

Guidelines adopted by the Board of Directors on **16 February 2018**
Revised by the board of directors on 15 October 2019

Guidelines for administrative fines for certain infringements of Article 19 of the EU's Market Abuse Regulation

1 Background

According to Article 19 of the EU Market Abuse Regulation¹, persons discharging managerial responsibilities at an issuer, as well as persons closely associated with them, shall submit notification of their transactions in shares or debt instruments of that issuer or derivatives or other financial instruments linked thereto.

The notification shall be made to Finansinspektionen promptly and no later than three trading days (in the Regulation, “business days”) after the date of the transaction.

The notification obligation arises for all subsequent transactions once the total amount of transactions has reached EUR 5,000 within a calendar year. The transaction amount is calculated without netting. This means that amounts from, for example, buying and selling may not be set off against one another before being totalled. The primary rule is that all transactions are included and count toward the threshold of EUR 5,000. The transaction that takes the amount to or above EUR 5,000 shall also be reported.

Supplemental provisions are available in Commission Delegated Regulation (EU) 2016/522² and Commission Implementing Regulation (EU) 2016/523³.

¹ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

² Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions.

³ Commission Implementing Regulation (EU) 2016/523 of 10 March 2016 laying down implementing technical standards with regard to the format and template for notification and

These provisions include a non-exhaustive list of various transactions subject to the notification obligation.

If a natural or legal person infringes provisions of the Regulation regarding the notification obligation, Finansinspektionen shall intervene according to Chapter 5, section 2, point 5 of the Supplemental Provisions for the EU Market Abuse Regulation Act (2016:1306) (Supplemental Act). For example, according to Chapter 5, section 3, point 6 of the same act, Finansinspektionen may issue an administrative fine to the person responsible for the infringement. Due to the nature of the infringement, an administrative fine is the most common method of intervention.

Finansinspektionen shall establish the size of the administrative fine in accordance with Chapter 5, section 18 of the Supplemental Act. The legislator has introduced a maximum flat administrative fine with two distinct calculation models for legal persons (Chapter 5, section 8, first paragraph, point 1) and natural persons (Chapter 5, section 8, first paragraph, point 2).

Circumstances that Finansinspektionen shall consider when the authority decides to intervene and determines the size of the administrative fine are set out in Chapter 5, sections 15, 16 and 18 of the Supplemental Act. These provisions contain an exemplifying enumeration where the starting point is an overall assessment of the various circumstances in the case in question (Bill 2016/17:22 p. 390).

Finansinspektionen is able to refrain from intervention if, for example, the infringement is negligible or excusable, or if special grounds otherwise exist (Chapter 5, section 17 of the Supplemental Act).

The guidelines shall apply to infringements that have occurred as of 1 February 2017, and the established amount limits are the highest possible administrative fines according to Chapter 5, section 8 of the Supplemental Act.

The guidelines shall not apply to

- transactions related to emissions allowances, auctioned products based on emissions allowances or related derivatives,
- infringements of Article 19(11) and 19(12) of the Market Abuse Regulation, and
- infringements in the form of missed notifications identified by Finansinspektionen.

public disclosure of managers' transactions in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council.

2 Circumstances that shall be taken into account when deciding on administrative fines

When Finansinspektionen decides on a sanction against a natural or legal person, according to Chapter 5, section 15 of the Supplemental Act it shall take into consideration the seriousness of the infringement and its duration. Special consideration shall be given to the actual and potential effects of the infringement on the financial system, the losses incurred and the degree of responsibility.

In addition to circumstances linked to the infringement itself, Finansinspektionen, as an aggravating circumstance, should consider any previous infringement of Article 19 of the Market Abuse Regulation by the notifier. In making such assessment, Finansinspektionen shall give particular consideration to whether the infringements are similar in nature and the time that has elapsed between the various infringements (Chapter 5, section 16, first paragraph of the Supplemental Act).

As a mitigating circumstance, Finansinspektionen shall consider whether the person who committed the infringement to a significant extent, through active cooperation, has facilitated Finansinspektionen's investigation and implemented measures after the infringement to prevent it from occurring again. Another mitigating circumstance is if the person who committed the infringement may suffer negative consequences in that his/hers employment can be expected to be terminated or he/she will suffer some other professional or commercial obstacle or difficulty (Chapter 5, section 16, second paragraph of the Supplemental Act).

