

# Finansinspektionen's Regulatory Code

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## **Regulations amending Finansinspektionen's regulations (FFFS 2013:9) regarding Swedish UCITS;**

**FFFS 2022:14**

Published on  
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decided 21 June 2022.

Finansinspektionen prescribes<sup>1</sup> pursuant to section 18, points 11 and 26 of the Swedish UCITS Ordinance (2013:588) relating to Finansinspektionen's regulations (FFFS 2013:9) regarding Swedish UCITS

*in part* that the heading immediately following Chapter 5, section 3 shall be removed, *in part* that Chapter 1, sections 2, 5 and 9; Chapter 7, section 1; Chapter 8, section 2; Chapter 8a, section 5; Chapter 14, section 2; Chapter 29, section 1; and Chapter 31, section 48a shall have the following wording.

*in part* that three new sections shall be inserted, Chapter 7, section 10a; Chapter 15, section 5a, and Chapter 16, section 4, with the following wording.

### **Chapter 1**

**Section 2** A foreign management company authorised to manage a Swedish UCITS pursuant to Chapter 1, section 6b of the Swedish UCITS Act (2004:46), where the operations are conducted from a branch in Sweden pursuant to Chapter 1, section 6, first paragraph, point 1 of the Swedish UCITS Act, shall apply the provisions set out below, where applicable, to the operations related to the fund:

- Chapter 1, Contents and scope of the regulations, section 9,
- Chapter 3, Procedures subject to a notification obligation and notifications, sections 2–5,
- Chapter 4, Wording of documents when applying for authorisation for a cross-border merger,
- Chapter 7, Organisational requirements, section 1, first paragraph, points 4, 7 and 9 and the second and fourth paragraphs,
- Chapter 14, Delegation agreements, section 2, second paragraph, point 5 and the fourth and fifth paragraphs,
- Chapter 16, Rules of Conduct,

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<sup>1</sup> Cf. Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organizational requirements, conflicts of interest, rules of conduct, risk management and the content of the contract between a depositary and a management company, in the wording pursuant to Commission Delegated Directive (EU) 2021/1270.

- Chapter 17, Order confirmation for subscription and redemption of units in Swedish UCITS,
- Chapter 18, Best possible result for the execution of portfolio transactions,
- Chapter 19, Best possible result for the placement of an order,
- Chapter 20, Handling portfolio transactions and orders,
- Chapter 21, Incentives,
- Chapter 23, The content of the fund rules,
- Chapter 24, Eligible assets,
- Chapter 25, Trading in derivative instruments and the use of other techniques and instruments, sections 1–22,
- Chapter 26, Feeder and master funds, sections 2–5,
- Chapter 27, Information to unit holders following mergers,
- Chapter 28, Method for the provision of some fund information,
- Chapter 29, Key investor information document,
- Chapter 30, Provision of key investor information documents and prospectuses, sections 1 and 2,
- Chapter 31, Annual reports and half-yearly reports for Swedish UCITS,
- Chapter 32, Information which foreign UCITS and foreign management companies provide in Sweden, sections 1, 7 and 8, and
- Chapter 33, Information and reporting requirements, sections 7–12, 14 and 15.

For operations other than those referred to in the first paragraph that are conducted in the manner set out in Chapter 1, section 6, first paragraph, point 1 of the Swedish UCITS Act, the following provisions shall apply where applicable:

- Chapter 1, Contents and scope of the regulations, section 9,
- Chapter 7, Organisational requirements, section 1, first paragraph, points 4, 7 and 9 and the second and fourth paragraphs,
- Chapter 14, Delegation agreements, section 2, second paragraph, point 5 and the fourth and fifth paragraphs,
- Chapter 16, Rules of Conduct,
- Chapter 17, Order confirmation for subscription and redemption of units in Swedish UCITS,
- Chapter 18, Best possible result for the execution of portfolio transactions,

- Chapter 19, Best possible result for the placement of an order,
- Chapter 20, Handling of portfolio transactions and orders, and
- Chapter 21, Incentives.

