

# Finansinspektionen's Regulations

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**FFFS 2002:5**

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## **Finansinspektionen's (the Swedish Financial Supervisory Authority) General Guidelines regarding Securities Operations**

decided on 20 March 2002.

Finansinspektionen provides the following General Guidelines.

### **Chapter 1. Introduction**

**1 §** These General Guidelines pertain, *inter alia*, to the applications procedure regarding licences to conduct securities operations and licenses and applications for investment firms to establish foreign branches and the procedure in conjunction with notices regarding what are commonly referred to as other cross-border operations.

**2 §** In addition, the provisions of Finansinspektionen's Regulations (FFFS 2002:6) regarding Business Plans for Investment firms, etc., and Finansinspektionen's Regulations (FFFS 2002:7) Regarding Rules of Conduct on the Securities Market shall be applied.

**3 §** The documents submitted to Finansinspektionen in conjunction with an application will form the basis for any decision to grant a licence. Finansinspektionen's assessment takes into account the fact that undertakings may vary in respect of, *inter alia*, size and business focus.

**4 §** The supervisory activities of Finansinspektionen are conducted on the basis that the information provided in conjunction with the application reflects actual circumstances. To the extent the undertaking's operations change after the licence has been granted, the decision to grant the licence may be reconsidered by Finansinspektionen.

### **Chapter 2. Application procedure**

#### **Generally**

**1 §** The application is submitted to Finansinspektionen and should, preferably, be drafted in such a manner that any documents deemed by the undertaking to be covered by confidentiality pursuant to Chapter 8, section 5 of the Trade Secrets Act (1980:100) should be submitted as appendices.

The application is to be signed by authorised representatives of the undertaking. Minutes of meetings of the undertaking's board of directors should state that the application has been approved by the board of directors. A copy of the application and appendices should be sent to the authorised auditor appointed by the general meeting. The aforementioned should also take place when the undertaking applies

for an extended licence to conduct securities operations. Where special cause exists, Finansinspektionen may request the submission of a special statement from the aforementioned auditor.

An investment firm should state the location of the undertaking's head office. In the event the main operation is conducted from a location other than the undertaking's head office, the location thereof should be stated.

### **Scope of the application**

**2 §** In the application, the undertaking should state which one or more of the lines of business set forth in Chapter 1, section 3, first paragraph of the Securities Operations Act (1991:981) to which the application relates. In addition, an investment firm and a foreign undertaking domiciled outside the EEA should state whether the undertaking applies for any licence pursuant to Chapter 3, section 4 of the Securities Operations Act (commonly referred to as a licence for ancillary operations). In addition, it should be stated whether the undertaking intends to apply to a central securities depository in order to act as an account operator or apply to a clearing organisation to act as a clearing member. It should also be stated whether the undertaking intends to apply for membership on an exchange, authorised marketplace or other regulated market and, in such case, to which regulated market membership pertains.

In the event the undertaking intends to conduct operations under a secondary name or to use a designation in its marketing other than its registered name, such fact should be stated.

If the undertaking is part of a group or financial group pursuant to Chapter 6 of the Capital Adequacy and Large Exposures (Credit Institutions and Investment firms) Act (1994:2004), the application should contain certain information regarding the individual undertakings in the group or the group's operations. In addition, a schematic diagram depicting the group structure should be provided.

Unless otherwise specifically stated, information pursuant to these General Guidelines is to be submitted in respect of undertakings already under the supervision of Finansinspektionen.

### **Registration certificate**

**3 §** A registration certificate from the Patent and Registration Office (PRV) issued with the last two months should be appended to the application. It should be noted that, pursuant to Chapter 2, section 2 of the Securities Operations Act, it is permissible to submit an application notwithstanding that the undertaking is not registered in the companies register.

### **Articles of Association**

**4 §** Proposed articles of association should be appended to the application. The articles of association should clearly state that the objects of the undertaking are to conduct securities operations and which of the lines of business the undertaking will conduct. Furthermore, in the event the undertaking will conduct any ancillary operation pursuant to Chapter 3, section 4 of the Securities Operations Act, it should state that the undertaking conducts "operations compatible therewith". Alternatively, each ancillary operation may be stated separately.

