

26 June 2014

## DECISION

Skandiabanken Aktiebolag  
through Chair of the Board of Directors  
Lindhagensgatan 86  
SE-106 55 Stockholm, Sweden

FI Ref. no. 13-1074



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## Adverse remark and administrative fine

### Decision of Finansinspektionen (to be issued on 27 June 2014 at 08.00)

1. Finansinspektionen issues an adverse remark to Skandiabanken Aktiebolag (corporate identity (ID) number 516401-9738).

*(Chapter 25, Section 1 of the Securities Market Act [2007:528])*

2. Skandiabanken Aktiebolag shall pay an administrative fine of SEK 10,000,000.

*(Chapter 25, Sections 8 to 10 of the Securities Market Act)*

How to appeal; see *Appendix 1*.

### Summary

Skandiabanken Aktiebolag ('Skandiabanken' or 'the Bank') has authorisation to conduct banking business under the Banking and Financing Business Act (2004:297) and securities business under the Securities Market Act (2007:528).

Finansinspektionen has conducted an investigation of the securities business that Skandiabanken conducts through tied agents. It transpired from this investigation that Skandiabanken received within its securities business remuneration from a third party, although this was not permitted as the Bank had not provided clients with information about this remuneration in the manner required according to the applicable rules. Clear information about the remuneration that a securities institute receives from a third party when it provides investment advice represents a precondition to enable clients to make informed investment decisions and understand which underlying inducements may affect the advice.

It has also been established that there have been inadequacies in the way in which Skandiabanken has handled conflicts of interest. Skandiabanken's remuneration system has created inducements for several of the Bank's tied

agents to recommend certain products to clients before others. Skandiabanken has neither identified nor dealt with this conflict of interest in a satisfactory way. Nor has the Bank informed clients about the conflict of interest in accordance with applicable rules. The Bank's inadequacies in this respect have increased the risk of the clients' interests being set aside in favour of the tied agents' interests.

Owing to the inadequacies existing in Skandiabanken's operation, the Bank has disregarded the fundamental requirement to protect the interests of clients when offering investment services.

The violations committed by Skandiabanken are not serious enough to revoke the Bank's authorisation to conduct securities business. Consequently, nor do the preconditions apply to issue a 'warning' to the bank. However, Finansinspektionen is of the opinion that the violations were of such a nature and scope that an 'adverse remark' should be issued to the Bank combined with an administrative fine.

## **1 Background**

### ***1.1 The investigation***

As part of its ongoing compliance work, Finansinspektionen has conducted a themed investigation with a view to checking how securities institutes that pursue activities through tied agents comply with the rules contained in the Securities Market Act (2007:528 – LV) and Finansinspektionen's Regulations (FFFS 2007:16) governing investment services and activities ('Regulations governing investment services and activities'). Skandiabanken was included in this themed investigation. Finansinspektionen has examined, among other things, whether Skandiabanken complies with the provisions on conflicts of interest and the disclosure requirement in relation to clients.

Finansinspektionen conducted a site visit to Skandiabanken on 14 February 2013 within the framework of the investigation. The Bank has also submitted written information concerning the matter.

Finansinspektionen first requested 30 randomly selected client files from Skandiabanken. However, it transpired in the course of processing the matter that not all of the 30 clients had received investment advice. Consequently, Finansinspektionen eventually examined 22 client files for clients who had received investment advice from five of Skandiabanken's tied agents during the period June 2012 up to and including January 2013. This corresponded to just over five per cent of the tied agents' total number of clients receiving investment advice at the time of Finansinspektionen's site visit. All of the client files examined related to retail clients. Twelve of the 22 clients had only invested in structured products, six clients only in mutual funds (UCITS) units and four clients in both structured products and mutual funds.

In addition to the above-mentioned client files, Finansinspektionen has examined, among other things, product information for depository accounts, IPS accounts (depository accounts for individual retirement savings) and

investment savings accounts, product leaflets for structured products, and also the Bank's Conflict of Interest Guidelines.

Skandiabanken was afforded on 21 February 2014 an opportunity to express its views on the observations and preliminary assessments made by Finansinspektionen. The Bank was also informed that Finansinspektionen was deliberating upon an intervention. In addition, Skandiabanken was on 26 May 2014 afforded an opportunity to submit a supplementary statement of views in the matter. The Bank has expressed its views on 28 March and 2 June 2014.

