

# Finansinspektionen's Regulatory Code

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**FFFS 2011:41**

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## **Regulations amending Finansinspektionen's regulations (FFFS 2007:16) regarding securities business;**

decided 28 June 2011.

Finansinspektionen prescribes pursuant to Chapter 6, section 1, points 3, 4, 6, 8–10, 12, 15, 17, 18, 21, 24, 26, 27 and 36 of the Securities Market Ordinance (2007:572) and Chapter 5, section 2, point 4 of the Banking and Financing Business Ordinance (2004:329) with regard to Finansinspektionen's regulations (FFFS 2007:16) regarding securities business

*in part* that the words “investment firm” and “firm”, with the exception of Chapter 3, shall be changed to “securities institution”,

*in part* that Chapter 1, sections 1, 2 and 4, Chapter 2, section 1, Chapter 3, sections 1, 2, 9, 15, 17, 19–22 and 24–26, Chapter 4, section 1, Chapter 6, sections 3, 4, 6–9, 11, 11a, 12 and 14, Chapter 7, section 1, Chapter 8, sections 1–3, Chapter 9, section 4, Chapter 10, sections 1, 6 and 11, Chapter 11, sections 3 and 9, Chapter 12, section 2, Chapter 14, sections 13, 14, 18, 28 and 34, Chapter 15, section 11, Chapter 18, section 6, Chapter 19, sections 3 and 4, Chapter 20, sections 6, 11 and 12 and Chapter 21, section 3 shall have the following wording,

*in part* that the heading immediately preceding Chapter 6, section 6, Chapter 14, section 34 and Chapter 22, section 1 shall have the following wording,

*in part* that seven new sections shall be inserted into the regulations, Chapter 3, section 20a, Chapter 6, section 11a, Chapter 8, section 1a, Chapter 14, section 35, and Chapter 22, sections 1–3, and that new headings immediately preceding Chapter 3, section 20a, Chapter 14, section 35 and Chapter 22, section 4 shall have the following wording.

### **Chapter 1**

**Section 1** These regulations apply to securities institutions unless otherwise specified. For Swedish credit institutions, the provisions shall be applied to the portion of their operations that refer to securities business.

**Section 2** A firm that applies for authorisation to conduct securities operations shall apply all of the provisions set out in Chapter 3 and Chapter 5, section 5.

However, Swedish credit institutions applying for authorisation to conduct securities operations and foreign firms outside of the EEA applying for authorisation to conduct securities operations from a branch in Sweden do not need to apply Chapter 3, sections 3–8 and Chapter 5, section 5.

**Section 4** Foreign firms within the EEA conducting securities operations in Sweden from a branch about which Finansinspektionen has been notified shall apply all of the provisions to their Swedish operations with the exception of the provisions in the following chapters:

Chapter 3 Application for authorisation to conduct operations

Chapter 4 Branch operations and cross-border operations

Chapter 5 Ownership and management assessment

Chapter 6 Organisational requirements, etc.

Chapter 7 Complaints handling

Chapter 8 Personal transactions

Chapter 9 Agency agreements

Chapter 10 Safeguarding of client assets

Chapter 11 Conflicts of interest

Chapter 16 Investment advice to consumers

Chapter 21 Sections 3 and 4

Chapter 23 Collateral in own and parent company shares

## Chapter 2

**Section 1<sup>1</sup>** Terms and expressions in these regulations shall have the same meaning as in Chapter 1, sections 4 and 5 of the Securities Market Act (2007:528). In addition, the following terms and expressions shall be defined as:

1. *Distribution channel*: a channel through which information has been or probably will be available to the public. Information that probably will be available to the public refers to information that is available to a large number of persons.

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

- a) The relevant person is acting outside of the scope of the activities he or she carries out in his/her capacity as a relevant person.
- b) The transaction is carried out on behalf of any of the following persons:
  - the relevant person,
  - any other person with whom the relevant person has a close relationship, or with whom the relevant person has close links,
  - a person whose links with the relevant person are such that he or she has a direct or indirect material interest in the outcome of the transaction, other than a fee or commission for the execution of the transaction.

3. *Financial analyst*: a relevant person who carries out investment analyses.

4. *Group*: the group to which a securities institution belongs, consisting of a parent company, its subsidiaries and the entities in which the parent company or its subsidiaries hold a participation and firms linked to one another within the meaning of Article 12(1) of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts.