**Suitability of senior management**

5 § Finansinspektionen's General Guidelines (FFFS 1998:14) regarding Ownership and Management Assessment provide that members of the board of directors, alternate members, and/or a person serving in the managing director's stead should append the information set forth in Appendix C to the aforementioned General Guidelines.

**Board of Directors**

6 § The board of directors exercises an important supervisory function. External members of the board of directors, i.e. persons outside the group of owners and other persons affiliated with the undertaking, can enhance the supervisory function. To the extent the undertaking does not have external board members, the reason therefor should be stated.

**Ownership**

7 § Information should be provided regarding all of the undertaking's owners. In the event the undertaking is part of a group or financial group, information regarding ownership shares or similar, company name and type of operation should be submitted with respect to other undertakings therein. Information should be provided regarding all links in any ownership chain.

Ownership should also be illustrated through a group or organisational diagram wherein each owner's share capital and voting capital is specified.

Information should also be submitted in respect of the manner in which the owners intend to finance shareholders' equity (loans, own funds, or suchlike).

**Suitability of owners**

8 § Finansinspektionen's General Guidelines (FFFS 1998:14) regarding Ownership and Management Assessment provide that certain owners should submit information set forth in the General Guidelines.

**Auditors**

9 § Information should be submitted regarding the institution's external auditors.

**Compliance Officer**

10 § The instructions to be issued by the board of directors with respect to when and how information regarding applicable rules are to be submitted to the board of directors and the undertaking's employees should be appended to the application. In addition, the compliance officer's name should be stated and a statement should be submitted regarding the compliance officer's expertise and experience. In the event the compliance officer will also be engaged in other work in the undertaking, a statement should be provided with respect to the proportion of work time the compliance officer is estimated to commit to compliance issues.

### **Amount of restricted equity, etc.**

**11 §** Upon commencement of operations, an investment firm shall have restricted equity of not less than the amount stated in the Securities Operations Act. This requirement must be fulfilled before the undertaking may be granted the licence applied for. Accordingly, a certificate issued by the undertaking's authorised auditor stating that the undertaking's restricted equity fulfils the aforementioned requirement should be appended to the application.

In certain cases, Finansinspektionen may grant exemptions from the requirement that an undertaking applying for a licence pursuant to Chapter 1, section 3, first paragraph, subsection 5 of the Securities Operations Act must have restricted equity of not less than EUR 730,000. In the event an undertaking requests an exemption pursuant to the aforementioned provision, the undertaking should state the considerations it has made and state the amount of restricted equity it deems to be required.

### **Shares and participating interests in other undertakings**

**12 §** An undertaking which, at the time of application, holds shares or participating interests in other undertakings should provide information thereon in the application. Therein it should also state which organisational considerations form the basis for the holdings of such shares or participating interests.

An investment firm should provide information regarding qualified holdings of shares for investment purposes held pursuant to Chapter 3, section 1 a of the Securities Operations Act.

### **Affiliated undertakings**

**13 §** The presence of other undertakings which have a significant affiliation with the undertaking applying for a licence should be reported. The routines which the undertaking uses to avoid misleading a customer in such cases in which the undertaking itself or the affiliated undertaking acts as a counterparty to the customer (commonly referred to as self dealing) should be stated.

### **Financial position**

**14 §** The person conducting the operations at the time of the application should append an audited annual report for the undertaking which has been approved by the general meeting. In the event the undertaking is part of a group, the annual report for the parent company and for the group to which the applicant belongs should also be appended. The annual report should, where applicable, cover the three most recent preceding financial years. In addition, where applicable, the most recent preceding interim report should be appended.

A forecast for the upcoming three financial years shall also be appended to the application.

The forecast should also cover the following information:

- Balance sheet and profit and loss statement both for the institution as well as for the financial group of undertakings which the institution manages or in which it is included.