**Section 5** A Swedish management company conducting such operations as those set out in Chapter 2, section 12, second paragraph of the Swedish UCITS Act (2004:46) shall apply all of the provisions in these regulations, where applicable, to its operations, with the exception of the following:

- Chapter 3, Procedures subject to a notification obligation and notifications, sections 2–5,
- Chapter 4, Wording of documents when applying for authorisation for a cross-border merger,
- Chapter 7, Organisational requirements, section 1, first paragraph, points 4,7 and 9 and the second and fourth paragraphs,
- Chapter 14, Delegation agreements, section 2, second paragraph, point 5,
- Chapter 16, Rules of Conduct,
- Chapter 17, Order confirmation for subscription and redemption of units in Swedish UCITS,
- Chapter 18, Best possible result for the execution of portfolio transactions,
- Chapter 19, Best possible result for the placement of an order,
- Chapter 20, Handling portfolio transactions and orders,
- Chapter 21, Incentives,
- Chapter 23, The content of the fund rules,
- Chapter 24, Eligible assets,
- Chapter 25, Trading in derivative instruments and the use of other techniques and instruments, sections 1–22,
- Chapter 26, Feeder and master funds, sections 2–5,
- Chapter 27, Information to unit holders following mergers,
- Chapter 28, Method for the provision of some fund information,
- Chapter 29, Key investor information document,
- Chapter 30, Provision of key investor information documents and prospectuses, sections 1 and 2,
- Chapter 31, Annual reports and half-yearly reports, and
- Chapter 33, Information and reporting requirements, sections 7–12,14 and 15.

For operations other than those referred to in the first paragraph that are conducted by a branch pursuant to Chapter 2, section 12, first paragraph of the Swedish UCITS Act, all provisions in these regulations shall apply, where applicable, to these operations, with the exception of the following:

- Chapter 7, Organisational requirements, section 1, first paragraph, points 4, 7 and 9 and the second and fourth paragraphs,
- Chapter 14, Delegation agreements, section 2, second paragraph, point 5,
- Chapter 16, Rules of Conduct,
- Chapter 17, Order confirmation for subscription and redemption of units in Swedish UCITS,
- Chapter 18, Best possible result for the execution of portfolio transactions,
- Chapter 19, Best possible result for the placement of an order,
- Chapter 20, Handling of portfolio transactions and orders, and
- Chapter 21, Incentives.

**Section 9** Unless otherwise stated, the terms and expressions used in these regulations have the same meaning and scope as in the Swedish UCITS Act (2004:46).

In addition, the following terms and expressions are defined as:

1. *Absolute Value at Risk*: Value at Risk expressed as a maximum percentage of a Swedish UCITS' value.

2. *AIF manager*: the same as in Chapter 1, section 3 of the Alternative Investment Fund Managers Act (2013:561).

3. *General investment policy*: The same as objectives and investment policy pursuant to Article 7 of Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

4. *Alternative investment fund*: the same as in Chapter 1, section 2 of the Alternative Investment Fund Managers Act.

5. *Employees in strategic management positions*: Employees other than senior management who have management roles and are responsible for the day-to-day activities of the Swedish fund management company, for example employees responsible for portfolio management, personnel, administration or marketing.

6. *The delegated regulation for MiFID 2*: 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.

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

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

a) The relevant person is acting outside of the scope of the activities he or she carries out in his/her capacity as a relevant person.

b) The transaction is carried out on behalf of any of the following persons:

– the relevant person,

– another person with whom the relevant person has a close relationship or close links,

– a person with whom the relevant person has such links that the relevant person has a direct or indirect material interest in the outcome of the transaction, other than a fee or commission for the execution of the transaction.

9. *Remuneration*: All remuneration and benefits from the Swedish management company to an employee. Remuneration and benefits from the Swedish management company refer, example a instance, to cash salary and other cash remuneration, remuneration in the form of shares or participations in a Swedish UCITS, or an instrument that attains a corresponding community of interest as units in a Swedish UCITS, pension provisions, severance payments or company cars.