5. *Implementing Regulation*: Commission Regulation (EC) No. 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for securities institutions,

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<sup>1</sup> Part of the change entails that the fourth point is repealed.

transaction reporting, market transparency, admission of financial instrument to trading and defined terms for the purpose of the Directive.

6. *Close relationship*: a relevant person and his/her

- a) spouse or partner,
- b) dependent children under the custody of the relevant person, and
- c) other parties closely related to the relevant person who for at least one year on the date of the transaction in question have shared the same household with this person.

7. *Relevant person*:

- a) a member of the board of directors, the managing director, a partner, a manager or a tied agent of the securities institution,
- b) a member of the board of directors, the managing director, a partner or a manager of a tied agent to the securities institution,
- c) an employee of the securities institution or the tied agent as well as any other natural persons whose services are placed at the disposal and under the control of the securities institution or tied agent and who are involved on behalf of the securities institution in the provision of investment services and activities, and
- d) a natural person who is directly involved in the provision of services in the form of investment services and investment activities to the securities institution or to its tied agent under an outsourcing arrangement.

8. *Securities transaction financing*: stock lending or stock borrowing or the lending and borrowing of other financial instruments, a repurchase or reverse repurchase transaction or a buy-sell back or sell-buy back transaction.

9. *Outsourcing*: an agreement in any form between a securities institution and a service provider by which the service provider performs a process, a service or an activity which would otherwise be undertaken by the securities institution itself.

10. *Durable medium*: any means which enables a client to store information addressed personally to the client in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

### Chapter 3

**Section 1** In its application, a firm shall state to which of the investment services and investment activities set out in Chapter 2, section 1 of the Securities Market Act (2007:528) the application refers. Furthermore, the firm shall state if it is applying for authorisation for any of the ancillary services set out in Chapter 2, section 2 of the same Act and if it is applying for authorisation for ancillary operations under Chapter 2, section 3 of the same Act.

When a securities institution applies for additional authorisation in accordance with Chapter 2, section 1 of the Securities Market Act all of the provisions in this chapter shall be applied. When a securities firm applies for additional authorisation in accordance with Chapter 2, sections 2 and 3 of Securities Market Act, all of the provisions in this chapter shall be applied with the exception of section 3, second to fourth paragraphs, and section 4, second paragraph.

The application shall be signed by an authorised representative for the firm.

**Section 2** The firm shall append to the application

1. the minutes of the board of directors demonstrating that the board of directors has approved the application,
2. a registration certificate for the firm from the Swedish Companies Registration Office, or the equivalent, which is not more than two months old.
3. an auditor's certificate issued by a chartered accountant which shows that the firm meets the capital requirements set out in Chapter 3, section 6 of the Securities Market Act,
4. articles of association, where it is clearly stated that the firm shall conduct securities operations and which investment services and investment activities and ancillary services and ancillary operations, if any, the firm will perform,
5. a business plan, prepared in accordance with sections 9–28,
6. guidelines for compliance pursuant to Chapter 6, section 8,
7. guidelines for risk management pursuant to Chapter 6, section 11,
8. guidelines for handling conflicts of interest pursuant to Chapter 11, section 3, and
9. internal rules regarding measures against money laundering or financing of terrorism.

**Section 9** The business plan shall contain a detailed description of the following:

1. the activities the firm intends to perform,
2. which part of the operations is responsible for the investment services and activities and the ancillary services and ancillary operations for which the firm is applying for authorisation,
3. the classes of financial instruments to be covered by the operations, and
4. which client category, retail or professional, the firm intends to target.

With regard to each service and activity for which the firm is applying for authorisation, the business plan shall contain a detailed flow chart showing the administrative processes that exist for the services and activities. These flow charts shall include all of the stages from the initial client contact until the transaction is settled or concluded. In conjunction with each flow chart, the structure of the internal control and how it is carried out shall be described.

The firm shall state if it intends to apply to a central securities depository to be an account operator or to a clearing organisation to be a clearing member. The firm shall also state if it intends to apply for membership on a regulated market or to participate in trading on a MTF, and in such case to which regulated markets or trading facilities.

If the application refers to authorisation to conduct trade in financial instruments on own account, it shall also be stated if the transaction is such that it will fall under the provisions regarding systematic internalisers set out in Chapter 9 of the Securities Market Act.

**Section 15** The business plan shall describe the organisation of the IT department. It shall contain a general description of the systems' functions and areas of application.

Where the firm shall handle orders, there shall be a flow chart demonstrating which applications are used for handling orders and an account of any system-dependent conditions that may affect the handling of orders. It shall also specify which controls, for example holding and credit controls, the system carries out when handling orders.

