

# Finansinspektionen's Regulatory Code

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## Regulations amending Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities;

**FFFS 2021:27**

Published on  
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decided on 22 June 2021.

Finansinspektionen prescribes<sup>1</sup> pursuant to Chapter 6, section 1, points 9 and 56 of the Securities Market Ordinance (2007:572) in respect of Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities

*in part* that the heading immediately preceding Chapter 3, section 10 shall be removed,

*in part* that Chapter 1, sections 1–4, Chapter 2, section 1, Chapter 3, sections 1 and 5–13, and the heading immediately preceding Chapter 3, section 7 shall have the following wording,

*in part* that the heading to Chapter 8 shall have the wording, "Documentation, information and administrative procedures",

*in part* that a new chapter, Chapter 3a, seven new sections, Chapter 1, sections 1a and 1b, Chapter 3, sections 14–16, and Chapter 8, sections 5 and 6, and new headings immediately preceding Chapter 3, sections 12 and 14 and Chapter 8, section 5 shall be inserted with the following wording.

### Chapter 1

**Section 1** These regulations apply to securities institutions unless otherwise specified.

Swedish credit institutions shall apply the regulations for the part of the operations that pertains to investment services and activities, with the exception of the provisions of Chapters 3 and 3a.

A securities company in accordance with Chapter 8, section 1c, first paragraph of the Securities Market Act (2007:528) shall

– instead of the provisions set out in Chapter 3, sections 5 and 7–13 of these regulations, apply the provisions set out in Chapter 2, section 14 and Chapter 5, sections 12–15 of Finansinspektionen's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control at credit institutions, and

<sup>1</sup> Cf. Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, in its original wording.

– instead of the provisions set out in Chapter 3a of these regulations, apply Finansinspektionen's regulations (FFFS 2011:1) regarding remuneration systems at credit institutions.

**Section 1a** The provisions set out in Chapter 3, section 5, section 7, point 2, and sections 11–13 and in Chapter 3a do not apply to a small and non-interconnected securities company.

That set out in the first paragraph does not apply to a securities company that pursuant to Chapter 8, section 1a, third paragraph or section 1b of the Securities Market Act (2007:528) shall apply the provisions set out in section 1a, first paragraph of the same chapter.

A securities company under Chapter 8, section 1b of the Securities Market Act shall apply the provisions set out in Chapter 3a, sections 6–12 of these regulations for remuneration for provided services or for earnings during the financial year that follows the financial year when the securities company made the assessment that it no longer fulfilled the criteria in Article 12(1) of the Investment Firms Regulation.

**Section 1b** The provisions of Chapters 3 and 3a shall, in accordance with the stipulations of Chapter 3a, section 1 of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968), be applied to an investment firm group.

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

The first paragraph does not apply to such firms as referred to in section 3, second paragraph.

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

The first paragraph also applies to securities companies in accordance with Chapter 8, section 1c, first paragraph of the Securities Market Act (2007:528).

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

## Chapter 2

**Section 1** In these regulations, terms and expressions shall have the same meaning as in Chapter 1, sections 4–5 of the Securities Market Act (2007:528) and Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (the delegated regulation for MiFID II). In addition, terms and expressions shall have the following meaning:

1. *Discretionary pension benefit*: a pension benefit that an undertaking on an individual basis grants an employee as part of his or her variable remuneration. It

does not include accumulated benefits vested by the employee in accordance with the conditions of the undertaking's pension system.

2. *Remuneration*: all remuneration and benefits for an employee, for example, cash salary and other cash payment, payment in the form of shares or share-based instruments, pension provisions, severance pay and car benefits.

3. *Remuneration policy*: Grounds and principles for how remuneration shall be set, applied and followed up.