10. *Remuneration policy*: The grounds and principles on which remuneration shall be based, applied and monitored, as well as on which a Swedish management company shall define which employees can impact the company's risk level and that of for each managed Swedish UCITS.

11. *Unit holder*: a natural or legal person or a Swedish UCITS, an alternative investment fund, a foreign UCITS or the equivalent holding one or more units in a Swedish UCITS or a foreign UCITS.

12. *Trading venue*: a regulated market, a trading facility, a systematic internaliser in accordance with Chapter 1, section 4b of the Securities Market Act (2007:528), a market maker within the EEA or another person providing liquidity within the EEA or an equivalent entity to any of the above outside of the EEA.

13. *Sustainability factors*: the same as sustainability factors pursuant to Article 2(24) of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

14. *Sustainability risk*: the same as sustainability risk pursuant to Article 2(22) of Regulation (EU) 2019/2088 of the European Parliament and of the Council.

15. *Internal rules*: policy and governance documents, guidelines, instructions or other written documents adopted by the board of directors or the managing director and through which the operations are controlled.

16. *Investors*: every unit holder or presumptive unit holder.

17. *Control function*: a Swedish management company's function(s) for risk management, compliance and internal audit or the equivalent.

18. *Client*: a natural or legal person or a Swedish UCITS, a foreign UCITS or the equivalent that provides fund-related operations, discretionary portfolio management or such services as those referred to in Chapter 7, section 1, first paragraph of the Swedish UCITS Act via a Swedish management company.

19. *Liquidity risk*: the risk that a position in a Swedish UCITS cannot be sold, redeemed or terminated at limited cost within a reasonable period of time and, therefore, that the fund cannot observe Chapter 4, section 13, first paragraph, first sentence of the Swedish UCITS Act at all times.

20. *Market risk*: The risk of loss in a Swedish UCITS due to changes in the market value of positions held by the fund as a result of altered market variables, such as interest rates, foreign exchange rates, share and commodity prices or an issuer's creditworthiness.

21. *Counterparty risk*: The risk of loss in Swedish UCITS due to the counterparty in a transaction not fulfilling its obligations before the transaction is settled.

22. *Operational risk*: the risk of loss in a Swedish UCITS due to insufficient internal procedures with regard to personnel and systems in the Swedish management company or external factors, legal and documentation-related risks, and risks resulting from trading, settlement and valuation procedures.

23. *OTC derivatives*: such derivative instruments as referred to in Chapter 5, section 12, second paragraph of the Swedish UCITS Act.

24. *Person with whom a relevant person has a close relationship*:

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

25. *Investment strategies*: the general basis for the strategic investment of assets and the investment techniques required to ensure that the general investment policy for each Swedish UCITS is implemented properly and effectively.

26. *Portfolio transaction*: A transaction on behalf of a Swedish UCITS carried out by a Swedish management company as a part of its fund operations.

27. *Relative Value at Risk*: a Swedish UCITS' Value at Risk divided by Value at Risk for the fund's reference portfolio.

28. *Relevant person*:

- a) a member of the board of directors, a partner, the managing director, or another manager of the Swedish management company,

b) an employee of the company and any other natural person who performs services for the Swedish management company, is under the control of the company, or is involved in conducting fund operations on behalf of the company, and

c) a natural person, who, within the framework of a delegation agreement, conducts part of the fund operations on behalf of the Swedish management company.

29. *Risk limit system*: a documented system of appropriate internal investment limits for a Swedish UCITS that is designed to manage all of the fund's material risks and ensure that the management of the fund occurs in compliance with the law, other regulations and the fund's rules.

30. *Risk-takers*: An employee belonging to a category of staff whose professional activities can have a material impact on the risk profile of a Swedish management company or a managed Swedish UCITS. This normally applies to employees who can enter into agreements or take positions on behalf of the Swedish management company or a managed Swedish UCITS or that in any other way could impact the Swedish management company or the managed Swedish UCITS' risk.