The business plan shall also state which measures shall be taken with regard to information security and physical security. In this context, a description shall be provided of the confidentiality protection functions which are used in order to prevent unauthorised persons from obtaining access to classified information.

**Section 17** The business plan shall state how the firm intends to obtain best order execution in accordance with the provisions in Chapter 18 and best execution in accordance with the provisions in Chapter 19.

**Section 19** The business plan shall account for how the firm intends to fulfil the requirement on transaction reporting set out in Chapter 10 of the Securities Market Act and the Implementing Regulation.

**Section 20** The business plan shall contain an account of the conflicts of interest the firm has identified and that may arise in its operations.

#### *Inducements*

**Section 20a** The business plan shall contain an account of the inducements pursuant to Chapter 12 that the firm may receive or pay and how the firm intends to inform customers about these inducements.

**Section 21** The business plan shall state how the firm intends to ensure that it complies with the regulations that apply to the operations. It shall furthermore state how the compliance function will be designed, how its work will be carried out and which compliance procedures pursuant to Chapter 6, section 8 the firm intends to apply.

**Section 22** The business plan shall establish how the firm, in accordance with Chapter 8, section 4 of the Securities Market Act, intends to identify, measure, steer, internally report and maintain control over the risks associated with its operations. The business plan shall also state which risk management procedures the firm intends to apply in accordance with Chapter 6, section 11.

For a firm that has a risk management function in accordance with Chapter 6, section 12, the business plan shall contain an account of how this function will be designed and how its work will be carried out.

**Section 24** The business plan shall establish which guidelines and procedures for handling complaints from retail clients in accordance with Chapter 7, sections 1 and 2 the firm intends to apply. Where the firm has appointed a complaints manager, the name of this person shall be given.

**Section 25** The business plan shall establish which guidelines and procedures pursuant to Chapter 8, section 1 regarding relevant person's personal transactions the firm intends to apply.

**Section 26** The business plan shall account for the internal rules regarding measures against money laundering and the financing of terrorism that the firm intends to apply. Information about the person at the function responsible for these issues shall be specified.

## **Chapter 4**

**Section 1** A securities firm notifying Finansinspektionen about branch operations pursuant to Chapter 5, section 1 of the Securities Market Act (2007:528) shall use

*Appendix 1.* A securities firm notifying about cross-border operations pursuant to Chapter 5, section 4 of the same Act shall use *Appendix 2.*

If a securities firm shall engage a tied agent established in another EEA country, *Appendix 1* shall be used.

## Chapter 6

**Section 3** The board of directors or the managing director shall adopt relevant, applicable guidelines to eliminate operational disturbances.

The guidelines shall establish that the securities institution, in the event of interruption to its systems or procedures, shall ensure that its most important information and functions are preserved and that its investment services and investment activities are maintained.

Where this is not possible, the securities institution shall ensure that the information and functions are restored without undue delay so that investment services and investment activities can be resumed within a reasonable amount of time.

**Section 4** A securities institution shall maintain current accounting guidelines and procedures that enable it, at the request of Finansinspektionen, to deliver financial reports in a timely manner which reflect a true and fair picture of the securities institution's financial position and comply with all applicable accounting standards and regulations. The guidelines shall be adopted by the board of directors.

### **The responsibility of the board of directors and managing director**

**Section 6** The board of directors is responsible for ensuring that the securities institution fulfils the obligations laid down in the Securities Market Act (2007:528) and other regulations which regulate the securities institution's operations. The managing director is responsible for ensuring that the securities institution fulfils the obligations that fall within the framework for the tasks of the managing director pursuant to law and other regulations as well as the guidelines and instructions adopted by the board of directors.

The board of directors and the managing director shall regularly assess and review the securities institution's guidelines and instructions. Furthermore, the board of directors and managing director shall assess and regularly review the effectiveness of the procedures, measures, processes and the equivalent implemented by the securities institution to comply with the Securities Market Act and other regulations which regulate the securities institution's operations. The board of directors and the managing director shall also take appropriate measures to address any deficiencies in these areas.

**Section 7** A securities institution shall ensure that the board of directors and the managing director regularly, and at least annually, receive written reports on the areas covered by the provisions in this chapter regarding compliance, risk management and internal audits. The reports shall contain, among other things, information about the appropriate measures taken in the event of any deficiencies.

