

Finansinspektionen's Regulatory Code

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Regulations

amending Finansinspektionen's regulations (FFFS 2007:17) regarding operations on trading venues;

FFFS 2017:5

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decided on 26 June 2017.

Finansinspektionen prescribes¹ pursuant to Chapter 6, section 1, points 2, 3, 6, 9, 19, 36, 41, 43, 49 and 56 of the Securities Market Ordinance (2007:572) in respect of Finansinspektionen's regulations (FFFS 2007:17) regarding operations on trading venues

in part that Chapters 7–9 shall be repealed,

in part that Chapter 1, sections 1 and 2, Chapter 1a, sections 1, 3–5, 25 and 28, Chapter 2, sections 1 and 9, Chapter 3, section 2, Chapter 5, section 11, Chapter 6, section 8, and Chapter 10, sections 1 and 8 shall have the following wording,

in part that three new sections shall be introduced, Chapter 1a, sections 5a, 8a and 8b and a new heading immediately preceding Chapter 1a section 8a with the following wording.

Chapter 1

Section 1 These regulations apply to stock exchanges, clearing organisations, undertakings providing data reporting services, securities institutions, companies whose transferable securities are admitted to trading on a regulated market or trading facility and to issuers of such transferable securities and to parties preparing prospectuses.

Section 2 These regulations contain provisions regarding

- application for authorisation (Chapter 1a),
- ownership and management assessment (Chapter 2),
- notification of certain acquisitions (Chapter 2a),
- registration (Chapter 3),
- disciplinary board (Chapter 4),
- market surveillance at a stock exchange (Chapter 5),
- market surveillance at a securities institution (Chapter 6),
- information requirement for transferable securities issuers (Chapter 10),
- issuers without a registered office in the EEA (Chapter 11),
- language in the prospectus (Chapter 11a),
- filing and disclosure of information related to shareholdings (Chapter 12),
- acquisition and disposal of own shares by limited liability companies (Chapter 13), and

¹Cf. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

- that the Swedish Securities Council decides in certain issues about public takeover bids on the stock market and publishes certain such decisions (Chapter 14).

Chapter 1a

Section 1 The provisions in this chapter apply to undertakings applying for authorisation to

1. as a stock exchange, operate a regulated market in accordance with Chapter 12, section 1 of the Securities Market Act (2007:528) or a trading facility, auction platform for trading emissions allowances or other ancillary operations in accordance with Chapter 13, section 12 of the same Act,
2. conduct clearing operations in accordance with Chapter 19, section 1 or ancillary operations in accordance with Chapter 20, section 7 of the same Act, or
3. operate a trading facility in accordance with Chapter 2, section 1, point 8 or 9 of the same Act.

When a stock exchange applies for authorisation to operate an additional regulated market or trading facility, auction platform for trading emissions allowances or other ancillary operations in accordance with Chapter 13, section 12 of the Securities Market Act, and when a clearing organisation applies for authorisation to conduct operations in accordance with Chapter 20, section 7 of the same Act, section 7, second paragraph and section 8, second paragraph do not apply.

When a securities institution applies for authorisation to operate a trading facility in accordance with Chapter 2, section 1, point 8 or 9 of the Securities Market Act, sections 7–22 do not apply.

When a stock exchange or securities institution operating an MTF applies for that facility to be registered as an emerging market for small and medium-sized enterprises in accordance with Chapter 11, section 13 of the Securities Market Act, sections 7–28 do not apply.

Section 3 An undertaking applying for authorisation as in section 1, first paragraph, point 1 or 2 shall append the following to the application:

1. board minutes that show that the undertaking's board of directors has approved the application,
2. a registration certificate for the undertaking from the Swedish Companies Registration Office, or equivalent, which is not more than two months old,
3. an auditor's certificate, issued by an authorised public accountant or a chartered accountant, showing that the undertaking holds the capital it has stated in accordance with section 10, first paragraph and – if the undertaking is applying for authorisation to operate a trading facility – that the undertaking fulfils the requirements regarding start-up capital that are set out in Chapter 3, section 6 of the Securities Market Act (2007:528).
4. a draft of the articles of association or statutes stating which operation(s) the undertaking intends to conduct, and
5. a business plan, prepared in accordance with the provisions of this chapter.