- An analysis of the capital base and capital adequacy ratio both for the institution as well as for any financial group of undertakings over which the institution may preside or in which it is included. The analysis shall also be presented in the manner set forth in Finansinspektionen's Regulations and General Guidelines (FFFS 2000:6) regarding Capital Adequacy and Large Exposures.

Forecasts and analyses should be presented for the respective areas of operation and the assumptions on which they are based should be stated. A sensitivity analysis should be submitted with respect to what effect changes in assumptions regarding, for example, volumes, interest rate levels and interest rate margins will have on the stated analyses and forecasts.

In addition, the undertaking should state the manner in which it intends to address the issue of financing of the operation. The statement should contain information regarding the markets on which the undertaking intends to obtain refinancing and the content of agreements regarding refinancing with another institution or creditor. In addition, special information should be provided regarding the manner in which the undertaking intends to address the financing issue in the event of a liquidity crisis and regarding the relationship between short and long-term borrowings in relation to the term to maturity of outstanding loans.

The instruction for the person who shall be entitled to take decisions on behalf of the undertaking regarding borrowing and the limits thereon should be appended to the statement.

The applicant should also submit such other information as may be significant to an assessment of the financial position.

#### **Special information regarding customer safe custody accounts**

**15 §** Undertakings which intend to administer safe custody accounts on behalf of customers shall specifically state the same. The undertaking should state the number of safe custody accounts which the undertaking plans to administer and approximate information regarding the breakdown of different customer categories (private persons, undertakings, institutions). Undertakings which have engaged another party to administer the safe custody accounts should provide information regarding the same.

#### **Rules regarding personal transactions by employees and closely-affiliated parties with financial instruments and foreign currency**

**16 §** The rules which the undertaking intends to apply should be appended to the application. In addition, the instructions to be applied as to when and the manner in which supervision shall be conducted and supervision of compliance with issued rules should be appended. In addition, information should be provided regarding which person has been appointed by the board of directors or management to be responsible for the supervision and to whom such person, in turn, reports his or her own transactions or the transactions of closely-affiliated parties.

#### **Customer protection**

**17 §** The requirement of sound operations also covers the customers' interests. Thus, the application should state which measures are planned to ensure that the undertaking, in its operations, can comply with consumer legislation. The

application should also contain information regarding the routines for administration of complaints. In addition, information should be provided regarding the names of the employee or employees who shall be responsible for handling complaints from the public. See, further, Finansinspektionen's General Guidelines (FFFS 2000:2) regarding Loans and Consumer Relationships and Finansinspektionen's General Guidelines (FFFS 1996:25) regarding Administration of Complaints regarding Financial Services Provided to Consumers.

### **Ethical rules**

**18 §** The guidelines for handling ethical issues to be applied should be appended to the application. See, further, Finansinspektionen's General Guidelines (FFFS 1998:22) regarding Guidelines for Handling Ethical Issues at Institutions under the Supervision of the Supervisory Authority.

### **Events of material significance**

**19 §** The guidelines for handling and reporting events of material significance to be applied by the undertaking are to be appended to the application. The statement should, among other things, set forth decision-making and reporting procedures in such matters. See, further, Finansinspektionen's General Guidelines (FFFS 1999:7) regarding Reporting of Events of Material Significance.

If a crime, an attempt to commit a crime or preparations therefor against the undertaking has occurred during the last two years, a statement should be provided thereon. The statement should contain information regarding the nature of the crime, the date and time of the crime, whether a police report was submitted and which measures have been taken to prevent new crimes of the same type.

### **Measures against money laundering**

**20 §** A statement should be submitted regarding which measures have been taken, or are intended to be taken, to prevent money laundering. Proposals for instructions should be submitted. See, further, Finansinspektionen's Regulations and General Guidelines (FFFS 1999:8) regarding Measures against Money Laundering.

### **Pending legal or arbitral proceedings**

**21 §** Undertakings which conduct operations at the time of application should state whether they are a party to legal or arbitral proceedings. Information should be provided as to the identity of the opposing party, which of the parties has initiated the proceedings, the nature of the dispute, the amount involved in the proceedings and when a resolution is expected.