4. *Qualifying money market fund*: an undertaking for collective investment which

1. has been authorised under Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), or

2. is subject to the supervision of and, where relevant, has been authorised by an authority under national legislation in a Member State, and satisfies the following conditions:

a) The undertaking's primary investment objective must be to maintain its net asset value either constant at par (net of earnings), or at the value of the investor's initial capital plus earnings.

b) So as to fulfil the primary investment objective, the undertaking shall

– invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days, or

– on an ancillary basis, invest in deposits with credit institutions.

c) The undertaking shall provide liquidity through same-day or next-day settlement.

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

5. *Control function*: the undertaking's function(s) for risk control, compliance and internal auditing or the equivalent.

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

7. *Risk-affecting staff*: employees whose tasks have a material impact on the undertaking's risk profile or the risk profile of the assets managed by the undertaking, including persons in senior management, risk-takers, staff engaged in control functions and any employees receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk-takers and other employees that the undertaking has identified according to technical standards

adopted by the European Commission pursuant to Article 30(4) of the Investment Firms Directive.

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

9. *Variable remuneration*: remuneration, the amount or size of which is not determined in advance. Variable remuneration does not include commission-based salary not linked to future risk commitment that may alter the firm's income statement or balance sheet.

10. *Executive management*: managing director, deputy managing director and other members of senior management or a similar body that report directly to the board of directors or the managing director.

### Chapter 3

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

**Section 5** A securities company shall ensure that the board of directors, and where applicable the risk committee pursuant to section 12, has access to information about the risks to which the securities company is or can be exposed.

**Section 6** A securities company in accordance with Chapter 8, section 1c, first paragraph of the Securities Market Act (2007:528) shall ensure that a risk committee in accordance with Chapter 5, section 12 of Finansinspektionen's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control at credit institutions receives regular, at least annual, written reports on the areas that are subject to provisions regarding risk management in the delegated regulation for MiFID II.

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

#### Risk management

**Section 7** A securities company, in its risk management in accordance with Chapter 8, sections 4 and 8 of the Securities Market Act (2007:528), shall consider in particular

1. material sources and effects of customer risks and all material impact on own funds,
2. material sources and effects of market risks and all material impact on own funds,
3. other material sources and effects of risks for the securities company, in particular those which can deplete the level of available own funds, and
4. liquidity risks over appropriate time periods, including intra-day, so as to ensure that the securities company maintains adequate levels of liquidity resources, including in respect of addressing material sources of risks in accordance with 1, 2 and 3.

**Section 8** A securities company's risk management in accordance with section 7 shall be proportionate to the company's complexity and risk profile and to the risk tolerance adopted by the board of directors. It shall also reflect the company's significance in each Member State where it conducts business.

**Section 9** When a securities company applies section 7, point 1, it shall consider holding professional indemnity insurance as an effective tool in its risk management.

**Section 10** When a securities company applies section 7, point 3, it shall ensure that material sources of risks for the company in relevant cases include material changes in the book value of assets, including any claims on tied agents, the failure of customers or counterparties, positions in financial instruments, foreign currency and commodities,, and obligations to defined-benefit pension systems.

**Section 11** A securities company that is exposed to risks that have not been considered in an appropriate manner through the own funds requirements calculated in accordance with Article 11 of the Investment Firms Regulation, in addition to that set out in section 7, shall give in its risk management due consideration to each material impact of the risks on the own funds.

#### *Risk committee*

**Section 12** A securities company where the value of its on and off-its balance sheet asserts is valued higher than on average EUR 100 million over the four-year period immediately preceding the current financial year shall ensure that the board of directors has a risk committee.

The risk committee shall consist of board members who are not members of the executive management of the company. The members of the risk committee shall have appropriate knowledge, skills and expertise to be able to understand, manage and monitor the risk strategy and risk appetite of the company.

**Section 13** A risk committee in accordance with section 12 shall serve as an advisor to the board of directors with respect to the present and future risk appetite and risk strategy of the securities company and assist the board of directors in its monitoring of the executive management's implementation of the strategy. The board of directors shall maintain the overall responsibility for the company's risk strategies and policies.