### ***1.2 About Skandiabanken and its activities through tied agents***

Skandiabanken has authorisation to conduct banking business under the Banking and Financing Business Act (2004:297) and securities business under LV.

In addition, Skandiabanken has authorisation to be registered as a manager of mutual funds units under the Investment Funds Act (2004:46), authorisation to conduct pension savings business under the Individual Pension Savings Act (1993:931) and authorisation to engage in insurance mediation under the Insurance Mediation Act (2005:405 – LFF).

Skandiabanken forms part of the Skandia Group. The Bank is a wholly owned subsidiary of Försäkringsaktiebolaget Skandia, which in its turn is wholly owned by Livförsäkringsbolaget Skandia, ömsesidigt. It is shown by Skandiabanken's Annual Report that the Bank had a turnover of SEK 1,574 million for the financial year 2013, with profit after tax of SEK 327 million. The Bank's average number of employees was 457 in 2013.

An opportunity was introduced in conjunction with the entry into force of LV for securities institutes to conduct certain securities business through tied agents. A tied agent may only represent one securities institute and may perform certain services on behalf of the institute, as specified in LV, including providing investment advice about financial instruments (Chapter 1, Section 5 LV).

At the time of Finansinspektionen's site visit, Skandiabanken had concluded contracts with ten tied agents concerning the provision of investment advice on behalf of Skandiabanken. One of the tied agents, Skandia Försäljning AB ('SFAB') was part of the Skandia Group during the period covered by Finansinspektionen's investigation. SFAB was deregistered as a tied agent of Skandiabanken on 24 April 2014. Two hundred and fifty-nine investment advisors were employed by SFAB when Finansinspektionen conducted its site visit. The other nine tied agents are independent of the Skandia Group and had 21 investment advisors in total at the time. The independent tied agents are referred to below as 'franchise firms' when the observations of the Finansinspektionen only applies to those firms.

Skandiabanken's tied agents were also registered as associate insurance intermediaries for other companies within the Skandia Group during the period to which the Finansinspektionen's investigation relates. These tied agents had approximately 13,600 clients as of 31 December 2012. However, the majority

of these clients were clients in these firms' capacity as tied insurance intermediaries. According to information from Skandiabanken, the tied agents had approximately 400 clients receiving investment advice at the time of Finansinspektionen's site visit. According to that stated by the Bank, Skandiabanken's securities business turnover amounted to SEK 120 million in 2012. Revenue from the Bank's investment advice activities accounted for SEK 6.3 million of the total securities business turnover. According to information from Skandiabanken, the total remuneration for tied agents for the activity examined in this matter amounted to SEK 3.6 million for the financial year 2012, which comprised 0.8 per cent of the tied agents' total revenue.

The tied agents mainly provide investment advice about mutual funds units and structured products. Approximately 97 per cent of the tied agents' total revenue from investment advice in 2012 came from advice concerning structured products. The corresponding figure for the first quarter of 2013 was 96 per cent.

## **2 Applicable provisions**

This matter raises central client protection rules in LV relating to the handling of conflicts of interest and information for clients.

A more detailed report on the provisions applied by Finansinspektionen when considering this matter is provided in *Appendix 2*.

## **3 Assessment of Finansinspektionen**

Under Chapter 8, Section 1 LV, a securities institute shall protect the interests of its clients when it provides investment services or ancillary services to its clients and shall act honestly, fairly and professionally. A securities institute shall also otherwise act in such a manner as to maintain public confidence in the securities market. These are some of the most fundamental requirements imposed on those conducting securities business.

More detailed rules regulating the activities of securities institutes linked to this overall provision are contained in LV and the Regulations governing investment services and activities. Among other things, there are rules instructing a securities institute to deal with conflicts of interest within their activities. There are also rules whereby a securities institute may not receive remuneration from a third party unless the client is provided with information about this remuneration in a comprehensive, accurate and understandable way.

### ***3.1 Information to clients about the remuneration Skandiabanken receives from third parties***

It is established by the investigation that Skandiabanken has received remuneration from UCITS and arrangers of structured products (product companies) in conjunction with the tied agents providing investment advice to clients (this was the case in 18 of the 22 cases for the client files examined). A precondition for a securities institute being allowed to receive remuneration from a third party when providing an investment service is that the institute

provides its clients with information about the remuneration in the manner prescribed by Chapter 12 of the Regulations governing investment services and activities. This obligation also applies when the investment service is provided by a tied agent on behalf of the securities institute. The information is necessary to enable the client to understand how the remuneration may influence the institute to act in a certain way.

