risk or return expectations.

Section 12 When a securities institution produces a financial instrument, it shall specify the relevant factors that could prompt a review of the financial instrument concerned.

Section 13 A securities institution shall, when re-issuing a financial instrument, perform a review of the instrument as in section 10.

Section 14 A securities institution shall take appropriate measures if the periodic review as in section 10 or a review prompted by an event as in section 12 causes

the financial instrument to no longer be considered compatible with the set target group.

Section 15 A securities institution that produces a financial instrument jointly with another securities institution shall ensure that the respective obligations of the institutions are documented in a written agreement. The same applies if the institution cooperates with an undertaking not authorised to conduct investment services and activities under the Securities Market Act (2007:528).

Section 16 A securities institution shall ensure that reports from the compliance function to the board of directors contain information about the financial instruments produced by the institution, including information about target groups and distribution strategies.

Product governance for distributors

Section 17 A securities institution shall, when deciding the range of financial instruments which it intends to distribute to clients, appropriately and proportionately follow sections 18–25 with regard to the nature of the financial instrument, investment service and the financial instrument’s target group..

Distributing a financial instrument includes offering or recommending a financial instrument.

Section 18 A securities institution shall follow section 17 and sections 19–25 also when offering or recommending financial instruments produced by undertakings that are not subject to the Securities Market Act.

Section 19 A securities institution shall have appropriate arrangements for its product governance, guaranteeing that a financial instrument distributed by the institution is compatible with its clients’ needs, characteristics and objectives, and establish a distribution strategy. In this context, the institution shall use the information it received from the producer, including the target group set by the producer, and the information held by the institution about its own clients.

Section 20 When a securities institution distributes a financial instrument produced by an undertaking not subject to the Securities market Act (2007:528), the institution shall determine a target group for the financial instrument and ensure that it is distributed in a way that is compatible with the needs, characteristics and objectives of the target group.

Where relevant information for establishing a target group is not publicly available, the institution shall take all reasonable steps to obtain such relevant information from the producer or its agent.

The institution shall, when it has an obligation to determine a target group, apply the requirements regarding product governance for producers as in sections 2–8, 10–12 and 14.

Section 21 A securities institution shall regularly review its product governance arrangements and ensure that they are effective and appropriate.

Section 22 A securities institution shall regularly review each financial instrument that it distributes and, in this context, consider all events that could materially affect the potential risk to the set target group.

The institution shall assess whether the financial instrument is consistent with the needs, characteristics and objectives of the set target group and whether the distribution strategy remains appropriate. The institution shall review the target group and update the product governance arrangements if it has misjudged the target group of a certain financial instrument, or if the financial instrument is no longer compatible with the needs, characteristics and objectives of the target group.

Section 23 A securities institution distributing a financial instrument shall, in order to support the review to be performed by a securities institution producing a financial instrument, provide information to the latter institution regarding

– how and to which client groups the financial instrument has been distributed and, where relevant,

– the outcome of the review as in section 21.

Section 24 If several securities institutions cooperate in the distribution of a financial instrument, the ultimate responsibility for meeting the product governance requirements as in sections 17–25 rests with the institution that has a direct client relationship.

However, an institution that collaborates in the distribution of a financial instrument without having the direct client relationship shall

1. ensure that relevant information about the financial instrument is forwarded from the institution producing the financial instrument to the institution distributing it to the end client, and

2. ensure that information as in section 23 is forwarded from the institution distributing the financial instrument to the end client to the institution producing the instrument.

Section 25 A securities institution shall ensure that the reports submitted by the compliance function to the board of directors contain information about the financial instruments distributed by the institution, as well as the distribution strategy for them. The reports shall also contain information about the client groups to which the financial instruments are distributed.

Chapter 6 Safeguarding of client assets

Section 1 This chapter contains provisions regarding safeguarding clients' financial instruments and funds in accordance with Chapter 9, sections 40, 41 and 43 of the Securities Market Act (2007:528).

Safeguarding of client financial instruments and funds

Section 2 For the purpose of safeguarding a client's rights in relation to the client's financial instruments and funds, a securities institution shall

1. keep such records and accounts as are necessary to immediately be able to distinguish assets held by the institution for one client from the assets it holds for another client, and from its own assets,

2. continuously maintain such records and accounts of the financial instruments and funds that the institution holds for a client,

3. regularly conduct reconciliations between its internal accounts and records with the corresponding records of a third party holding the assets,

4. ensure that a client's financial instruments deposited with a third party, in accordance with sections 6–9, can be identified separately from the financial instruments belonging to the institution and from financial instruments belonging to the third party, by means of differently titled accounts in the books of the third party or by means of other equivalent measures that achieve the same level of protection,

5. ensure that client funds deposited in accordance with sections 10 and 11 at a central bank, a credit institution or a bank authorised in a country outside the EEA or a qualifying money market fund are held in an account or accounts that can be identified separately from the accounts used to hold funds belonging to the securities institution, and

6. have adequate organisational procedures to minimise the risks of loss or devaluation of client assets, or of rights associated with these assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

Section 3 If the legislation of a country outside of the EEA in which a client's financial instruments or funds are held prevents a securities institution from following the provisions in section 2 points 4 or 5, the institution shall take equivalent measures to protect the client's rights.