**Section 8** A securities institution shall maintain current and appropriate guidelines and procedures to detect any risk of failure by the securities institution to fulfil its obligations under the Securities Market Act and other regulations which regulate

the securities institution's operations. The guidelines shall be adopted by the board of directors.

The securities institution shall implement appropriate measures and procedures designed to minimise these risks and enable Finansinspektionen to effectively carry out its supervision.

When designing procedures and guidelines, the securities institution shall take into account the nature, scope and complexity of the business and the nature and scope of its investment services and investment activities.

**Section 9** A securities institution shall have a permanent and effective compliance function.

The function shall work independently and

1. control and regularly assess the appropriateness and effectiveness of measures and procedures implemented in accordance with section 8, second paragraph and evaluate the actions taken to address deficiencies in the securities institution's compliance, and
2. advise and assist relevant persons carrying out investment services and investment activities in such a manner that the operations comply with the Securities Market Act and other regulations regulating the activities of the securities institution that are subject to an authorisation obligation.

**Section 11** A securities institution shall

1. maintain current and appropriate guidelines and procedures for risk management with the purpose of identifying the risks relating to its activities, processes and systems and, where appropriate, set an acceptable level of risk tolerated by the institution, and
2. adopt effective procedures, processes and mechanisms to manage the risks relating to its activities, processes and systems, in light of the level of risk tolerance in point 1.

The guidelines shall be adopted by the board of directors.

**Section 11a** A securities institution shall verify

1. that guidelines and procedures in accordance with section 11, point 1 are adequate and effective,
2. the extent to which the securities institution and its relevant persons comply with the procedures, processes and mechanisms adopted in accordance with section 11, point 2, and
3. that measures the firm has taken to address deficiencies in guidelines, procedures, processes and mechanisms, including failure by relevant persons to comply with these, are adequate and effective.

**Section 12** A securities institution shall, where appropriate and reasonable in view of the nature, scope and complexity of the business and the nature and scope of the investment services and activities, maintain a risk management function that operates independently.

The risk management function shall

1. implement the guidelines and procedures set out in section 11, and

2. provide reports and advice to the board of directors and the managing director in accordance with section 7.

**Section 14** A securities institution shall, where appropriate and reasonable in view of the nature, scope and complexity of the business and the nature and scope of the investment services and investment activities, maintain an internal audit function. The function shall be separate and independent from the other functions and activities of the institution.

The internal audit function shall:

1. maintain a current audit plan adopted by the board of directors to examine and assess if the securities institution's systems, internal control mechanisms and procedures are adequate and effective,
2. issue recommendations based on the work carried out in accordance with point 1,
3. verify compliance with these recommendations, and
4. with regard to internal audit matters, report in accordance with section 7.

## Chapter 7

**Section 1** A securities institution shall maintain effective and transparent guidelines and procedures for the prompt and reasonable handling of complaints from retail clients. The guidelines shall be adopted by the board of directors.

## Chapter 8

**Section 1** A securities institution shall have guidelines and procedures for personal transactions. The guidelines shall be adopted by the board of directors and apply to a relevant person who

1. is involved in activities that can give rise to a conflict of interest, or
2. has access to inside information pursuant to section 1, point 1 of the Financial Instruments Trading (Market Abuse Penalties) Act (2005:377), or to other confidential information relating to clients in the securities institution's operations.

**Section 1a** The guidelines and procedures shall be current and appropriate with the purpose of preventing

1. a relevant person from conducting personal transactions that
  - a) are in violation of the Financial Instruments Trading (Market Abuse Penalties) Act,
  - b) entail the misuse or improper disclosure of confidential information, or
  - c) are in violation of, or could be in violation of, the obligations of the securities institution pursuant to the Securities Market Act,
2. a relevant person, other than within the scope of his or her employment or contract for services, from advising or influencing another person to enter into a transaction in financial instruments which, if it regards a personal transaction of the relevant person, is covered by
  - a) point 1,
  - b) Chapter 11, section 11, points 1 or 2, or
  - c) Chapter 20, section 4, and



3. a relevant person, regardless of what is laid down in the Financial Instruments Trading (Market Abuse Penalties) Act, other than within the scope of their employment or contract for services, from disclosing information or positions to a third person if the relevant person is aware, or reasonably should be aware, that the other person, as a result of the disclosure, will or probably would

- a) enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be such a transaction as referred to in point 1 or 2b or 2c of this provision, or
- b) advise or influence another person to enter into such a transaction.