An undertaking applying for authorisation as in section 1, first paragraph, point 3 shall append to the application the information required according to the Delegated Regulation adopted by the European Commission pursuant to Article 7.4 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as worded according to Directive (EU) 2016/1034 of the European Parliament and of the Council.

Section 4 An undertaking applying for authorisation, as a stock exchange, to operate a regulated market shall, in addition to the provisions set out in section 3, append the following to its application:

1. a description of arrangements regarding governance of the undertaking, as well as a description of how the undertaking fulfils the requirements in terms of the board's responsibility for establishing, monitoring and evaluating such arrangements in accordance with Chapter 12, section 6e of the Securities Market Act (2007:528),
2. descriptions of the systems, procedures and arrangements put in place, and information about the content of any agreements entered by the undertaking in accordance with Chapter 13, sections 1a–1e of the same Act,
3. rules on co-location services in accordance with Chapter 13, section 1f of the same Act,
4. a description of how the undertaking meets the requirements regarding fee structures in Chapter 13, section 1g of the same Act,
5. a description of how the requirements regarding identification in accordance with Chapter 13, section 1h of the same Act are fulfilled,
6. rules regarding minimum price change in accordance with Chapter 13, section 1i of the same Act,
7. a description of how the requirements regarding sound security mechanisms and adequate resources and back-up facilities in accordance with Chapter 13, section 1j of the same Act are fulfilled, if the undertaking reports transactions on behalf of a securities institution,
8. A description of the reporting systems for employees provided by the undertaking in accordance with Chapter 13, section 2a of the same Act,
9. rules for trading on the regulated market in accordance with Chapter 13, section 6 of the same Act,
10. A description of how the requirement regarding synchronised clocks according to Chapter 13, section 6a of the same Act is fulfilled,
11. rules for public takeover bids in accordance with Chapter 13, section 8 of the same Act,
12. rules for who may participate in trading on the regulated market in accordance with Chapter 14, section 1 of the same Act, and

13. rules for the admission of financial instruments to trading on the regulated market in accordance with Chapter 15, section 1 of the same Act.

In addition to the stipulations of the first paragraph, the undertaking shall append:

1. rules or agreement terms and conditions that regulate the issuers' information obligation,
2. a policy for promoting board diversity in accordance with section 8b, and
3. procedures for market surveillance in accordance with Chapter 5, section 3.

Section 5 An undertaking applying for authorisation to operate a trading facility, in addition to the provisions set out in section 3, shall append the following to its application:

1. a description of the arrangements put into place in accordance with Chapter 11, section 2a or 2b of the Securities Market Act (2007:528).
2. rules for who may participate in trading on the trading facility in accordance with Chapter 11, section 3 of the same Act,
3. rules for trading on the trading facility in accordance with Chapter 11, sections 4 and 4a of the same Act,
4. descriptions of the systems, procedures and arrangements put in place, and information about the content of any agreements entered in accordance with Chapter 13, sections 1a–1e of the same Act,
5. rules on co-location services in accordance with Chapter 13, section 1f of the same Act,
6. a description of how the undertaking meets the requirements regarding fee structures in Chapter 13, section 1g of the same Act,
7. a description of how the requirements regarding identification in accordance with Chapter 13, section 1h of the same Act are fulfilled,
8. rules regarding minimum price change in accordance with Chapter 13, section 1i of the same Act,
9. a description of how the requirements regarding sound security mechanisms and adequate resources and back-up facilities in accordance with Chapter 13, section 1j of the same Act are fulfilled, if the undertaking reports transactions on behalf of a securities institution, and
10. a description of how the requirement regarding synchronised clocks according to Chapter 13, section 6a of the same Act is fulfilled.

In addition to the stipulations of the first paragraph, a stock exchange or securities institution shall append:

1. rules or agreement terms and conditions that regulate the issuers' information obligation,
2. procedures for market surveillance in accordance with Chapter 6, section 4, and

3. the description of the functioning of the trading facility required according to Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments, in the format set out in the regulation.

Section 5a A stock exchange or securities institution operating an MTF and which is applying for the facility to be registered as an emerging market for small and medium-sized enterprises shall describe how the undertaking meets the requirements in

- Chapter 11, section 13 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.

Certain requirements in terms of the board of directors of a stock exchange

Section 8a A stock exchange shall set aside sufficient resources to train board members.

Section 8b A stock exchange shall, when appointing board members, consider a broad spectrum of qualities and expertise and, to this end, have a policy for promoting board diversity.