When applying the first paragraph, the institution shall inform the client that the institution is not subject to the provisions regarding the safeguarding of client financial instruments and funds in the Securities Market Act (2007:528) and in these regulations.

Section 4 A securities institution may enter agreements regarding liens, set-off rights or other collateral interest as regards a client's financial instruments or funds enabling a third party to dispose of the client's financial instruments or funds in order to cover a claim that does not pertain to the client or provide a service to the client, only if this is legally required in a country outside of the EEA in which the client's financial instruments or funds are held.

If the institution enters agreements that give rise to such a lien, set-off right or other collateral interest as in the first paragraph, the institution shall inform the client thereof and call attention to the risks associated with such arrangements.

If the institution grants such liens, set-off rights or other collateral interests as in the first paragraph with respect to a client's financial instruments or funds, or if the institution has been informed that such have been granted, such liens, set-off rights and other collateral interests shall be set out in client agreements and in the institution's own accounts in order to show the ownership structure applying to the client's assets.

Section 5 A securities institution shall ensure that information regarding a client's financial instruments and funds are available so that it can, as needed, be provided to an authority, an appointed insolvency practitioner or to these responsible for the resolution of failed institutions.

The information shall include the following:

1. Internal accounts and records that identify the balances of funds and financial instruments held for each client,
2. Records of where client funds have been deposited by a securities institution in accordance with sections 10–13, and records about the accounts opened with a third party in which the client’s funds have been deposited, as well as relevant agreements with such undertakings.
3. Records of where the financial instruments held by the securities institution on behalf of clients are deposited as in sections 6–9, and records of the accounts opened with a third party in which the client’s financial instruments are deposited, as well as relevant agreements with such undertakings.
4. Records regarding third parties that carry out tasks for the institution, and of which tasks the institution outsourced thereto.
5. Records of persons at the institution who participate in processes relating to the safeguarding of client assets.
6. Agreements relevant to establishing client ownership over assets.

Safekeeping of client financial instruments

Section 6 A securities institution may keep financial instruments held by the institution for clients in an account or accounts opened with a third party.

The institution shall appoint and regularly evaluate the third party and procedures for the holding and safekeeping of the financial instruments.

The institution shall in particular assess the third party’s knowledge and market reputation, and the legal requirements in place regarding holding financial instruments, and which that could adversely affect clients’ rights.

Section 7 Where a securities institution proposes to deposit client financial instruments with a third party, the institution shall ensure that deposits are only made with a third party in a country where the safekeeping of financial instruments for the account of another person is subject to specific regulation and supervision and that the third party is subject to this regulation and supervision.

Section 8 A securities institution holding a financial instrument for a client may hold the financial instrument with a third party in a country outside the EEA that does not regulate holding and safekeeping of financial instruments for the account of another person, only if the requirements of points 1 or 2 are fulfilled.

1. The type of financial instrument or investment service associated with these instruments requires them to be kept with a third party in a country outside the EEA.
2. The financial instruments are held on behalf of a professional client that requests in writing the institution deposit them with a third party in a country outside the EEA.

Section 9 A securities institution shall ensure the requirements in sections 7 and 8 are also fulfilled when the third party has delegated any of its tasks concerning the holding and safekeeping of financial instruments to another third party.

Depositing client funds

Section 10 A securities institution accepting client funds shall immediately deposit these funds

1. in an account at a central bank,
2. in an account at a credit institution authorised under the Banking and Financing Business Act (2004:297) or an account with a credit institution authorised under an equivalent law in another EEA country,
3. in an account with a bank authorised in a country outside the EEA, or
4. in a qualifying money market fund.

The provisions of the first paragraph and sections 11–13 do not apply to

1. credit institutions authorised under the Banking and Financing Business Act (2004:297), or authorised under an equivalent law in another EEA country regarding deposits as in the Banking and Financing Business Act and which are held by the institution, and
2. securities companies authorised to accept funds in accounts according to Chapter 2, section 2, first paragraph point 8 of the Securities Market Act (2007:528) when the company accepts funds in accounts according to such authorisation.