**Section 2** The guidelines and procedures, among other things, shall ensure that

- 1. all relevant persons covered by section 1 are aware of the restrictions that exist on personal transactions and the measures established by the securities institution to regulate personal transactions and disclosure in accordance with section 1a,
- 2. the securities institution is informed promptly of all personal transactions entered into by a relevant person, either by notification or in some other way that enables the securities institution to identify these transactions, and
- 3. a record is kept of the personal transactions notified to or identified by the securities institution.

The records, in accordance with the first paragraph, point 3, shall include all authorisations or prohibitions reported for such transactions.

In conjunction with outsourcing agreements, the securities institution shall ensure that the service provider records relevant persons' personal transactions and, at the request of the securities institution, immediately turns over such information.

**Section 3** The provisions set out in sections 1, 1a and 2 shall not be applied to

- 1. personal transactions entered into as part of a portfolio management service, where there is no prior exchange of information in conjunction with the transaction between the portfolio manager and the relevant person, or any other person on the behalf of whom the transaction is entered into, or
- 2. personal transactions in shares in collective investment undertakings or UCITS which meet the conditions under Directive 2009/65/EC of the European Parliament on the coordination of laws, regulations and administrative provisions relating to firms for collective investment in transferable securities (UCITS) or that are covered by supervision pursuant to legislature in a Member State that requires an equal risk spread among assets, provided that the relevant person or any other person on behalf of whom the transactions are entered into do not participate in the management of the collective investment undertakings or UCITS.

## Chapter 9

**Section 4** Where a securities institution outsources parts of the work and functions of material significance for its business, investment services or investment activities, the institution shall remain responsible for discharging its obligations under the Securities Market Act, and, in particular, ensure that

- 1. the outsourcing agreement does not entail that the board of directors or the managing director delegate their responsibility,

2. the security institution's relationship and obligations towards its clients in accordance with the Securities Market Act are not altered, and
3. the outsourcing agreement does not cause the conditions that the securities institution must fulfil to conduct securities business to be undermined, repealed or amended.

## Chapter 10

**Section 1** This chapter contains provisions regarding protection of clients' financial instruments and funds in accordance with Chapter 8, sections 34–35 of the Securities Market Act (2007:528).

**Section 6** A securities institution receiving client funds shall immediately deposit these funds in one or several accounts with

1. a central bank,
2. a credit institution authorised in accordance with Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions,
3. a bank authorised in a country outside the EEA, or
4. a qualifying money market fund.

The first paragraph shall not apply to credit institutions authorised in accordance with Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions (recast) in relation to deposits within the meaning of the Directive held by the institution, and to securities firms authorised to receive funds on account in accordance with Chapter 2, section 2, first paragraph, point 8 of the Securities Market Act.

**Section 11** A securities institution may only enter into agreements for securities financing transactions in respect of financial instruments held on behalf of a client in an omnibus account maintained by a third party, or in any other way use financial instruments held in such an account on own account or on behalf of another client if, in addition to that set out in section 10, at least one of the following conditions are met:

1. all clients whose financial instruments are held together in a omnibus account have given prior consent in accordance with section 10, line 1, or
2. the securities institution has established systems and controls which ensure that only financial instruments belonging to the client who has given prior consent in accordance with section 10, point 1 are duly used.

To enable the correct allocation of any loss, the securities institution's records shall contain information about each client who consented to the use of his or her financial instruments and the number of used financial instruments belonging to each such client.

## Chapter 11

**Section 3** A securities institution shall have guidelines specifying how the institution shall handle conflicts of interest. The guidelines shall be adopted by the board of directors and give appropriate consideration to the size and organisation of the securities institution and the nature, scope and complexity of its operations.

Where the securities institution is a member of a group, the guidelines shall also take into account the circumstances the securities institution is aware of or should

be aware of and which may give rise to a conflict of interest as a result of the structure or business activities of other firms in the group.

**Section 9** A recommendation of the type covered by Article 1(3) in Directive 2003/125/EC implementing Directive 2003/6/EC of the European Parliament and the Council relating to the obligation to fairly present investment recommendations and to declare conflicts of interest, but that refers to financial instruments in accordance with the definition laid down in the Securities Market Act and does not meet the requirements set out in section 8, shall be treated as marketing information in accordance with the same Act. A securities institution that prepares or distributes such recommendations shall ensure that these recommendations can be clearly identified as marketing information.