31. *Variable remuneration*: Remuneration, the amount or size of which is not determined in advance. Variable remuneration does not include commission-based salary not linked to future risk assumptions that may alter a Swedish management company's or a Swedish UCITS' income statement or balance sheet.

32. *Synthetic risk and reward indicator*: the same as the synthetic indicator pursuant to Article 8 of Commission Regulation (EU) No. 583/2010.

33. *Speciall regulated staff*: Senior management as well as employees in the following categories of staff and who have not be exempted pursuant to Chapter 8a, section 5:

a) employees in strategic management positions,

b) employees responsible for control functions,

c) risk takers, and

d) employees whose total remuneration is equal to or exceeds the total remuneration to any of the members of senior management.

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

35. *Value at Risk*: A measure of the highest expected loss at a given confidence interval during a certain period characterised by normal market conditions.

36. *Durable medium*: any means which

a) enables the client to store information addressed personally to the client in a way accessible for future reference and during a period of time adequate for the purposes of the information, and

b) allows unchanged reproduction of the information stored.

37. *Senior management*: the managing director, the deputy managing director, and other members of a Swedish management company's governing body or a similar body that reports directly to the board of directors or the managing director.

38. *Investment Firms Regulation*: Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014.

## Chapter 7

**Section 1** A Swedish management company shall be organised and have procedures in accordance with the following:

1. There shall be current and documented decision-making procedures that clearly specify reporting lines, and an organisational structure which clearly allocates functions and areas of responsibility,

2. Relevant persons shall be aware of the procedures which they shall follow in order to properly discharge their responsibilities.

3. There shall be current and appropriate internal control mechanisms in place which ensure compliance with decisions and procedures at all levels of the company.

4. The company shall have personnel with the expertise and knowledge required for the discharge of the tasks allocated to them.

5. Internal reporting and the dissemination of information within the company shall be current and effective, and the company shall have an effective exchange of information with affected third parties.

6. The company shall retain relevant information related to its fund operations and internal organisation for at least five years.

7. Where a relevant person works within multiple functions, this shall not prevent the relevant person from discharging his/her tasks soundly, honestly and professionally.

8. There shall be an allocation of responsibility and work defined from a control standpoint. Such an allocation of responsibility and work shall have the purpose of preventing any single person from processing a transaction alone throughout the entire processing chain (the duality principle).

9. The company shall ensure that it complies with Chapter 14, section 2, second paragraph, point 5.

When the company applies the first paragraph, it shall take into consideration the nature, scope and complexity of the business.

When the company applies the first paragraph, points 1–3, 5 and 6, it shall consider sustainability risks.

When the company applies the first paragraph, points 4, 7 and 9, it shall have the resources and personnel with the knowledge required to integrate sustainability risks.



**Section 10a** The Board of Directors is responsible for integrating sustainability risks

1. in the information referred to in section 10,
2. in the function for compliance that the Swedish management company shall have pursuant to section 14,
3. when each fund's investment policy is implemented in accordance with the fund rules, and
4. when the internal rules referred to in section 10, point 2 are assessed and reviewed pursuant to section 11, first paragraph.

## Chapter 8

**Section 2** The board of directors of a Swedish management company shall adopt appropriate internal rules for risk management. The internal rules shall contain

- information about the risks the company identifies to which each Swedish UCITS it manages is or can be exposed,
- a description of how the company can assess each fund's exposures to market, liquidity, sustainability and counterparty risks and the exposure to all other risks, including operational risks, which can be of material significance for the fund, and
- a description of how the risks shall be managed.

## Chapter 8a

**Section 5** A Swedish management company shall analyse the risks associated with its remuneration policy and remuneration structure. Based on this analysis, the Swedish management company shall identify specially regulated staff at the company. The Swedish management company shall document and specifically motivate if employees in any of the categories of staff set out in Chapter 1, section 9, second paragraph, points 33a–d are not considered to exercise a material impact on the Swedish UCITS' risk level and therefore shall not be classified as belonging to the company's specially regulated staff.