### **Market supervision**

**22 §** In the event a Swedish securities institution intends to organise trading of financial instruments which are not listed on an exchange or authorised marketplace, the application should state the manner in which market supervision is organised. See, also, Finansinspektionen's Regulations (FFFS 2001:5) regarding Market Supervision at Securities Institutions, etc.

## **Business plan**

**23 §** A plan of the contemplated business should be appended to the application. The contents of such plan are set forth in Finansinspektionen's Regulations (FFFS 2002:6) regarding Business Plans for Investment firms, etc. In addition to the provisions therein, the undertaking should also observe the following.

### *The organisation*

**24 §** The application should also state if any person will also be employed by another undertaking and, in such case, should state which assessments have been made regarding any conflicts of interest.

### *Market risks*

**25 §** The application should state the degree to which the undertaking's operations entail any market risks.

"Market risks" means interest rate risks, share price risks, risks as a consequence of warranties issued in conjunction with the issuance of transferable securities, settlement risks, counterparty risks and currency exchange risks.

The undertaking should also provide an overall risk policy for handling its market risks. The following should be included in the risk policy:

- definition of market risks;
- the undertaking's total risk exposure;
- identified risks;
- permissible instruments, strategies and criteria for what are commonly referred to as hedging, position-taking, etc.
- rules of procedure which provide a clear allocation of duties and work;
- methods for measuring market risk;
- limit system, its approval procedure and measures to be taken in conjunction with deviations;
- special routines for implementation of new financial instruments; and
- reporting structure.

In addition to proposals for risk policies, a proposal should be made regarding the submission of instructions which describe the handling of market risks in greater detail.

### *Receipt of funds subject to a reporting obligation*

**26 §** An overall description should be provided as to the manner in which the undertaking ensures that funds are separated and deposited on account in banking institutions. The description should set forth the manner in which the ongoing work is organised and supervised.

### *Granting of loans and credit risks*

**27 §** Sound lending operations are conditional upon the undertaking developing and maintaining a system for supervision and follow-up of risks in lending and loan administration. A statement should be submitted as to the manner in which the operation is intended to be conducted. Proposals for a lending policy and lending instructions should be submitted. What these should contain are set forth

in Finansinspektionen's General Guidelines (1995:49) regarding Credit Risks in Credit Institutions and Investment firms.

**28 §** In conjunction with loans in consumer relations, the undertaking may simplify the credit assessment if satisfactory security is provided in the form of financial instruments, and lending is conducted in accordance with applicable industry practices.

**29 §** In conjunction with lending, security provided should first be comprised of financial instruments. Other property should constitute security only where necessary to supplement previously provided security, i.e. what is commonly referred to as supplementary security.

In the event the undertaking intends to grant loans against security which is normally provided as supplementary security, the application shall state that the undertaking possesses the expertise to perform the necessary security assessments in a satisfactory manner.

#### *Outsourcing*

**30 §** An outsourcing engagement should be formulated in such a manner that the undertaking retains the possibility to effect and supervise the operation conducted on behalf of the undertaking by the person appointed therefor. It should be further pointed out that an engagement may at no time entail a waiver by the undertaking of the responsibility vis-à-vis customers and others in respect of the activity included in the engagement. See Finansinspektionen's Memorandum regarding outsourcing (18 December 1998).

#### *Liability insurance*

**31 §** An investment firm shall append a copy of the insurance agreements procured by the undertaking. The agreements shall state the amount of excess for each individual loss.

The indemnity which may be payable per loss for an investment firm applying for a licence pursuant to Chapter 1, section 3, first paragraph, subsection 2 of the Securities Operations Act should normally amount to not less than SEK one million. The maximum indemnity which may be paid during a period of one year should amount to not less than SEK five million. In respect of an undertaking which applies for a licence pursuant to Chapter 1, section 3, first paragraph, subsections 1, 3, 4 and 5 of the aforementioned Act, the indemnity amount per loss should amount to not less than SEK two million. In this context, the maximum indemnity amount payable during a period of one year should amount to not less than SEK ten million. The excess should not be so excessive that it jeopardises the undertaking's continued operations. In the event the undertaking applies for several licences, the amount levels should first be discussed with Finansinspektionen.