Skandiabanken has, through its tied agents, provided clients with information about the remuneration that the Bank receives from UCITS through the clients receiving brochures with product information relating to depository accounts, IPS accounts and investment savings accounts. The following is stated in the brochures:

*“The bank is entitled to pay or receive incentives under certain conditions. Incentives from/to a third party must be structured so that they enhance the quality of the investment service in question. Nor may there be any risk of the incentive conflicting with the bank’s obligation to act in an honest, fair and professional way in relation to its clients. The UCITS will charge a management fee for savings in funds. The fund’s management fee is shown in the fund’s fact sheet. Holders of mutual funds units will pay a management fee to the UCITS when purchasing mutual funds units in the fund in question. Skandiabanken engages in cooperation with the UCITS which means that clients have an opportunity to purchase mutual funds units via Skandiabanken’s Fund Trading System. The UCITS has undertaken through the said cooperation to pay Skandiabanken some of the management charge (no more than eighty-eight per cent) and, in certain cases, some of the purchase charge, if any.”*

The product leaflet attached to a number of client files includes some general information about the remuneration received by Skandiabanken when the tied agents provide advice about structured products. In all but one arranger’s product leaflets it is merely stated that product companies pay remuneration to distributors mediating the products and that remuneration is calculated as a lump sum remuneration on nominal amount (or alternatively an market exposure amount or the structured product’s price). In the remaining arranger’s product leaflet it is stated instead that the remuneration for distributors is calculated as a lump sum remuneration on the nominal amount and that this corresponds to approximately 0.5 per cent annually, assuming that the investment is held until the ordinary maturity date.

Skandiabanken stated in its statement of views that the Bank, in addition to the above-mentioned information, has also described the basic terms of the structure for third party remuneration in the form of a summary on the Bank’s website. The following information is provided in the summary referred to by Skandiabanken concerning the remuneration that Skandiabanken receives from third parties when mediating mutual funds units:

*“The mutual funds units in which Skandiabanken offers trade are managed by various UCITS. Skandiabanken receives annual remuneration to mediate and administer mutual funds units from each UCITS in the form of a percentage of the assets managed.”*

Information is also provided in the summary concerning the remuneration that Skandiabanken receives from third parties when mediating structured products:

*“The structured products provided by Skandiabanken are issued by various issuers/arrangers. Skandiabanken receives remuneration for mediating the structured products from each arranger. This remuneration may be calculated as a percentage of the amount invested and may vary between different arrangers and also between different structured products provided by the same arranger. Examples of structured products are equity-linked bonds, credit certificates and fixed income certificates.”*

In view of the information provided in the summary, Skandiabanken considers that it has provided the information required to be permitted to receive the remuneration in question and that the Bank has thus not disregarded the provisions of Chapter 12 of the Regulations governing investment services and activities.

Finansinspektionen initially concludes that the information provided in the brochures, including product information for depository accounts, IPS accounts and investment savings accounts, and the information provided in all but one arranger’s product leaflets found in the client files do not satisfy the requirements imposed by Chapter 12, Section 1 of the Regulations governing investment services and activities, as neither the amount nor the method of how the remuneration is to be calculated are shown.

Finansinspektionen concludes, in respect of the information that Skandiabanken has provided in the summary on its website, that such a summary should include information about the basic terms of the remuneration system. Under Chapter 8, Section 22, third paragraph LV, the summary shall be fair and clear and not misleading. Finansinspektionen has laid down in several sanction decisions that a summary under Chapter 12, Section 2 of the Regulations governing investment services and activities must be sufficiently detailed to enable the client to readily understand how the remuneration may influence the firm to act in a certain way. The summary must also show which remuneration is linked to which product categories or category of cooperating partner. It must also clarify whether the term of the product is relevant to the assessment of the amount of the remuneration. (See among other things FI Ref. no. 12-2525 and FI Ref. no. 12-5043.)

Finansinspektionen concludes that the information that Skandiabanken has provided in the summary on its website has not afforded the clients an opportunity to compare the remuneration amounts for different products. This has meant that the clients have not had an opportunity to understand which underlying inducements could affect the advice. Consequently, the summary may not be deemed to include the basic terms of the remuneration system, and nor does the information satisfy the requirements to be fair, clear and not misleading. There is consequently no reason for Finansinspektionen to adopt a position in this matter regarding whether the information about remuneration from a third party – which is to be provided to a client before a service is

provided – may be provided through the information being published on the institute's website.