Section 25 The business plan shall contain an account of the conflicts of interest the undertaking has identified and how these are handled. The business plan shall also include a description of how the undertaking fulfils the requirements set out in Chapter 13, section 1, second paragraph, point 3 of the Securities Market Act (2007:528).

If the undertaking is also applying for authorisation to operate a trading facility, the business plan shall also contain a description of how the undertaking meets the requirements in Chapter 11, section 1b of the Securities Market Act.

If the undertaking has adopted guidelines or other internal rules for the identification and handling of conflicts of interest, these shall be appended to the business plan.

Section 28 The business plan shall include a description of how the undertaking fulfils the rules regarding pre and post trade information in Articles 3, 6, 8 and 10 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012. If the undertaking is also applying for authorisation to operate a trading facility, the description shall also cover how the undertaking fulfils the same rules for the trading facility.

Chapter 2

Section 1 This chapter contains provisions governing the information a stock exchange, a clearing organisation and their owners shall submit to

Finansinspektionen in conjunction with an ownership or a management assessment pursuant to the Securities Market Act (2007:528). The chapter also contains provisions setting out that an undertaking providing data reporting services shall notify Finansinspektionen of changes to the management.

Provisions regarding the information that an undertaking providing data reporting services shall submit to Finansinspektionen in connection with a management assessment are provided in

- Chapter 10 of the Securities Market Act,
- Article 4 of Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers, and
- Annex 2 to the Implementing Regulation adopted by the European Commission pursuant to Article 61.5 of Directive 2014/65/EU on markets in financial instruments.

Section 9 A stock exchange, a clearing organisation and an undertaking providing data reporting services shall inform Finansinspektionen when new individuals are appointed to the following positions at the undertaking:

- chairman of the board,
- board members,
- alternate board members, and
- managing director or deputy managing director, i.e. a person serving in the managing director's stead.

Stock exchanges, clearing organisations and undertakings providing data reporting services shall also notify Finansinspektionen when the number of board members is reduced.

When a new chairman of the board, board member, alternate board member, managing director or deputy managing director is appointed at a stock exchange or a clearing organisation, the undertaking shall append the information set forth in Appendix 2.

When a new chairman of the board, board member, alternate board member, managing director or deputy managing director is appointed at an undertaking providing data reporting services, the undertaking shall append the information set out in Annex 3 to the Implementing Regulation adopted by the European Commission pursuant to Article 61.5 of Directive 2014/65/EU on markets in financial instruments.

Chapter 3

Section 2 Registration of transferable securities on a regulated market, unless otherwise specified in section 3, may only occur if conditions are in place for trading effectively in the transferable securities with respect to the issuer's financial circumstances, organisation and ability to fulfil its disclosure obligation to the stock exchange and the market, and if the application refers to

- a) transferable securities that are freely transferable,

- b) transferable securities, whose issuer or the person acting in the issuer's stead has not suspended their payments, been declared bankrupt or entered into liquidation, and
- c) transferable securities whose issuers can show annual reports and auditors' reports or equivalent historical information for the past three financial years (issue prospectuses published during that period and, for the period following the latest annual report, six-month reports and, where prepared, quarterly and interim reports).

In addition to that set out in the first paragraph, registration of shares may only occur if the registration application refers to

- a) shares in a company, the expected market value of which – or, if this value cannot be estimated, the company's equity and untaxed reserves less the tax rate that has applied to the company in the past financial year – is not below EUR 1 million,
- b) subscribed-for and allotted shares for which full and acceptable payment was received,
- c) all already issued shares of the same class, and
- d) shares distributed to the public exceeding 25 per cent of the subscribed share capital for all shares of the same class.

For convertible debt instruments, debt instruments linked to options to subscribe for new shares, options to subscribe for new shares that are not linked to debt instruments (warrants), issue certificates, interim certificates, participating loans, equity loans or convertible participation certificates, in addition to that set out in the first paragraph, registration may only occur if the transferable securities concerned are issued by companies whose shares are or at the same time will be admitted to trading on a stock exchange.

For debt instruments other than those set out in the third paragraph, in addition to that set out in the first paragraph, registration may only occur if the registration application refers to

- a) loans, the total nominal amount of which is not less than EUR 200,000.
- b) debt instruments, the issuer of which has fulfilled its obligations with regard to the debt instruments, and
- c) all debt instruments issued at the same time and on the same terms.