The securities institution shall ensure that such recommendations contain a clear explanation in a prominent location, or with regard to an oral recommendation, a clear explanation

1. that the recommendations have not been prepared in accordance with the requirements in the laws and regulations designed to promote the independence of investment analyses, and
2. that the recommendations are not subject to any prohibition on dealing prior to the dissemination of the investment analyses.

## Chapter 12

**Section 2** For the purposes of section 1, point 2a, the securities institution may summarise for a client the basic terms of the system relating to fees, commission or non-monetary benefits, provided that the client is informed that the securities institution provides more detailed information at the client's request.

## Chapter 14

**Section 13** The information a securities institution provides a client pursuant to sections 10–12 shall be provided in a durable medium or, if the conditions set out in Chapter 2, section 3 are met, on a website.

**Section 14** A securities institution may provide a retail client with the information required in accordance with section 10 immediately after the client is bound by an agreement for the provision of investment services or ancillary services, and the information required in accordance with section 11 as soon as the provision of the service has commenced, if

1. the securities institution was unable to comply with the time limits set out in section 10 and section 11 because, at the request of the client, the agreement was entered into using technology for distance communication which prevents the securities institution from providing the information, or
2. the securities institution, when Chapter 3, section 4 of the Distance and Doorstep Sales Act (2005:59) is not applied in any other way, meets the requirements in the provision by acting as if the retail client is a consumer and the securities institution is an undertaking in the meaning of the same Act.

**Section 18** A securities institution, where applicable, shall provide a retail client with information about

1. the name and address of the securities institution as well as necessary contact information so the client can maintain effective contact with the securities institution,
2. the language the client may use in its contact with the securities institution and the language used in documentation and other information from the securities institution,
3. the methods of communication the securities institution and the client shall use and, where relevant, when sending and receiving orders,
4. the securities institution's authorisation to conduct securities operations and the name and address of the authority that issued the authorisation,
5. if the securities institution acts through a tied agent and in which country the agent is registered, and
6. which type of reports on the performance of the service the securities institution shall provide to the client in accordance with Chapter 8, section 27 of the Securities Market Act and the frequency and timing of the provision of such reports.

If the securities institution holds financial instruments or funds for its clients, it shall, where applicable, provide a brief description of the steps the securities institution takes to safeguard them, including a summary of any remuneration to investors or the deposit guarantee scheme that applies to the securities institution's operations.

Furthermore, where applicable, the securities institution shall provide a summary of the guidelines regarding conflicts of interest the securities institution shall have pursuant to Chapter 11, section 3. The securities institution shall, whenever the client requests it, provide more detailed information about the guidelines for conflicts of interest in a durable medium or by means of a website, where this does not constitute a durable medium, provided that the conditions set out in Chapter 2, section 3 are met.

**Section 28** Where a third party keeps a retail client's financial instruments in an omnibus account, the securities institution shall inform the client about this and provide a clear warning about the risks related to this type of holding.

#### **Information in accordance with the UCITS-IV directive**

**Section 34** A key investor information document that meets the requirements set out in Article 78 of Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to firms for collective investment in transferable securities (UCITS) meets the requirements for

1. information about financial instruments and proposed investment strategies in accordance with Chapter 8, section 22, first paragraph, point 2 of the Securities Market Act, and
2. information about prices and fees in accordance with Chapter 8, section 22, first paragraph, point 4 of the same Act with regard to prices and fees for the UCITS, including entry and exit fees.

#### **Provision of information to fund unit holders**

**Section 35** A securities institution shall provide such information as referred to in Chapter 8, section 22b of the Securities Market Act on a durable medium.

## Chapter 15

**Section 11** Pursuant to Chapter 8, section 25, first paragraph, point 1e of the Securities Market Act, a financial instrument shall be considered non-complex if

1. it does not fall under Chapter 1, section 4, point 2c or 5 of the Securities Market Act,
2. there are frequent opportunities to dispose of, redeem or in any other way realise the instrument at prices that are publicly available to market participants, and that either are market prices or prices made available, or validated, through valuation systems independent of the issuer,
3. there is no actual or potential liability for the client that exceeds the cost of acquiring the instrument, and
4. there is sufficient publicly available information about the characteristics of the instrument that is likely to be understood without difficulty by an average retail client, such that this client can make an informed decision as to whether to enter into a transaction in that instrument.

## Chapter 18

**Section 6** The board of directors or the managing director shall adopt the guidelines for the execution of orders that the securities institution shall maintain pursuant to Chapter 8, section 29, first paragraph of the Securities Market Act. The guidelines and systems for the execution of orders shall be reviewed on an annual basis.