## Chapter 14

**Section 2** A Swedish management company shall exercise the requisite skill, care and diligence necessary when entering into, managing and terminating delegation agreements relating to fund operations.

Where the company intends to engage a third party to manage a Swedish UCITS or carry out administrative measures associated with the management of the fund on behalf of the company, it shall ensure that, in part,

1. the service provider carries out the delegated work or functions efficiently, , and, for this purpose, the company shall adopt processes for assessing the performance of the service provider,
2. the service provider monitors the delegated work and functions and manages associated risks in an appropriate manner,

3. if the service provider does not carry out the task efficiently and in compliance with applicable laws and other provisions, appropriate measures are taken,
4. the service provider notifies the company about all events that may have a material impact on its ability to efficiently carry out the delegated work or functions in accordance with appropriate laws and other provisions,
5. the company shall have the expertise and resources required to effectively monitor the delegated work and functions and manage the risks associated with the delegation as well as monitor these functions and manage these risks,
6. the service provider cooperates with Finansinspektionen in connection with the delegated work or functions,
7. the company, its auditors and Finansinspektionen have actual access to information regarding the delegated work or functions and to the service provider's premises, and Finansinspektionen can exercise its supervision of the service provider's assignment,
8. the service provider protects all confidential information relating to the company or its clients,
9. the company and the service provider maintain a contingency plan for re-establishing operations after unforeseen events and for periodic testing of back-up procedures, where necessary, with regard to the parts of the fund operations that were delegated, and
10. the delegation agreement may be terminated without affecting the continuity and quality of the operations,

Where the company intends to engage a third party to conduct certain work or functions that are included in the fund operations but are not covered by the second paragraph, it shall take appropriate and reasonable measures given the nature, scope and complexity of the operations.

When the company applies the first and second paragraph with regard to delegation agreements that refer to risk management, it shall consider sustainability risks.

If the company considers investment decisions' primarily negative impact on sustainability factors pursuant to Article 4(1)(a), 4(3), or 4(4) of Regulation (EU) 2019/2088 of the European Parliament and of the council, it shall consider such primarily negative impact when it applies the first and second paragraph with regard to delegation agreements that refer to risk management.

## Chapter 15

**Section 5a** A Swedish management company, when identifying the different types of conflicts of interest that can damage the interests of the unit holders, shall include the types of conflicts of interest that can arise as result of integrating sustainability risks into the company's processes, systems and internal controls.

## Chapter 16

**Section 4** When a Swedish fund company applies sections 2 and 3, it shall consider sustainability risks.

If the company considers investment decisions' primarily negative impact on sustainability factors pursuant to Article 4(1)(a), 4(3), or 4(4) of Regulation (EU) 2019/ 2088 of the European Parliament and of the council, it shall consider such a primarily negative impact when it applies the sections 2 and 3.

## Chapter 29

**Section 1** Provisions regarding the content of a prospectus are set out in Chapter 4, sections 15, 16 and 25–27 and Chapter 5, section 18 of the Swedish UCITS Act (2004:46). The prospectus shall also contain the information set out in sections 2–22.

Where the Swedish UCITS consists of unit classes, the contents of the prospectus shall be adapted thereto and the identifying characteristics of the unit classes described.

## Chapter 31

**Section 48a** The annual report shall contain disclosures about

1. the number of employees that received payment of fixed or variable remuneration during the financial year,
2. the total remuneration amount paid to specially regulated staff during the financial year, broken down into the categories of employees set out in Chapter 1, section 9, second paragraph, point 33.
3. how remuneration and benefits to employees has been calculated, and
4. the result of the reviews referred to in Chapter 8a, section 16 and any deviations from the remuneration policy that occurred.

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These regulations shall enter into force on 01 August 2022.

ERIK THEDÉEN

Lisa Söderström