If the amounts referred to in the second or fourth paragraph are denominated in a different currency, the currency shall be translated to EUR using the exchange rate at the time of registration.

Chapter 5

Section 11 A stock exchange, in its monitoring of trade and price formation, besides the provisions of Chapter 13, section 7, second paragraph of the Securities Market Act (2007:528), shall without delay inform Finansinspektionen of transactions in financial instruments that can be suspected to be in breach of statutes or good practice on the securities market.

In cases where it can be assumed that a trade order or transaction constitutes, or is linked to, insider trading or market manipulation, or attempts at insider trading or market manipulation, there are specific rules on reporting obligations in Regulation (EU) No 594/2014 of the European Parliament and of the Council.

Chapter 6

Section 8 A securities institution, in its monitoring of trade and price formation, besides the provisions of Chapter 8, section 17, third paragraph of the Securities Market Act (2007:528), shall inform Finansinspektionen without delay of transactions in financial instruments that can be suspected to be in breach of statutes or good practice on the securities market.

In cases where it can be assumed that a trade order or transaction constitutes, or is linked to, insider trading or market manipulation, or attempts at insider trading or market manipulation, there are specific rules on reporting obligations in Regulation (EU) No 594/2014 of the European Parliament and of the Council.

Chapter 10

Section 1 This chapter contains provisions regarding the information obligation for an issuer that has Sweden as the home Member State in accordance with Chapter 1, sections 7–9a of the Securities Market Act (2007:528) and whose transferable securities in accordance with point 1 or 2 in chapter 1, section 4 of the Securities Market Act are admitted to trading or registered on a regulated market following application by the issuer. The provisions also apply to an issuer that has applied for admission to trading or registration.

An issuer of transferable securities in accordance with point 1 or 2 in the definition in Chapter 1, section 4 of the Securities Market Act that does not have Sweden as the home Member State shall, if the transferable securities are registered or admitted to trading on a regulated market in Sweden, apply section 8. If the securities are not admitted to trading on a regulated market in the issuer's home Member State, the issuer shall also apply sections 5 and 6.

The provisions set out in sections 2, 6, 7 and 9 shall also apply to issuers whose transferable securities in accordance with point 1 or 2 in the definition in Chapter 1, section 4 of the Securities Market Act are traded on a trading facility.

Section 8 An issuer that shall disclose information in accordance with Chapter 17 of the Securities Market Act (2007:528) or otherwise in accordance with these regulations, shall disclose information in accordance with the following provisions regarding language.

For an issuer who has Sweden as the home Member State, the following applies:

- a) If the issuer's transferable securities in accordance with section 1 are admitted to trading only on a Swedish regulated market, the information shall be disclosed in Swedish.
- b) If the issuer's transferable securities in accordance with section 1 are admitted to trading on a Swedish regulated market and on a regulated market in one or more other states within the EEA, the information shall be disclosed in Swedish and in either English or a language approved by the competent authorities in the state(s).
- b) If the issuer's transferable securities in accordance with section 1 are not admitted to trading on a Swedish regulated market but only on a regulated market in one or more other states within the EEA, the information shall be disclosed in Swedish, English or a language approved by the competent authorities in the state(s).

d) If the issuer does not have a registered office in a state within the EEA and its transferable securities in accordance with section 1 are primarily traded on a trading venue outside the EEA that equates to a regulated market, the information shall be disclosed in Swedish or English.

e) If the issuer has chosen Sweden as the home Member State in accordance with Chapter 1, section 8, first paragraph or section 9, second paragraph of the Securities Market Act, the information shall be disclosed in Swedish or English.

An issuer that has another state within the EEA as its home Member State shall disclose the information in Swedish or English.

An issuer of transferable securities in accordance with point 1 or 2 of the definition in Chapter 1, section 4 of the Securities Market Act, the nominal value per unit of which on the day of issue is or corresponds to at least EUR 100,000, shall, notwithstanding that set out in the second and third paragraphs, disclose the information in Swedish, English or in a language approved by the competent authorities where the transferable securities are admitted to trading.

An issuer may disclose information in more languages than those prescribed in this provision. Finansinspektionen may decide on exemptions from the provisions in the second–fourth paragraphs.

The first–third paragraphs do not apply to information covered by Chapter 12, section 12.

These regulations shall enter into force on 3 January 2018.

ERIK THEDÉEN

Carl Sehlin