When Finansinspektionen establishes the size of the administrative fine, the authority, in accordance with Chapter 5, section 18 of the Supplemental Act, shall take into consideration such circumstances as those set out in sections 15 and 16 and the legal or natural person's financial position. Also, if possible to establish, consideration shall also be given to any gains that the person or any other person benefited from as a result of the infringement or the avoidance of costs.

3 Guidelines for determining the administrative fine

When Finansinspektionen assesses whether it shall intervene according to these guidelines, it shall first determine whether an infringement occurred of the rules regarding the notification obligation. The size of the fine is then determined, during which Finansinspektionen assesses the circumstances surrounding the infringement. Finansinspektionen shall also take into consideration any aggravating and mitigating circumstances that are not associated with the infringement itself. The legislation contains an exemplifying list of circumstances that shall be considered.⁴ Furthermore,

⁴ Bill 2016/17:22 p. 390.

consideration shall be given to the concerned person's financial position, and to any gains the person has benefited from or any costs the person has avoided as a result of the infringement. Finally, Finansinspektionen shall assess whether the infringement is negligible or excusable or if special grounds otherwise exist to refrain from intervention.

Finansinspektionen finds it appropriate to use a standardised model as a starting point when determining the size of the administrative fine. If a person who previously has committed an infringement commits a new infringement that is negligible, the lowest fine level in the applicable column for the delay is to be used as a basic amount.

According to the Market Abuse Regulation, the notification must be submitted within three business days from the date of the transaction. According to Finansinspektionen, a delay should be counted in business days up to five business days. Thereafter, the delay is counted in calendar weeks and months.

Basic fines for late notification – intervals for time value assessment for a correctly filled-in notification form (amounts in SEK)

Natural person

Compensation (SEK)		≤1 business day	2 business days	3 business days	4 business days	5 business days	>5 business days	>2 calendar weeks	>4 calendar weeks	>3 months	>6 months	>12 months
1	25,000	-	-	2,500	5,000	6,000	7,000	8,000	9,000	10,000	11,000	12,000
25,001	75,000	-	2,500	5,000	6,000	10,000	12,000	14,000	16,000	18,000	20,000	25,000
75,001	150,000	2,500	5,000	10,000	13,000	17,000	17,500	18,500	21,500	27,000	33,000	36,000
150,001	250,000	5,000	12,000	18,000	24,000	30,000	31,000	33,000	39,000	49,000	59,000	64,000
250,001	500,000	11,000	22,000	34,000	45,000	56,000	58,000	62,000	72,000	91,000	110,000	120,000
500,001	1,000,000	22,000	45,000	68,000	90,000	110,000	120,000	120,000	140,000	180,000	220,000	240,000
1,000,001	2,500,000	53,000	110,000	160,000	210,000	260,000	270,000	290,000	340,000	430,000	510,000	560,000
2,500,001	5 million	110,000	230,000	340,000	450,000	560,000	580,000	620,000	720,000	910,000	1,100,000	1,200,000
5,000,001	10 million	220,000	450,000	680,000	900,000	1,130,000	1,160,000	1,240,000	1,450,000	1,820,000	2,170,000	2,300,000
10,000,001	20 million	450,000	900,000	1,350,000	1,560,000	1,750,000	1,940,000	2,140,000	2,330,000	2,530,000	2,720,000	2,900,000
20,000,001 and over		680,000	1,350,000	2,030,000	2,150,000	2,270,000	2,390,000	2,510,000	2,630,000	2,760,000	2,880,000	3,000,000