#### *Audit function*

**32 §** An undertaking should state the manner in which an independent audit function will be designed and how it shall work in accordance with the rules in section 10 of Finansinspektionen's General Guidelines (FFFS 1999:12) regarding management, internal information and internal supervision within credit and securities institutions and in Swedish management companies.



The statement should state:

- the manner in which the audit function will be organised;
- instructions for the function;
- whether there will be an independent IT/data audit function;
- if there will be a specific, internal auditor;
- whether an audit plan will be produced and who shall establish the same; and
- how often and to whom the audit function will report.

In the event the audit function is to be carried out by external auditors or consultants, a comparable statement should be provided in respect of their engagement. The engagement should be regulated in a written agreement appended to the application.

### **Chapter 3. Qualifications requirement for employees in Swedish securities institutions**

**1 §** A Swedish securities institution should, in its operations, impose special requirements for qualifications concerning:

- such employees who have contacts with customer, e.g. investment advice and other persons, the task of whom is to provide advice and serve customers; and
- employees with positions of responsibility in the undertaking. This should also include the Managing Director of investment firms or managers of securities operations and banks, persons acting in their stead, members of the management group for the securities operation, and area manager or suchlike, and Compliance Officers. Where cause exists therefor, an undertaking should be able to exempt certain employees from the special requirement of qualifications.

**2 §** The special qualifications requirements should cover the following areas where appropriate:

- financial instruments and trading in financial instruments;
- administration of financial instruments;
- financial economics relating to the advising operations;
- ethical issues; and
- external and internal rules for the securities operation.

The undertaking should have guidelines in respect of which special qualifications requirements the undertaking imposes and which employees are to be covered by such requirements.

### **Chapter 4. Normal liquidity management pursuant to Chapter 4, section 1 of the Securities Operations Act**

**6 §** In the event a Swedish securities institution which does not possess a licence in accordance with Chapter 1, section 3, first paragraph, subsection 3 of the Securities Operations Act has acquired financial instruments as part of normal liquidity management, the undertaking should not borrow on these instruments for the purpose of acquiring additional financial instruments. Nor should the undertaking, as part of normal liquidity management, buy or sell financial instruments from or to a customer.

## **Chapter 5. Operations in foreign countries**

### **Establishment of branches**

**1 §** Pursuant to Chapter 1, section 4 of the Securities Operations Act, an investment firm may, following authorisation from Finansinspektionen, establish a branch in any country outside the EEA.

In the event a Swedish institution conducts securities operations from a branch in any country outside the EEA, the institution may apply to the Deposit Guarantee Board and request that the investor protection and, where applicable, the deposit guarantee shall also apply in respect of the branch's operations.

An investment firm which intends to establish a branch in another country within the EEA shall, pursuant to Chapter 1, section 5 of the aforementioned Act notify Finansinspektionen prior to commencement of the operations.

The Swedish investor protection/deposit guarantee also covers assets lodged with a securities institution's branch in a country outside of the EEA.

### **Content of the application and notification**

**2 §** The information to be contained in an application for authorisation to establish a branch outside the EEA shall contain the information set forth in Chapter 1, section 4 of the Securities Operations Act.

With respect to the establishment of a branch in another country within the EEA, the investment firm should complete the questionnaire appended to the notification, see *Appendix 1*. The services which the investment firm may offer via the branch are set forth in *Appendix 2*. A translation of the completed questionnaire - into an official language of the country to which the establishment pertains - alternatively in English, shall also be submitted.

The branch should appoint a person who is responsible for the operation. Such person should be domiciled in the country in which the branch is established. In addition, the branch should appoint a person the duties of whom are to ensure that personnel in the branch and its board of directors, where applicable, are aware of the applicable rules governing the operations. A *curriculum vitae* for the manager and other senior management should be appended to the notification.

### **Change of the branch's operations**

**3 §** In the event the investment firm, following the establishment of the branch in another EEA country, intends to change the operations of the branch, its address, or responsible persons in management, such shall be notified in writing to Finansinspektionen and the supervisory authority in the country in which the branch is established not less than one month prior to implementation of the change.