#### *Risk management function*

**Section 14** A securities company in accordance with Chapter 8, section 1c, first paragraph of the Securities Market Act (2007:528) shall ensure that a risk management function as referred to in Article 23 of the Delegated Regulation for MiFID II

1. identifies, measures and correctly reports all significant risks, and
2. actively participates in the work with the securities company's risk strategy and in all significant risk management decisions and provides comprehensive feedback on all types of risks that apply to the company.

**Section 15** A securities company in accordance with Chapter 8, section 1c, first paragraph of the Securities Market Act (2007:528) shall ensure that a risk

management function has sufficient authority and position as well as sufficient resources.

**Section 16** A securities company in accordance with Chapter 8, section 1c, first paragraph of the Securities Market Act (2007:528) shall ensure that the person managing the risk management function is an independent senior manager with specific responsibility for the risk management function. If the nature, scope and complexity of the operations of the securities company do not motivate there being a specially appointed person to this end, another senior manager at the company may perform the task, provided that this does not pose any conflict of interest.

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

### **Chapter 3a Remuneration scheme**

**Section 1** This chapter contains provisions regarding the remuneration scheme referred to in Chapter 8, section 4c of the Securities Market Act (2007:528) on how undertakings shall measure, govern, report and control the risks the remuneration structure can entail.

The provisions set out in sections 7 and 8, section 10, second–fourth paragraphs, and sections 13 and 14 do not apply to an undertaking whose on and off-balance sheet assets on average for the four immediately preceding financial years do not exceed EUR 100 million.

The provisions set out in sections 7–8 and section 10, second–fourth paragraphs do not apply with regard to remuneration to a person whose annual variable remuneration does not exceed EUR 50,000 or one-fourth of the person's total annual remuneration.

### **Other legislation**

**Section 2** The provisions in this chapter do not affect an undertaking's obligations under applicable principles of contract and labour law. These regulations also are applied without prejudice to the rights of labour market parties during collective bargaining.

### **Remuneration policy**

**Section 3** A securities company shall have a remuneration policy that covers all employees.

The remuneration policy shall be consistent with and promote sound and effective risk management and be gender neutral.

**Section 4** A securities company, in addition to that set out in section 3, second paragraph, shall observe the following principles when adopting and applying its remuneration policy for risk-affecting staff:

1. The remuneration policy shall be clearly documented and proportionate to the size and internal organisation, as well as to the scope and complexity of the activities of the securities company.

2. The remuneration policy shall be in line with the security company's business strategy and objectives and also take into account long-term effects of investment decisions taken.

3. The remuneration policy shall contain measures to avoid conflicts of interest, encourage responsible business conduct and promote risk awareness and prudent risk-taking.

4. The board of directors of the security company shall adopt and regularly review the remuneration policy and bear overall responsibility for overseeing its implementation.

5. The implementation of the remuneration policy shall as a minimum every year be subject to a central and independent internal audit by control functions.

6. Staff performing control functions shall be independent in relation to the business units they monitor, have appropriate authority and receive remuneration in relation to how they achieve the goals that are linked to these functions, independent of the result within the business areas they control.

7. Remuneration to senior executives that are responsible for risk management and compliance functions shall be monitored directly by the remuneration committee as referred to in section 13 or, if such a committee has not been established, by the board of directors.

8. The remuneration policy shall contain the criteria for adopting fixed remuneration and the criteria for adopting variable remuneration. The remuneration policy shall clearly specify the difference between these criteria. The fixed remuneration shall primarily reflect relevant professional experience and organisational responsibility in accordance with that set out in the employee's role description as part of the employment agreement. The variable remuneration shall reflect sustainable and risk-adjusted performance and any performance in addition to what is required to meet the requirements in the employee's role description.