Legal person

Compensation (SEK)		≤1 business day	2 business days	3 business days	4 business days	5 business days	>5 business days	>2 calendar weeks	>4 calendar weeks	>3 months	>6 months	>12 months
1	25,000	-	-	2,500	5,000	8,000	9,000	10,000	12,000	16,000	21,000	24,000
25,001	75,000	-	2,500	5,000	10,000	12,000	14,000	15,000	17,000	20,000	30,000	45,000
75,001	150,000	2,500	5,000	12,000	17,000	23,000	26,000	30,000	37,000	50,000	60,000	70,000
150,001	250,000	5,000	15,000	20,000	31,000	42,000	46,000	53,000	65,000	87,000	110,000	120,000
250,001	500,000	12,000	25,000	40,000	58,000	78,000	86,000	100,000	120,000	160,000	200,000	250,000
500,001	1,000,000	22,000	50,000	80,000	110,000	150,000	170,000	200,000	250,000	300,000	400,000	500,000
1,000,001	2,500,000	55,000	120,000	190,000	270,000	360,000	400,000	450,000	550,000	750,000	1,000,000	1,000,000
2,500,001	5 million	110,000	250,000	400,000	550,000	780,000	850,000	1,000,000	1,200,000	1,600,000	2,000,000	2,400,000
5,000,001	10 million	220,000	500,000	800,000	1,000,000	1,500,000	1,700,000	2,000,000	2,400,000	3,300,000	4,000,000	4,500,000
10,000,001	20 million	450,000	1,000,000	1,600,000	2,000,000	3,000,000	3,400,000	3,500,000	4,200,000	4,800,000	5,500,000	6,000,000
20,000,001 and over		680,000	1,400,000	2,400,000	3,500,000	4,200,000	4,500,000	4,800,000	5,100,000	5,400,000	5,700,000	6,000,000

Calculation factors

The person subject to the notification obligation is responsible for ensuring that a notification is submitted to Finansinspektionen on time.

The table “Basic fines – intervals for time value assessment” should be used as a starting point. The delay in the number of trading days and the size of the transaction are guiding in determining the seriousness of the infringement.

Examples of circumstances that should lead to an increase in the basic fine by at least 25 per cent, although always within the limitation set out in Chapter 5, section 8 of the Supplemental Act:

- The notification contains deficiencies in relation to the requirements set out in Article 19.6 of the Market Abuse Regulation.
- There was a significant market interest in the notification being made public.
- There are aggravating circumstances in accordance with Chapter 5, section 16, first paragraph of the Supplemental Act that are not related to the infringement itself. Example:
 - The notifier has committed one or several similar infringements within a period of one year after Finansinspektionen has intervened against the notifier for a similar infringement.

Examples of circumstances that should lead to an increase in the basic fine by at least 50 per cent, although always within the limitation that is set out in Chapter 5, section 8 of the Supplemental Act:

- There has been an intention to mislead the market.
- There are aggravating circumstances in accordance with Chapter 5, section 16, first paragraph of the Supplemental Act that are not related to the infringement itself. Example:
 - The notifier has committed one or several similar infringements within a period of two months after Finansinspektionen has intervened against the notifier for a similar infringement.

Examples of circumstances that should lead to a reduction in the basic fine by at least 25 percent:

- There are mitigating circumstances in accordance with Chapter 5, section 16, second paragraph of the Supplemental Act that are not related to the infringement itself. Example:
 - The notifier suffers harm, for example in terms of employment, as a result of the infringement.

- The transaction was complex and there has been uncertainty regarding the reporting obligation or as regards which day should be considered the date of the transaction.

Examples of circumstances that should lead to a reduction in the basic fine by at least 50 percent:

- There are mitigating circumstances in accordance with Chapter 5, section 16, second paragraph of the Supplemental Act that are not related to the infringement itself. Example:
 - The notifier is seriously harmed by the infringement, for example loses his/hers employment.
 - A notifier that is a legal person can show documented measures for avoiding a reoccurrence of the infringement.

Proportionality

An administrative fine shall not be disproportionate in relation to the circumstances that have come up during the investigation and that serve as a basis for Finansinspektionen's intervention. For example, according to Chapter 5, section 18 of the Supplemental Act, Finansinspektionen, shall take the financial position of the person who committed the infringement into special consideration. Finansinspektionen shall also take the principles of proportionality into consideration in general when determining the size of the fine in each individual case. For example, one circumstance that can be taken into consideration is the size of the amount within the relevant interval in the vertical column of the table showing the basic fees.

4 Guidelines for waiving intervention

According to Chapter 5, section 17 of the Supplemental Act, Finansinspektionen may refrain from intervention if, for example, the infringement is negligible or excusable, or if special grounds otherwise exist. Grounds for refraining from intervention may include the following:

- Finansinspektionen has intervened against the notifier for the same transaction, for example if the person subject to the notification obligation has already been issued an administrative fine in accordance with the Financial Instruments Trading Act (1991:980).
- Notification of the transaction was not submitted on time due to circumstances that the notifier reasonably could not have been able to control or predict.

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Reference to external requirements that gave rise to the governance document
Chapter 5 of the Supplemental Provisions for the EU Market Abuse Regulation Act (2016:1306)

Reference to underlying internal governance documents

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