In summary, it is thus established that Skandiabanken has disregarded the rules on inducements contained in Chapter 12 of Regulations governing investment services and activities, as the Bank has received remuneration from a third party in its securities business without the Bank having provided sufficient information about this remuneration. Thus, the Bank has also disregarded the basic requirements contained in Chapter 8, Section 1 LV about protecting the interest of clients when offering investment services.

### ***3.2 Skandiabanken's remuneration for franchise firms***

It is prescribed by Chapter 8, Section 21 LV that a securities institute shall take all reasonable steps to identify conflicts of interest that may arise between the institute or a tied agent and a client in the course of providing investment services. The institute is also obliged to take all reasonable steps to prevent the client's interests from being adversely affected by conflicts of interest. Where the steps taken by the institute are insufficient to prevent the clients' interests from being adversely affected, the institute is obliged to clearly inform the client of the nature or source of the conflict of interest before undertaking performance of an investment service on the client's behalf. Further provisions concerning the handling of conflicts of interest by securities institutes are contained in Chapter 11 of Regulations governing investment services and activities.

It is shown by the investigation that the remuneration that franchise firms receive from Skandiabanken when they provide advice on behalf of the Bank varies depending on the kind of product in which the client decides to invest. When franchise firms mediate a structured product, they receive a lump-sum remuneration from Skandiabanken of 2.8 to 3.8 per cent (depending, among other things, on the term) of the amount invested by the client. When franchise firms mediate mutual funds units, they receive ongoing remuneration instead in the form of annual remuneration amounting to 0.3 to 0.45 per cent of the value of the mutual funds units mediated.

In the opinion of Finansinspektionen, when advisers or tied agents receive higher remuneration when mediating a certain product compared with another, this gives the advisor or tied agent reason to recommend clients to invest in those products that yield the highest remuneration despite the fact that it might possibly be more advantageous for the client to invest in another product.

Skandiabanken has stated in its statement of views that there is justification for the Bank to pay higher remuneration to the tied agents for advice about structured products than for advice about mutual funds units. According to the Bank, the reason for this is that it takes longer to provide advice about structured products than about mutual funds units, because the complexity of the products requires a great deal more explanation and a greater documentation requirement for the advisor. In addition, Skandiabanken is of the opinion that an advisor for structured products must continuously monitor the investment, as these products mature within a certain period.

Skandiabanken's statement of views in this respect could possibly be interpreted as the Bank being of the opinion that the higher remuneration when mediating structured products has not created inducements for franchise firms to recommend clients to invest in these products, as the time frame and thereby the costs are greater for these products. However, Finansinspektionen considers in any event that any difference in the period for providing advice between the different products does not justify the significantly higher remuneration provided when mediating structured products. Furthermore, Finansinspektionen considers that mediating structured products does not require more monitoring than mediating mutual funds units. In the event that a structured product matures before the end of the term, the person who has distributed the product will normally be notified of this by the product arranger. Finansinspektionen therefore considers that the time required to mediate structured products is not so much more than for mediating mutual funds units that it justifies the difference in remuneration. In the opinion of Finansinspektionen, the fact that franchise firms received significantly higher remuneration for mediating structured products than for mediating mutual funds units has thus created inducements for the companies to recommend that clients invest in structured products.

Skandiabanken has at the same time conceded in its statement of views that there is a potential conflict of interest between franchise firms and clients owing to the remuneration that Skandiabanken pays to franchise firms. However, Skandiabanken considers that the Bank has identified the conflict of interest in its guidelines for the handling of conflicts of interest (adopted on 23 November 2011 and, according to information received from the Bank, valid up to and including 12 February 2013).

The following is stated, among other things, in Section 2 of Skandiabanken's Conflict of Interest Guidelines *Definition on conflict of interest*:

- In addition, for the purpose of identifying the types of conflict of interest that arise in the course of the provision of investment and ancillary services and which can have a detrimental effect on the customer's interests, an investment firm shall take into account as a minimum if the firm, a relevant person or a person directly or in-directly associated by control to the firm:
  - is likely to make a financial gain or avoid a financial loss at the expense of the customer;
  - has an interest in the outcome of the service that is provided to the customer or of the transaction that is carried out on behalf of the customer, which is different from the customer's interest;
  - has a financial or other reason to favour the interest of another customer or group of customers over the interest of the customer;
  - conduct the same type of business as the customer; or
  - receives or will receive from a person other than the customer an inducement in connection with a service provided to the customer, in the form of money, goods or services other than the standard commission or fee for the service in question.