An overview shall also be carried out when a significant change occurs that affects the securities institution's ability to continue to obtain the best possible result for the execution of a client's order on a consistent basis using the trading venues included in the guidelines.

## Chapter 19

**Section 3** A securities institution shall establish guidelines in order to obtain the best possible results in accordance with section 2. The guidelines shall be adopted by the board of directors or the managing director. The guidelines shall specify for each class of instrument which trading venues or market actors with which the orders are placed or to which the securities institution transmits orders for execution. The securities institution shall ensure that the stated trading venues or market actors have procedures for the execution that enable the securities institution to fulfil its obligations under this chapter.

The securities institution shall provide appropriate information to its clients about the guidelines established in accordance with this provision.

**Section 4** A securities institution shall regularly control that the guidelines established in accordance with section 3 are effective, particularly with regard to the quality of the execution at the trading venues or market actors specified in the guidelines and, where necessary, correct any deficiencies.

The securities institution shall furthermore review its guidelines on an annual basis. An overview shall also be carried out when a significant change occurs that affects the securities institution's ability to continue to obtain the best possible result for its clients.

## Chapter 20

**Section 6** The board of directors or the managing director shall adopt guidelines for the allocation of orders and implement these guidelines effectively so that client orders or transactions on own account that are aggregated with other client orders are fairly allocated. The guidelines shall specify how volume and price determine the allocation and treatment of partial executions.

**Section 11** In the event a securities institution consents to an order being received and executed outside of the securities institution's premises, the securities institution shall prepare separate guidelines thereon. The guidelines shall be adopted by the board of directors or the managing director.

**Section 12** In the event a securities institution authorises a broker, for a short period, to monitor and execute orders on behalf of a client in respect of all or part of the client's holdings of financial instruments, the securities institution shall prepare separate guidelines thereon. The guidelines shall be adopted by the board of directors or the managing director.

## Chapter 21

**Section 3** All telephone conversations at a broker's desk at a securities institution shall be recorded. The aforesaid shall also apply to the securities institution's conversations which relate to client orders on other telephones in premises with access to the trading system of a regulated market or an MTF, or premises which have been specifically adapted for financial instruments trading.

A client order which has been received via mobile phones or at a personal meeting with a client and which has thus not been recorded must be documented. The mobile phone subscriptions used in the securities business shall belong to the securities institution.

The board of directors or the managing director shall adopt guidelines for how assignments that have not been recorded shall be handled.

## Chapter 22 Reporting information to Finansinspektionen

**Section 1** The provisions in this chapter apply to such transactions as referred to in Chapter 10 of the Securities Market Act (527:528).

**Section 2** The reporting obligation set out in Chapter 10, section 3 of the Securities Market Act shall also apply to transactions that refer to

1. financial instruments that are subject to trade on a multilateral trading facility, and
2. derivatives that have not been accepted for trade on a regulated market but that have financial instruments that have been admitted to trading on a regulated market as an underlying asset.

**Section 3** In order to identify the client on whose behalf a transaction was carried out, pursuant to Chapter 10, section 3 of the Securities Market Act, a report shall contain the following information:

1. when the client is a securities institution, a valid Business Identifier Code (BIC) pursuant to ISO 9362, and

2. in all other cases, a unique and permanent code that identifies the client.

### Reporting for special cases

**Section 4** Upon request from Finansinspektionen, a securities institution, in accordance with the detailed instructions on format and procedures provided by Finansinspektionen, shall provide a transaction's reference number and the following information about the client on behalf of whom a transaction was executed:

1. the client number,
2. the client's name or other designation,
3. the client's personal identification number, company registration number or other identification number, and
4. the client's address.

Reporting pursuant to the first paragraph may also be provided in the manner set out in Chapter 10, section 4, points 2–4 of the Securities Market Act.

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1. These regulations shall enter into force on 1 November 2011. However, the provisions in Chapter 14, sections 34 and 35 shall begin to apply on 1 August 2011.

2. With regard to simplified prospectuses prepared pursuant to Article 28 of Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to firms for collective investments in transferable securities (UCITS), Chapter 14, section 34 applies in its old wording up to and including 30 June 2012.

MARTIN ANDERSSON

Jesper Dahllöf

*Appendix 1*

**Form for notification of the establishment of a branch or tied agent pursuant to Article 32 of Directive 2004/39/EC on Markets in Financial Instruments**

This form shall also be submitted in English. The form is available on FI's website.

