

Guidelines decided by the Board of Directors on 14
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Guidelines for determining administrative fines for infringements of the Financial Instruments Trading Act

1 Background

Rules on the notification obligations for holders of shares and certain other financial instruments that pertain to a company whose shares are listed on a regulated market are found in Chapter 4 of the Financial Instruments Trading Act (1991:980) (LHF), known as the major shareholding notification rules. In the event of infringements of the notification rules, Finansinspektionen shall decide to issue an administrative fine on those who have not complied with the obligation to report changes in their listed shareholdings and holdings of certain other financial instruments to Finansinspektionen, known as major shareholding notifications. Finansinspektionen shall also decide to issue an administrative fine to an issuer that does not disclose information at the right time about corporate actions that result in changes in the total number of shares or votes. If such a change leads to a shareholder passing a major shareholding notification limit, an administrative fine shall be issued to those who do not report this on time. The size of the administrative fine shall be set in accordance with Chapter 6, Sections 3 b–3 f of LHF.

These guidelines shall be applied to infringements that have occurred as of 1 February 2016 and replace the guidelines dated 9 September 2011 (FI Ref. 11-9242). Older guidelines shall apply to infringements that took place prior to 1 February 2016.

The circumstances that Finansinspektionen shall consider when assessing an infringement are listed in Chapter 6, Sections 3 d–3 f of LHF. That which is listed constitutes an exemplifying list and a basic premise is that an overall assessment of the various circumstances of the individual case shall be conducted (Govt Bill 2015/16:26, p. 106).

It is possible for Finansinspektionen to fully or partially waive the administrative fine if the infringement is negligible, excusable or if special grounds otherwise exist (Chapter 6, Section 3 g of LHF).

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

When Finansinspektionen is deciding on a sanction against a natural person or legal entity, it shall, in accordance with Chapter 6, Section 3 d of LHF, consider how serious the infringement is and its duration.

Specific consideration shall be given to the actual and potential effects of the infringement on the financial system, the losses incurred and the degree of responsibility.

An aggravating circumstance that shall be considered is whether the legal entity or natural person has previously committed an infringement. In making such assessment, specific weight should be given to whether the infringements are of a similar nature and the time that has elapsed between the various infringements (Chapter 6, Section 3 e, first para. of LHF).

A mitigating factor that shall be considered is whether the legal entity or natural person has facilitated Finansinspektionen's investigation to a significant extent through their active cooperation, and whether the legal entity quickly rectified the violation or the natural person quickly took action in order to rectify the violation after it was reported to, or notified by, Finansinspektionen (Chapter 6, Section 3 e, second para. of LHF).

According to Chapter 6, Section 3 f, when the size of the administrative fine is being determined, consideration shall be given to such circumstances listed in Sections 3 d and 3 e and to the legal entity's or natural person's financial position, and, where it can be ascertained, the profit that the legal entity or natural person made as a result of the infringement.

3 Guidelines for determining administrative fines

When Finansinspektionen examines a major shareholding notification case, it shall first be established whether an infringement of the major shareholding notification rules has taken place. Subsequently, the size of the fine is determined, at which point Finansinspektionen shall assess which circumstances relate to the infringement itself, followed by the aggravating and mitigating circumstances that do not relate to the infringement itself. The circumstances stated in the legislation constitute an exemplifying list of which circumstances are to be considered.¹ Consideration shall also be given to the legal entity's or natural person's financial position and any profit made as a result of the infringement. Finally, Finansinspektionen shall examine whether the infringement is negligible or excusable, or whether there are otherwise special grounds to fully or partially waive the fine.

Finansinspektionen finds it appropriate to use a standardised model as a starting point when determining the size of the administrative fine.

¹ Govt Bill 2015/16:26, p. 106.

Basic fines – intervals for time value assessment

Delay in trading days	1	2	3	4	5	6–10	11–20	21–40	> 40 days*
Fine for natural person (SEK)	25,000	30,000	35,000	40,000	50,000	60,000 – 80,000	80,000 – 100,000	100,000 – 200,000	200,000 – maximum fine
Fine for legal entity (SEK)	50,000	60,000	70,000	80,000	100,000	150,000 – 300,000	300,000 – 600,000	600,000 – 1,000,000	1,000,000 – maximum fine

* Major shareholding notification has taken place after more than 40 trading days, or not at all.

Calculation factors

A major shareholding notification is effected on the day that a complete notification has been received by Finansinspektionen.

The table “Basic fines – intervals for time value assessment” should be used as a starting point where the number of trading days serves as a guide to the severity of the infringement.

Examples of circumstances that should lead to an increase in the basic fine of at least 50 per cent, although always within the limitation set out in Chapter 6, Section 3 b of LHF:

- The change in shareholding has involved the passing of more than one major shareholding notification limit (from above or below).
- There has been a considerable market interest in a major shareholding notification having taken place at the right time.
- There are aggravating circumstances as per Chapter 6, Section 3 e, first para. of LHF that do not relate to the infringement itself.

Examples of circumstances that should lead to a reduction in the basic fine of at least 50 per cent, although the fine shall at least amount to SEK 15,000:

- The change in shareholding has pertained to investment of funds in a Swedish UCITS or in a non-UCITS fund whose rules does not grant an exemption from Chapter 5, Section 20 of the Swedish UCITS Act (2004:46).
- The change in shareholding has pertained to shares that are owned by an insurance company within the scope of an endowment policy.
- The change in shareholding has taken place following disclosure of corporate actions as per Chapter 4, Section 9 of LHF.
- There has not been a market interest in a major shareholding notification taking place at the right time.
- The change in shareholding has concerned the application of technically complicated major shareholding notification rules for calculating voting rights for financial instruments other than shares.
- There are mitigating circumstances as per Chapter 6, Section 3 e, second para. of LHF that do not relate to the infringement itself.

4 Guidelines for administrative fine concessions

According to Chapter 6, Section 3 g of LHF, the administrative fine may be fully or partially waived if the infringement is negligible, excusable or there are otherwise special grounds.

Grounds for a concession may be that

- an administrative fine has been issued to the notifier for the same change in shareholding in accordance with the Provisions Supplementing the EU Market Abuse Act (2016:1306),
- the fine can be regarded as being unreasonably high when considering the individual's financial situation, or
- the change in shareholding has not been reported at the correct time due to circumstances the notifier reasonably could not have been able to control or predict.

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Purpose
To function as guidance when determining administrative fines for infringements of the major shareholding notification rules in those cases where the infringements have taken place from 1 February 2016.
Reference to external requirements that gave rise to the governance document
Chapters 4 and 6 of the Financial Instruments Trading Act (1991:980)

Reference to underlying internal governance documents

Version history

Entry into force	Version	Comments
14/03/2016	1.0	Cf. FI Ref. 16-2956
29/05/2017	2.0	Cf. FI Ref. 17-5044