It is also stated in Section 3 of the Conflict of Interest Guidelines a conflict of interest refers to a situation where the actions of the Bank might have negative financial consequences for the Bank's customers, i.e. the Bank enriches itself or a customer at the expense of another customer(s). Skandiabanken states in its statement of views that the Guidelines in these respects cover situations where Skandiabanken's tied agents may have an interest in recommending a certain product before another in view of different remuneration levels.

Finansinspektionen observes that in all essential respects the content of Section 2 of Skandiabanken's Conflict of Interest Guidelines reiterates the provisions of Chapter 11, Section 2 of the Regulations governing investment services and activities, which sets out the factors that a securities institute must consider in order to be able to identify the conflicts of interest that may arise in conjunction with the institute providing investment services. In the opinion of Finansinspektionen, for a conflict of interest that may arise in the operation to be deemed to have been identified by the securities institute, the institute is required to identify the specific circumstances in the institute's operation that give rise to, or may give rise to, a conflict of interest. It is not sufficient for the securities institute to list in its Conflict of Interest Guidelines the factors that according to the applicable rules and regulations are to be considered to enable the institute to identify such conflicts of interest. It is not possible to discern from Skandiabanken's Conflict of Interest Guidelines that the Bank has specifically identified that franchise firms receiving higher remuneration for mediating structured products than for mediating mutual funds units constitutes a conflict of interest. The Bank has thus not identified this conflict of interest as referred to in Chapter 8, Section 21, first paragraph, item 1 LV.

Skandiabanken has also stated in its statement of views that the Bank, in addition to identifying the conflict of interest, has also taken measures to deal with the conflict of interest and that clients have been informed about this. Finansinspektionen has made the assessment that the Bank has not identified the conflict of interest in question through the Conflict of Interest Guidelines referred to by the bank. However, that claimed by Skandiabanken ought to lead to Finansinspektionen now moving on to consider whether the measures referred to by Skandiabanken about the handling of, and information relating to, conflicts of interest should *per se* mean that the Bank may nonetheless be deemed to have satisfied the requirements.

Skandiabanken has referred to Section 4 of the Conflict of Interest Guidelines, which explains how conflicts of interest are normally dealt with in its operation. Finansinspektionen observes that the measures and procedures for dealing with conflicts of interest contained in the Guidelines are extremely general in nature. It is only shown, in those parts that are of interest here, that conflicts of interest may be dealt with by making separate supervision of relevant persons who primarily carry out activities on behalf of, or provide services to, customers whose interests may conflict or who in any other way conflict, including the interests of the Bank; and measures to prevent or limit persons from exercising inappropriate influence over the way in which a relevant person carries out an investment or ancillary service. There are no further details about the kinds of separate supervision and measures meant.

According to the Bank, the Conflict of Interest Guidelines have been further implemented by the internal rules and regulations for tied agents (*Riktlinjer för rådgivning och förmedling av försäkring och finansiella instrument* [Guidelines for advice and mediation of insurance and financial instruments] adopted on 1 January 2012). These guidelines include, among other things, a review of some of the requirements imposed when providing advice under LV and LFF. It is stated, among other things, that the tied agents shall act honestly, fairly and professionally and that the interests of clients shall be protected with due care, and also that the advice provided by tied agents is to be adapted to the wishes and needs of the client and that the solutions recommended are appropriate for the client. It does not state anywhere in the document how Skandiabanken, beyond requiring the tied agents to comply with the provisions of LV that apply to the operation, has ensured that the conflict of interest in question has not adversely affected the interests of clients. Consequently, no measures that are sufficient to prevent the conflict of interest in question from possibly having an adverse effect on the interests of clients have been taken through the agents' internal rules and regulations.