A comparable application as referred to in the first paragraph should also be made with respect to branches in a country outside the EEA.

**Other cross-border operations**

4 § Pursuant to Chapter 1, section 6 b of the Securities Operations Act, a investment firm which intends to conduct operations in another country within the EEA by offering and providing services without establishing a branch there - and prior to commencement of the operation - must notify Finansinspektionen.

The undertaking should use the questionnaire in *Appendix 1*. The services which a undertaking may offer are set forth in *Appendix 2*. A translation should also be submitted of the completed questionnaire in one official language of the country to which the notification pertains or, alternatively, in English.

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These General Guidelines shall enter into force on 1 July 2002, at which time Finansinspektionen's General Guidelines (FFFS 1998:34) regarding a licence to conduct securities operations shall cease to apply.

CLAES NORGRÉN

Ülle-Reet Jakobson

## **Establishment of a branch for offering of services through other cross-border operations in another EEA country**

An investment firm which intends to establish a branch within the EEA should respond to all of the questions below. In the event an investment firm intends to offer and provide services without establishing a branch, commonly referred to as other cross-border operations, questions 1, 2, 7, 8 and 10 should be answered.

This notification will be sent by Finansinspektionen to the relevant supervisory authority in the country of operations.

1. State complete business name and address of the head office in Sweden.
2. State the country to which the establishment relates.
3. State the business name under which operations will be conducted in the country of operations, complete address as well as telephone and fax number of the place of operations of the country of the branch.
4. State the name and personal ID number of the person who will be responsible for the branch operations and the person who shall be the Compliance Officer. Curriculum vitae should be appended.
5. Provide the name of the person(s) and the branch who may sign on behalf of the undertaking.
6. State whether a board of directors will be appointed for the branch and, where appropriate, the composition and powers thereof.
7. Provide a plan for the contemplated operation with information regarding which operations are intended to be conducted pursuant to *Appendix 2*. The description should be as detailed as possible.
8. State whether any operations will be conducted which are not stated in *Appendix 2*.
9. Describe the branch's organisation (an organisational diagram is welcomed).
10. The name and address of a person who may be contacted in connection with this notification.

The undersigned hereby confirms that the above information is correct and undertakes to notify Finansinspektionen and the supervisory authority in the country of operations immediately upon any change in any of the above circumstances.

Place and date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Council directive 93/22/EEC of 10 May 1993 on investment services in the securities field

To be completed for all Swedish authorised investment firms that carry on listed activities in other EEA member states on a cross border basis.

Authorised investment firm: \_\_\_\_\_

Name of the EEA member country where the firm intends to operate (host member state): \_\_\_\_\_

### SECTION A

Services	Y/N
1. (a) Reception and transmission, on behalf of investors, of order in relation to one or more of the instruments listed in Section B.	
1. (b) Execution of such orders other than for own account.	
1. Dealing in any of the instruments listed in Section B for own account.	
2. Managing portfolios of investments in accordance with mandates given by investors on a discriminatory client by client basis where such portfolios include one or more of the instruments listed in Section B.	
3. Underwriting in respect of issues of any of the instruments listed in Section B and/or the placing of such issues.	

### SECTION B

Instruments	Y/N
1. (a) Transferable securities.	
1. (b) Units in collective investment undertakings.	
2. Money-market instruments.	
3. Financial-futures contracts, including equivalent cash-settled instruments.	
4. Forward interest-rate agreements (FRA's).	
5. Interest rate, currency and equity swaps.	
6. Options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.	

**SECTION C**

<b>Non-core services</b>	<b>Y/N</b>
1. Safekeeping and administration in relation to one or more of the instruments listed in Section B.	
2. Safe custody services.	
3. Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting credit or loan is involved in the transaction.	
4. Advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings.	
5. Services related to underwriting.	
6. Investment advice concerning one or more of the instruments listed in Section B.	
7. Foreign exchange service where these are connected with the provision of investment services.	