Section 11 Where a securities institution does not deposit client funds with a central bank in accordance with section 10, it shall exercise all due skill, care and diligence in the appointment and regular review of a credit institution, bank or money market fund where the funds are deposited and the arrangements for the holding of these funds.

The institution shall take into account the expertise and market reputation of such institutions or money market funds as in the first paragraph with a view to ensuring the protection of clients' rights as well as legal requirements or market practices related to the holding of client funds that could adversely affect clients' rights.

Section 12 A securities institution shall, in order to be able to deposit client funds in a qualifying money market fund, have obtained the client's consent. When obtaining such consent, the institution shall inform clients that funds placed with a qualifying money market fund will not be held in accordance with the requirements for safeguarding client funds set out in these regulations.

Section 13 Where a securities institution deposits client funds with a credit institution, a bank or a money market fund of the same group as the institution, the latter shall ensure that the client funds it deposits in its own group do not exceed 20 per cent of all such client funds.

The institution need not apply the provisions of the first paragraph if it can demonstrate that the limitation is not proportionate with respect to the nature, scope and complexity of the institution's operations, the collateral offered by such a third party as in the first paragraph, and the extent to which the institution holds client funds.

The institution shall periodically review the assessment made in accordance with the second paragraph and shall notify Finansinspektionen of its initial and reviewed assessments.

Use of client financial instruments

Section 14 A securities institution may enter into agreements regarding securities financing transactions whereby the institution utilises the financial instruments held for a client, or in any other way utilises these financial instruments for its own account or the account of another client, only if

1. The client grants prior consent to utilising the instruments on the set terms and this is confirmed by the client's signature or equivalent, and
2. the institution only uses the client's financial instruments on the terms to which the client in question consented.

Section 15 A securities institution may only enter agreements regarding securities financing transactions which entail that

1. the institution utilises financial instruments held by a third party for a client in an omnibus account, and
2. the institution utilises in another way financial instruments held in an omnibus account for its own account or that of another client, besides the provisions in section 14, if

– a client whose financial instruments are held in such an account has given prior consent as in section 14, point 1, and

– the institution has established systems and controls which ensure that only financial instruments belonging to a client who has given prior consent as in section 14, point 1 are so utilised.

The records of the institution shall include details of each client who consented to using the financial instruments, as well as the number of financial instruments used belonging to each such client, so as to enable the correct allocation of any loss.

Section 16 A securities institution shall take appropriate measures to prevent the unauthorised utilisation of a client's financial instruments for its own or account or that of any other person.

Such measures shall cover at minimum

1. the conclusion of agreements with clients on measures to be taken by the institution in the event of the client not having enough provision on its account on the settlement date,
2. the monitoring by the institution of its projected ability to deliver on the settlement date and the putting in place of remedial measures if this cannot be done, and
3. the monitoring and prompt requesting of securities that are undelivered or outstanding on the settlement date and beyond.

Section 17 A securities institution shall have arrangements for

1. all its clients to ensure that a party borrowing a client's financial instrument pledges adequate collateral,
2. continually monitoring to ensure that the collateral as in point 1 is appropriate, and

3. taking necessary steps to maintain the balance with the value of client instruments.

Agreements regarding assigning assets as security

Section 18 A securities institution, when using such agreements on assigning assets as security as in Chapter 9, section 43 of the Securities Market Act (2007:528), shall consider the relationship between a client's obligations towards the institution and the value of the client's assets covered by the agreement regarding assigning assets as security.

The institution shall keep a record of and motivate the considerations it makes in this assessment.

Section 19 When assessing the suitability of an agreement regarding assigning assets as security, a securities institution shall consider

1. whether the relationship between a client's obligations towards the institution and use of an agreement regarding assigning assets as security is weak,
2. whether the amount of a client's financial instruments or funds subject to agreements regarding assigning assets as security far exceeds the client's obligations, or is even unlimited, or if the client has any obligation at all to the institution, and
3. whether all clients' financial instruments or funds are subject to agreements regarding assigning assets as security, without consideration of what obligation each client has towards the institution.

Section 20 A securities institution shall, when using agreements regarding assigning assets as security, inform clients of the risks in and effects of such agreements.

Arrangements to protect client assets

Section 21 A securities institution shall designate a responsible person at the institution who has sufficient knowledge, expertise and powers to be able to assume specific responsibility for questions pertaining to the institution's obligation to protect client financial instruments and funds.

Section 22 A securities institution shall ensure that the responsible person as in section 21 can execute his/her duties effectively.