Type of notification: **[e.g. first-time notification/  
additional services/change of  
address]**

Ref. no.:

Member State where the branch will  
be established:

Securities firm: **[Name]**

Address:

Telephone number:

E-mail address:

Contact person: **[Name]**

The securities firm's home country:

Authorisation: Authorised by Finansinspektionen

Date of authorisation for  
the securities firm:

Date of establishment of  
the branch:

**Investment services and investment activities that will be provided:**

		Investment services and investment activities								Ancillary services						
		1	2	3	4	5	6	7	8	1	2	3	4	5	6	7
Financial instruments	1															
	2															
	3															
	4															
	5															
	6															
	7															
	8															
	9															
	10															



Tied agent outside of the securities firm's home country: [Name]

Address of tied agent: [Address]

**Investment services and investment activities that will be provided by one or more tied agents outside of the securities firm's home country:**

		Investment services and investment activities								Ancillary services						
		1	2	3	4	5	6	7	8	1	2	3	4	5	6	7
Financial instruments	1															
	2															
	3															
	4															
	5															
	6															
	7															
	8															
	9															
	10															

**Business plan**

This form shall also be submitted in English. The form is available on Finansinspektionen's website, [www.fi.se](http://www.fi.se).

Information for submission	Answer
<p><b><u>1. Business strategy</u></b></p> <p><i>a) How will the branch contribute to the company's/group's goals and strategy?</i></p> <p><i>b) What are the branch's primary operations?</i></p>	
<p><b><u>2. Operational strategy</u></b></p> <p><i>a) Specify which type of clients/counterparties the branch will target.</i></p> <p><i>b) Specify how the company will reach these clients and which services will be offered.</i></p>	
<p><b><u>3. Organisational structure</u></b></p> <p><i>a) Briefly describe the branch's placement in the group. (Attach an organisational outline of the group.)</i></p>	

<p><i>b) Describe the branch's organisational structure and specify functional and legal reporting lines.</i></p> <p><i>c) Specify who will be responsible for the branch's daily operations.</i></p> <p><i>d) Specify who will be responsible for the branch's compliance.</i></p> <p><i>e) Specify who at the branch will be responsible for handling client complaints.</i></p> <p><i>f) How will the branch report to the head office?</i></p> <p><i>g) Describe the agency agreements for activities of material significance that the branch has entered into.</i></p>	
<p><b><u>4. Tied agents</u></b></p> <p><i>a) Will the branch use tied agents?</i></p> <p><i>b) Specify the tied agents' contact information if this information is available</i></p>	
<p><b><u>5. Internal control systems</u></b></p> <p><i>Give a short description of the measures the branch has taken to ensure:</i></p> <p><i>a) Protection of clients' assets</i></p> <p><i>b) Compliance with the rules of conduct and other requirements that the host country is responsible for in accordance with Art. 32(7) and the documentation rules under Art. 13(9)</i></p> <p><i>c) Compliance with ethical rules, including rules for the personal</i></p>	

<p><i>transactions of relevant persons</i></p> <p><i>d) Measures against money laundering</i></p> <p><i>e) Monitoring and control of agency agreements, if such exist</i></p>	
<p><b><u>6. Information about auditors</u></b></p> <p><i>a) Information about how an audit of the branch will be carried out and contact information for the external auditor, if one exists.</i></p>	
<p><b><u>7. Financial forecast</u></b></p> <p><i>Append an earnings forecast and a cash flow statement for a 12-month period</i></p>	

*Appendix 2*

**Form for notification of cross-border operations pursuant to Article 31  
Directive 2004/39/EC on Markets in Financial Instruments**

This form shall also be submitted in English. The form is available on  
Finansinspektionen's website.

Type of notification: **[e.g. first-time notification/  
additional services/change of address]**

Ref. no.:

Member State where services  
will be provided:

Securities firm: **[Name]**

Address:

Telephone number:

E-mail address:

Contact person: **[Name]**

The securities firm's home country:

Authorisation: Authorised by Finansinspektionen

Date of authorisation for  
the securities firm:

Date of the provision  
of services:

**Investment services and investment activities that will be provided:**

		Investment services and investment activities								Ancillary services						
		1	2	3	4	5	6	7	8	1	2	3	4	5	6	7
Financial instruments	1															
	2															
	3															
	4															
	5															
	6															
	7															
	8															
	9															
	10															

Tied agent established in the securities firm's home country: **[Name]**

Address of tied agent: **[Address]**