Nor does the fact that the provisions in both the Bank's Conflict of Interest Guidelines and internal rules and regulations for tied agents that compliance therewith is to be monitored on an ongoing basis through various kinds of sample check, both internally within the operation and by the Compliance Department (the Bank's compliance function), entail an identification or handling of the conflict of interest in question. The sample checks could possibly result in the Bank subsequently discovering that franchise firms have been influenced by the conflict of interest in question but do not satisfy the requirements contained in Chapter 8, Section 21, first paragraph LV, which states that a securities institute must take all reasonable steps to prevent conflicts of interest from having an adverse effect on the interest of clients.

Then, as regards the question of whether the clients have been informed about the conflict of interest in question, it is indicated that the Bank considers that the clients have been informed about this by having received a brochure concerning the remuneration that franchise firms receive and also by Skandiabanken providing information about the remuneration on its website.

It is stated in Chapter 8, Section 21, second paragraph LV that a securities institute must inform the client of the nature or source of the conflict of interest when it provides clients with information about a conflict of interest. It also follows from Chapter 11, Section 6 of the Regulations governing investment services and activities that the information must be sufficiently detailed so that the client can make an informed decision about the investment or ancillary service where the conflict of interest arises.

It was not possible to discern from the brochure that franchise firms have provided to clients that franchise firms receive higher remuneration for mediating structured products than for mediating mutual funds units. Nor is this shown by the information that Skandiabanken provided on its website during the period in question. In the assessment of Finansinspektionen, the information provided to clients was thus not sufficiently detailed to afford clients an opportunity to make informed decisions about the investment service provided to clients. The information that Skandiabanken and the franchise

firms have provided to clients has thus not satisfied the requirements contained in Chapter 8, Section 21, second paragraph LV about the client receiving clear information about the nature or source of the conflict of interest.

Finansinspektionen concludes that Skandiabanken has disregarded the requirements imposed on the Bank under Chapter 8, Section 21 LV. Inadequacies in a securities institute's handling of conflicts of interest increases the risk of the interests of clients being set aside in favour of the interests of the institute or its tied agents. Consequently, the Bank has also in this respect disregarded the fundamental requirements contained in Chapter 8, Section 1 LV about protecting the interests of clients when providing investment services.

## **4 Consideration of intervention**

### ***4.1 Applicable provisions***

Under Chapter 25, Section 1 LV, Finansinspektionen shall intervene where a securities institute has disregarded its obligations under a statute, other statutory instruments governing the operation of the firm, the firm's articles of association, statutes or rules or internal instructions based on legislation governing the firm's operation. Finansinspektionen shall in such case issue: an order to limit the operations in some respect within a certain time; an order to reduce the risks therein within a certain time; an order to take some other measure in order to rectify the situation; a prohibition on the execution of decisions; or an adverse remark. Where the violation is serious, the firm's authorisation shall be revoked or, where sufficient, a warning shall be issued.

Under Chapter 25, Section 2 LV, Finansinspektionen may refrain from intervention where a violation is insignificant or excusable, where the firm undertakes rectification, or where any other body has taken steps against the firm which are deemed sufficient.

If a Swedish securities institute has issued a decision concerning an adverse remark or warning, Finansinspektionen may decide under Chapter 25, Section 8 that the institute should pay an administrative fine.

Under Chapter 25, Section 9 LV, the administrative fine shall be not less than SEK 5,000 and not more than SEK 50 million. The fine may not exceed ten per cent of the firm's turnover for the immediately preceding financial year. In respect of securities institutes, the fine may not be so large that the securities institute cannot thereafter fulfil the requirements of Chapter 8, Section 3 LV.

### ***4.2 Assessment of violations and choice of intervention***

The Finansinspektionen's investigation shows that Skandiabanken has breached certain central client protection rules contained in LV.

Skandiabanken has received remuneration from a third party in its securities business despite the Bank not having provided information about remuneration in the manner required. As a consequence of this, the clients were not afforded

an opportunity to make investment decisions based on fair information. This has entailed a risk of the clients investing in products that they would not have invested in if the Bank had complied with the rules applicable to its operation.

There have also been inadequacies in the way Skandiabanken has handled conflicts of interest. The Bank's remuneration system has created inducements for franchise firms to recommend structured products to clients, although there may have been other products within the range provided by these firms that would have been more advantageous for the clients. Skandiabanken has neither identified nor dealt with this conflict of interest in a satisfactory way. Nor has the Bank informed the clients about the conflict of interest in the manner required by the rules and regulations. These inadequacies have increased the risk of the clients' interests being set aside in favour of the franchise firms' interests.