Reports by external auditors

Section 23 A securities institution shall ensure that its external auditors at least once a year control the adequacy of the institution's actions and procedures as in Chapter 9, sections 40, 41 and 43 of the Securities Market Act (2007:528) and sections 1–22.

The external auditors shall notify Finansinspektionen if the institution is lacking adequate actions and procedures.

Chapter 7 Payments to and from third parties

Section 1 This chapter contains provisions regarding payments and benefits as in Chapter 9, sections 21 and 22 of the Securities Market Act (2007:528).

Payments for investment services and ancillary services

Section 2 A securities institution which, when offering investment services or ancillary services to a client, offers or accepts payment, or offers or accepts benefits to or from any party other than the client, must be able to demonstrate that all payments or benefits provided to or accepted by the institution are devised so as to enhance the quality of the investment service or ancillary service for the client by means of

1. keeping an internal record of all payments and benefits provided to or accepted from a third party in connection with the services, and
2. documenting how the payments and benefits provided or accepted by the institution enhance the quality of the services provided to the client.

The institution shall also document the steps taken in order not to impair its conditions for fulfilling its duty to act honestly, fairly and professionally in accordance with the best interests of the client.

Section 3 A payment or a benefit shall be considered to be designed to enhance the quality of a service when the following conditions are met:

1. The payment or benefit is justified by the provision of an additional or higher-level service to a client, proportional to the level of the payment or benefit received.
2. The payment or benefit provides the client with a tangible advantage.
3. The payment or benefit is justified by the provision of an ongoing benefit to the client in connection with an ongoing payment or benefit.

A payment or benefit shall not be considered acceptable if the provision of the service to the client to which the payment or benefit pertains is affected or distorted due to such payment or benefit.

Section 4 The provisions of section 3 apply throughout the entire period in which a securities institution provides or accepts a payment or a benefit.

Section 5 For payments or benefits that it accepts from or provides to a third party, a securities institution shall disclose the following information to clients:

1. If the institution cannot determine in advance the size of a payment or benefit that it is to accept or provide, and instead describes to the client the method for calculating this amount, the institution shall retroactively disclose to the client the amount of the payment or benefit accepted or provided by the institution.
2. When the institution continually accepts or provides a payment or benefit related to an investment service it provides to the client, the institution shall at least once a year disclose to the client the amount that it has accepted from or provided to a third party during that year.
3. When the institution accepts or provides non-monetary benefits related to the investment service provided, the institution shall price and state the benefit separately. Minor non-monetary benefits need not be priced.

Remuneration for investment advice on an independent basis and portfolio management

Section 6 A securities institution which, when offering independent investment advice or portfolio management to a client, accepts a payment or a benefit from a third party, or a person acting on behalf of a third party, shall transfer to the client the payment or benefit received by the institution from the third party. The institution shall transfer the payment or benefit to the client as soon as possible after the institution has accepted the payment or benefit.

The institution shall devise and apply a procedure for ensuring that all payments and benefits accepted or provided by a third party, or a person acting on behalf of a third party, as in the first paragraph, are allocated and transferred to each client.

The institution shall inform clients of the payments and benefits that it is transferring to them.

Section 7 The following shall be considered to be such minor non-monetary benefits as in Chapter 9, section 22, second paragraph of the Securities Market Act (2007:528):

1. information or documentation relating to a financial instrument or an investment service, which is generic in nature or personalised to reflect the circumstances of an individual client.
2. Written material prepared by a third party that is commissioned and paid for by an undertaking that is an issuer or potential issuer to promote a new issuance by that institution, or where the third party is contractually engaged and paid by the issuer to produce such material on an ongoing basis. A condition for this is that the relationship is clearly disclosed in the material and that the material is made available at the same time to any securities institution wishing to receive it or to the general public.
3. Participation in conferences, seminars and other information events on the benefits and features of a specific financial instrument or an investment service.
4. Hospitality of a reasonable mimimis value.

Minor non-monetary benefits shall be reasonable and proportionate and of such a scale that they are unlikely to influence the institution's behaviour in any way that is detrimental to the interests of the relevant client.

Minor non-monetary benefits shall be disclosed prior to the provision of investment advice on an independent basis or portfolio management being offered to the client. Minor non-monetary benefits may be described in a generic way.

Payments in the form of investment analysis

Section 8 If a securities institution accepts an investment analysis, this shall not be considered as a payment or benefit from a third party if the institution pays for the analysis with its own funds or client funds.

Analysis account

Section 9 If a securities institution pays for investment analysis with client funds, it shall use a specific account for analysis expenditure (analysis account).