9. The fixed part of the remuneration shall represent a sufficiently large part in relation to the employee's total remuneration so the policy can be fully implemented with regard to the variable parts and that the variable parts can be set to zero. The securities company shall adopt in its remuneration policy appropriate ratios between fixed and variable parts of the total remuneration by considering the company's business activities and the risks associated with them as well as the impact the risk-affecting staff have on the company's risk profile.

**Section 5** A securities company shall adopt and apply the principles set out in section 4 in a manner that is appropriate to the company's size and internal organisation and to the nature, scope and complexity of the business.

### **Variable remuneration**

**Section 6** A securities company shall ensure that all variable remuneration the company allocates and pays to risk-affecting staff meets the following requirements:

1. If the variable remuneration is performance related, the total amount of variable remuneration shall be based on a combination of the assessment of the individual's performance, of the performance of the business unit concerned, and the overall performance of the security company.

2. The assessment of the performance of the individual shall take both financial and non-financial criteria into account.
3. The assessment of the performance referred to in point 1 shall be based on a multi-year period and take into account the security company's business cycle and business risks.
4. The variable remuneration shall not affect the security company's ability to ensure a sound capital base.
5. Guaranteed variable remuneration shall only occur for new staff, only for the new employee's first year of employment, and only if the security company has a strong capital base.
6. Payments in conjunction with the termination of employment shall reflect the employee's performance over time and not reward failure or misconduct.
7. The remuneration package that is used with the aim of compensating or buying out from previous employment contracts shall be in line with the security company's long-term interests.
8. The security company's assessment of performance that serves as a basis for the calculation of variable remuneration shall consider all types of current and future risks. In its assessment, the company shall also consider the cost of the capital and the liquidity required in accordance with the Investment Firms Regulation.
9. When allocating variable remuneration within the securities company, consideration shall be given to all types of current and future risks.

#### *Deferral*

**Section 7** A securities company shall ensure that at least 40 per cent of the variable remuneration for risk-affecting staff is deferred over a period of three to five years before it is paid or the ownership rights are transferred to the employee. When the security company decides on how much of the variable remuneration is to be deferred, and how long, it shall consider the company's business cycle, the nature of the business and its risks, and the employee's responsibility and tasks.

The securities company shall defer at least 60 per cent of the variable remuneration for employees who have variable remuneration parts that are particularly large.

When the securities company applies the first and second paragraphs, it may pay out deferred variable remuneration once a year, evenly distributed over the time that the remuneration is deferred (pro rata). The first payment may be made first one year after the variable remuneration was decided.

#### *Shares and other instruments*

**Section 8** A securities company shall ensure that at least 50 per cent of the variable remuneration for risk-affecting staff consists of any of the following instruments:

- a) Shares.
- b) Share-linked instruments.



c) Tier 1 instruments, Tier 2 instruments or other instruments that can be fully transformed to Common Equity Tier 1 capital instruments or written down and that adequately reflect the security company's credit quality on an ongoing basis.

d) Non-cash instruments that reflect the instruments of the portfolios being managed.

The securities company shall ensure that variable remuneration paid in the form of instruments in accordance with the first paragraph are subject to restrictions entailing that the employee may not exercise control over the instruments for at least one year after the ownership right to the instruments has been transferred to the employee. This applies regardless of whether the variable remuneration has been deferred or not.

#### *Loss of remuneration*

**Section 9** A securities company shall ensure that up to 100% of the variable remuneration to risk-affecting staff shall be lost if the securities company's financial performance is subdued or negative.

The securities company shall also ensure that variable remuneration is only paid out or transferred to the employee to the extent that is justifiable based on the criteria the securities company adopted in its remuneration policy and that in particular covers situations where the employee in question

- a) participated in or was responsible for conduct that resulted in significant losses for the securities company, or
- b) no longer is considered fit and proper.

#### *Discretionary pension benefits*

**Section 10** A securities company shall ensure that discretionary pension benefits to risk-affecting staff are in line with the securities company's business strategy, objectives, values and long-term interests.