Owing to the inadequacies found in Skandiabanken's operation, the Bank has not complied with fundamental requirements to protect the interests of clients when offering investment services.

Skandiabanken has stated in its statement of views that there are reasons for Finansinspektionen to refrain from an intervention owing to the activity examined being of a limited scope and because Skandiabanken had already itself identified that there were certain inadequacies associated with their advisory activities prior to Finansinspektionen's site visit and had accordingly started work to remedy these inadequacies. The Bank has stated, among other things, that it has continuously updated its Conflict of Interest Guidelines and that separate conflict of interest guidelines have also been produced for franchise firms. Furthermore, the Bank has stated that the information on the website about the remuneration that Skandiabanken receives from third parties and the information about the remuneration that franchise firms receive from Skandiabanken has been improved following Finansinspektionen's site visit and also that its compliance function has been reinforced.

Finansinspektionen may refrain from intervening if, among other things, a violation is insignificant or excusable, or if the firm takes rectification measures. As the assessment of Finansinspektionen means that Skandiabanken has violated certain central provisions for the activity it pursued, the violation consequently cannot be considered insignificant. Nor are there sufficient reasons to refrain from an intervention on the grounds that the Bank has implemented rectification in certain respects. No circumstances whereby the violations should be deemed to be excusable have been established in the matter.

Skandiabanken's violations are not so serious that there is reason to revoke the Bank's authorisation to conduct securities business. Consequently, nor do the preconditions apply to issue a warning to the bank. However, the violations were of such a nature and scope that an adverse remark is to be issued to the bank. The adverse remark should be combined with an administrative fine, considering the nature of the violation.

As regards the amount of the administrative fine, Finansinspektionen concludes that the Bank's turnover amounts to SEK 1,574 million according to the last annual report adopted. The administrative fine may therefore not be more than SEK 50 million under Chapter 25, Section 9 LV. According to Finansinspektionen, there is no reason to, as argued by Skandiabanken, proceed on the basis of the Bank's turnover for its securities business instead of the Bank's total turnover when determining the amount of the administrative fine. The administrative fine should primarily constitute a gradation of the Bank's violations. It ought to also be possible to take into account the situation at the firm that committed the violation. For example, a fine that is perceived as a deterrent for a small firm with a modest turnover may seem to be virtually insignificant for a firm with great financial resources (see Government Bill 2006/07:115, p. 508). However, when assessing the amount of the administrative fine, Finansinspektionen takes some account of the fact that Skandiabanken has taken a number of measures as a result of the inadequacies observed. In one case, the Bank had already taken measures before Finansinspektionen had drawn attention to the inadequacies. Finansinspektionen therefore decides to impose an administrative fine of SEK 10,000,000.

The administrative fine, which will pass to the State, will be invoiced by Finansinspektionen after the decision has entered into final legal force.

## FINANSINSPEKTIONEN

Bengt Westerberg  
*Chair of Board*

Isa Svenneborg  
*Lawyer*

The decision in this matter was made by the Board of Finansinspektionen (Bengt Westerberg (Chair), Birgitta Johansson-Hedberg, Eva Lindström, Astri Muren, Hans Nyman, Gustaf Sjöberg, Kristina Ståhl and Martin Andersson (Director-General)) following a presentation by Isa Svenneborg (Lawyer). Per Håkansson (Chief Legal Counsel), Robert Karlsson (Head of Department), Susanne Seiler Lemon (Head of Division) and David Körösi Rejman (Financial Inspector) also participated in the final processing of this matter.

### *Appendices*

Appendix 1 – How to appeal

Appendix 2 – Applicable provisions

Cc: CEO of the Bank



## *Appendix 1*

### **How to appeal**

You can appeal in writing to the administrative court if you consider this decision to be incorrect. Address the appeal to Stockholm Administrative Court, but send or submit it to Finansinspektionen, Box 7821, SE-103 97 Stockholm, Sweden.

State the following in the appeal:

- Name and address
- The decision you are appealing against and the number of the matter
- Why you consider the decision to be incorrect
- The change sought and why you consider that the decision should be changed.

Remember to sign the document.

The appeal must have been received by Finansinspektionen within three weeks of the date on which you received the decision.

If the appeal is received on time and Finansinspektionen does not itself decide to amend the decision in the manner requested, Finansinspektionen will forward the appeal to Stockholm Administrative Court.