Section 10 A securities institution may agree with a client that the latter is to pay for investment analysis that contributes to the investment decisions made by the client or those made by the institution on behalf of the client (analysis fee). The agreement shall specify the analysis fee to be paid by the client, and the frequency of the fee. The analysis fee may not be amended without the client having received clear information about such an amendment. The institution shall deposit the analysis fee that it levies from the client in a n analysis account as specified in section 9.

Section 11 An analysis fee can be paid on an ongoing basis or in connection with a transaction. If the analysis fee is paid in connection with a transaction, it shall be stated separately.

Section 12 The analysis fee levied from a client by the securities institution shall be based on an analysis budget which the institution shall determine and regularly follow up. The analysis fee may not be linked to the volume or value of transactions executed on behalf of the client.

Section 13 A securities institution shall ensure that its analysis budget is based on a reasonable assessment of the institution's need for investment analysis. The board of directors shall ensure that the funds for purchasing investment analyses are allocated in an appropriate and controlled manner to ensure that the budget is managed and used in the best interests of the institution's clients.

The institution's controls as in the first paragraph shall comprise the entire verification chain for payouts to the suppliers providing investment analysis, and for how disbursed amounts are determined based on the quality criteria in section 14. The institution shall not use the analysis budget and analysis account to fund internal analysis work.

Section 14 A securities institution shall regularly assess the quality of the investment analysis it purchases. The institution shall establish criteria for assessing the quality of the analysis it purchases in a written policy. In the written policy, the institution shall also describe how the analysis purchased through the analysis account can contribute to better investment decisions and benefit a client. The written policy shall be provided to the client.

Section 15 A securities institution may delegate the management of an analysis account to a third party, provided that this facilitates purchasing investment analysis.

Section 16 A securities institution that uses an analysis account, when agreeing with a client that the latter shall pay an analysis fee as set out in section 10, shall disclose information about the budgeted amount for investment analysis and the calculated analysis fee for the client. The client shall also receive annual information about the total analysis fee paid.

Section 17 A securities institution using an analysis account, upon the request of a client, shall describe

1. the suppliers that have accepted payment from the analysis account,
2. payment accepted by suppliers over a defined period,
3. the investment analysis received by the institution over a defined period, and
4. how the total amount spent from the account compares to the budget set by the institution for that period, noting any rebate or carry-over if residual funds remain in the account.

Section 18 A securities institution shall have a procedure for converting any surplus in the analysis account into lower fees for a client.

Section 19 A securities institution may not accept analysis fees exceeding the budgeted amount for analyses.

Fees for executing client orders

Section 20 A securities institution executing a client order shall identify separate Fees for these services that only reflect the cost of executing the transaction.

The institution shall also state fees for other benefits or services it performs for another securities institution established in the EU, as separate and identifiable

fees. The supply of and fees for those benefits or services may not be influenced or conditioned by levels of payment for execution services.

Chapter 8 Documentation and information

Record-keeping

Section 1 A securities institution shall for a period of at least five years retain the records required in accordance with

1. the Securities Market Act (2007:528),
2. Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012,
3. these regulations and other regulations issued pursuant to the Securities Market Act, and
4. the delegated regulation for MiFID 2.

When a security institution's authorisation has been revoked, the undertaking shall retain its records until the five-year period required in the first paragraph has expired.

Cancelling client orders

Section 2 A securities institution shall keep a record of when a client cancels an order. The documentation shall contain a reference to the order concerned, the time of the cancellation and, where relevant, the name of the person who received notice of cancellation.

Information for non-professional clients

Section 3 In an agreement in accordance with Chapter 9, section 42, second paragraph of the Securities Market Act (2007:528) on accepting funds from a non-professional client in an account, the securities institution shall clarify to the client that the funds will be included in the institution's own operations. The client shall always receive a copy of the document that contains the agreement.

Information for unit holders

Section 4 A securities institution shall provide such information to a unit holder as in Chapter 9, section 19 of the Securities Market Act (2007:528) via a durable medium.

Chapter 9 Collateral in own and parent company shares

Section 1 A banking company, credit market company or securities company may, to the scale and under the conditions set out in Chapter 10, section 12 of the Banking and Financing Business Act (2004:297), Chapter 11, section 1 compared with Chapter 10, section 12 of the same Act and Chapter 9 section 44 of the

Securities Market Act (2007:528), accept own shares or shares in the parent company as collateral. These shares may not be included in the value of the collateral.

The first paragraph does not apply in derivative trading when own shares are received as security from a client that is liable for such specific shares.

These regulations shall enter into force on den 3 January 2018, whereupon Finansinspektionen's regulations (FFFS 2007:16) regarding investment services and activities shall be repealed.

ERIK THEDÉEN

Claudia Bäckström