The securities company shall transfer or pay discretionary pension benefits to risk-affecting staff in the form of such instruments as referred to in section 8 and shall then meet the requirements set out in the third and fourth paragraphs.

The securities company shall ensure that discretionary pension benefits transferred to an employee in conjunction with the employee retiring are subject to a period of at least five years, during which the employee may not exercise control over the instruments.

If the securities company transfers discretionary pension benefit to an employee before the employee retires, due to the termination of employment, the discretionary pension benefits shall be subject to a deferral of at least five years.

#### *Risk hedging strategies*

**Section 11** When applying sections 6–10, a securities company shall ensure that risk-affecting staff do not use personal risk hedging strategies or remuneration or liability-related insurance to undermine the principles set out in sections 6–10.

*Proportionality*

**Section 12** When a securities company applies sections 6–11, it shall follow the requirements on proportionality set out in section 5.

**Remuneration committee**

**Section 13** A securities company shall have a remuneration committee. The remuneration committee shall be gender balanced and make an independent assessment of the remuneration policy, remuneration practices and the incentives created for managing risk, capital and liquidity.

The remuneration committee may be established at group level.

The chair and other members of the remuneration committee shall be members of the securities company's board of directors and may not perform any executive functions within the company.

If the board of directors includes employee representatives who have been appointed in accordance with the Representation on the Board of Directors for Private Employees Act (1987:1245), one or several of these shall be included in the remuneration committee.

**Section 14** The remuneration committee shall prepare decisions on remuneration, including decisions that have implications for the securities company's risks and risk management and are to be made by the company's board of directors.

When the remuneration committee prepare decisions in accordance with the first paragraph, it shall take into account the public interest and the long-term interests of the securities company's shareholders, investors and other stakeholders.

**Extraordinary public financial support**

**Section 15** If a securities company benefits from extraordinary public financial support as defined in Article 2(1)(28) of the Crisis Management Directive, the securities company may not pay any variable remuneration to the company's board members. If the variable remuneration the securities company pays to staff other than the board members would be inconsistent with the securities company maintenance of a sound capital base and its timely exist from extraordinary public financial support, the variable remuneration shall be limited to a portion of net revenue.

**Reporting**

**Section 16** A securities company shall submit the following information to Finansinspektionen on an annual basis regarding persons active in the company whose annual remuneration, per financial year, is at least EUR 1 million:

1. number of persons,
2. their job responsibilities,
3. the business area in which these persons are active, and
4. what the remuneration consists of.

The information in accordance with the first paragraph shall be submitted broken down into pay brackets of EUR 1 million.

An undertaking shall submit information to Finansinspektionen in accordance with the first paragraph in the manner described in more detail on the authority's website.

Finansinspektionen shall have received the information no later than 60 days after the end of the financial year.

## Chapter 8

### Administrative procedures for compliance controls

**Section 5** A securities company shall have internal control procedures, administrative procedures and accounting procedures that make it possible for Finansinspektionen, at any time, to check that the company is compliant with the provisions set out in:

1. Chapter 3, section 6 and Chapter 8, sections 1b, 3, 4 and 4 c–8 of the Securities Market Act (2007:528),
2. Chapter 2a, sections 1, 2 and 4 and Chapter 3a, section 2 of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968),
3. The Investment Firms Regulation,
4. Chapter 3, sections 5 and 7–13 and Chapter 3a of these regulations, and
5. Chapter 5, sections 4 and 5 and Chapter 8, section 3a of Finansinspektionen's regulations and general guidelines (FFFS 2014:12) regarding prudential requirements and capital buffers.

**Section 6** A securities company shall register all transactions and document the systems and processes that are subject to the provisions set out in section 5 in such a manner that Finansinspektionen, at any time, can assess the company's compliance with the provisions.

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These regulations shall enter into force on 07 July 2021.

ERIK THEDÉEN

Kristina Wollter