## Appendix 2

### Applicable provisions

- *Securities Market Act (2007:528 – LV)*
- *Finansinspektionen's Regulations (FFFS 2007:16) governing investment services and activities ('Regulations governing investment services and activities')*

### Tied agents

According to Chapter 1, Section 5, item 1 LV, 'tied agent' under the Act means a natural or legal person who has entered into an agreement with a Swedish securities institute or a foreign investment firm domiciled in the EEA to exclusively on behalf of that institute or firm:

- a. promote investment and/or ancillary services,
- b. receive or transmit instructions or orders in respect of investment services or financial instruments,
- c. place financial instruments, or
- d. provide investment advice to clients in respect of such instruments or service

### Information about remuneration

A securities institute shall under Chapter 8, Section 1 LV protect the interest of its clients when it provides investment services or ancillary services to its clients and shall act honestly, fairly and professionally. A securities institute shall also generally act in such a manner as to maintain public confidence in the securities market.

It is stated in Chapter 8, Section 22, third paragraph LV, among other things, that all information which the securities institute provides to its clients shall be fair and clear and not misleading.

Under Chapter 12, Section 1 of the Regulations governing investment services and activities, an investment firm that provides an investment or ancillary service to a client may only pay or be paid a fee or commission, or provide or be provided with non-monetary benefit, if

1. it is paid or provided to or by a client or a person on behalf of the client,
2. it is paid or provided to or by a third party or a person acting on behalf of a third party, provided:
  - a. prior to the provision of the service, the client is provided with information, in a manner that is comprehensive, accurate and understandable, about the existence, nature and amount of the fee, commission or benefit, or if the amount cannot be ascertained, the method for calculating the amount, and
  - b. the payment of the fee or commission or the provision of the non-monetary benefit is designed to enhance the quality of the



- relevant service to the client and not impair the firm from fulfilling its duty to safeguard the interests of the client, or
3. there are proper fees which enable or are necessary for the provision of the service, for example custody costs, settlement and exchange fees, regulatory levies and which, by their nature, cannot conflict with the firm's duties to safeguard the best interests of its clients.

Under Chapter 12, Section 2 of the Regulations governing investment services and activities, an investment firm, for the purposes of Section 1, sub-section 2a, may disclose for a client the basic terms of the system relating to fees, commission or non-monetary benefits in summary form. Upon the request of the client, more detailed information must be provided.

### **Conflicts of interest**

Under Chapter 8, Section 1 LV, a securities institute shall protect the interest of its clients when it provides investment services or ancillary services to its clients and shall act honestly, fairly and professionally. A securities institute shall also otherwise act in such a manner as to maintain public confidence in the securities market.

It follows from Chapter 8, Section 21 LV that a securities institute shall take all reasonable steps to

1. identify conflicts of interest that may arise between the institute, a tied agent or any person linked to them and a client or between one client and another in the course of providing investment services and ancillary services, and
2. prevent conflicts of interest from having an adverse effect on the interests of clients.

Where the steps taken by an institute pursuant to the first paragraph, subsection 1 are insufficient to prevent the clients' interests from being adversely effected, the institute shall clearly inform the client of the nature or source of the conflict of interest before the institute undertakes performance of an investment service or ancillary service on the client's behalf.

Under Chapter 11, Section 2 of the Regulations governing investment services and activities, an investment firm shall, for the purposes of identifying the types of conflict of interest that arise in the course of the provision of investment and ancillary services and which can have a detrimental effect on the client's interests, take into account as a minimum if the firm, a relevant person or a person directly or indirectly associated by control to the firm:

1. is likely to make a financial gain or avoid a financial loss at the expense of the client,
2. has an interest in the outcome of the service that is provided to the client or of the transaction that is carried out on behalf of the client, which is different from the client's interest,
3. has a financial or other reason to favour the interest of another client or group of clients over the interests of the client,
4. conducts the same type of business as the client, or

5. receives or will receive from a person other than the client an inducement in connection with a service provided to the client, in the form of money, goods or services other than the standard commission or fee for the service in question.

It is stated in Chapter 11, Section 6 of the Regulations governing investment services and activities that information to a client in accordance with Chapter 8, Section 21 of LV shall be delivered in a durable medium and shall be sufficiently detailed with regard to the firm's categorisation of the client so that the client can make an informed decision about the investment or ancillary service where the conflict of interest arises.