

Finansinspektionen's Regulatory Code

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Regulations

amending Finansinspektionen's regulations and general guidelines (FFFS 2005:11) regarding insurance mediation;

FFFS 2017:4

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decided on 26 June 2017.

Finansinspektionen prescribes¹ pursuant to Chapter 7, sections 1, 3 and 4 of the Insurance Mediation Ordinance (2005:411) that Chapter 1, section 2, Chapter 2, sections 1, 7 and 9–15 and Chapter 3, sections 4 and 5 of Finansinspektionen's regulations and general guidelines (FFFS 2005:11) regarding insurance mediation shall have the following wording.

Chapter 1

Section 2 The same definitions are used in these regulations and general guidelines as in Chapter 1, section 10 of the Insurance Mediation Act (2005:405) unless otherwise stated.

In these regulations and general guidelines the following terms are defined:

1. *liability insurance*: such insurance for liability for damages as referred to in Chapter 2, section 5, point 4 and section 6, first paragraph, point 2 of the Insurance Mediation Act,
2. *fund unit mediation*: such ancillary operations as are referred to in Chapter 2, section 1, point 1 and section 5, first paragraph, point 14 of the Securities Market Act (2007:528),
3. *the delegated regulation for MiFID II*: 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, and
4. *investment advice on fund units*: such ancillary operations as are referred to in Chapter 2, section 1, point 5 and section 5, first paragraph, point 14 of the Securities Market Act (2007:528).

¹ Cf. Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

Chapter 2

Section 1 An insurance intermediary who is a legal person shall ensure that those employees who shall mediate insurances, mediate fund units or provide insurance advice on fund units to others than consumers have the knowledge and expertise required and that those employees' skills are updated in accordance with section 12.

For employees providing investment advice on fund units to consumers, the provisions set forth in Chapter 4, sections 2 and 5 of Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities apply.

General guidelines

An insurance intermediary that is a legal person should establish guidelines for which knowledge and expertise the employees who shall mediate insurances, mediate fund units or provide investment advice on fund units shall possess. The guidelines should not relate to individual employees but to different positions or categories of employees at the intermediary with a focus on the activity they shall carry out and the products they are to mediate. It should also be clear from the guidelines how the insurance intermediary shall ensure that the employees' skills are updated.

An insurance intermediary that intends to delegate a work task which is connected with insurance mediation to someone at the intermediary who does not have the right to mediate insurances, should establish guidelines for which work task(s) can be delegated and which knowledge and expertise the delegated person should possess. When delegating tasks, the insurance intermediary should follow the instructions provided in this respect in the Government bill 2004/05:133 Insurance Mediation, p. 52f.

If the insurance intermediary is a legal person, the guidelines should be established by a person who is a member of the management of the legal person.

Section 7 Persons who mediate life insurances in cases other than those set out in section 4 shall, in addition to the stipulations of section 6, possess knowledge of the following:

1. The Financial Advice to Consumers Act and relevant regulations and general guidelines from Finansinspektionen.

2. The Money Laundering and Terrorist Financing (Prevention) Act (2017:630) and relevant regulations from Finansinspektionen.

3. Law, such as:

- a) The Marriage Code
- b) Cohabitation legislation
- c) The Parental Code
- d) The Inheritance Code
- e) Fiscal law

4. Financial economics, such as:

- a) The capital market

- b) Financial instruments
 - c) Investment strategies
 - d) Portfolio theory
 - e) Return and risk
5. Insurance required by law
6. Contractual insurance, such as
- a) Individual personal insurance
 - b) Personal group insurance
 - c) Personal insurance based upon collective bargaining agreements
7. Types of insurance, such as:
- a) Traditional insurance
 - b) Unit-linked insurance
 - c) Occupational pension insurance
8. Actuarial and life assurance theory, such as
- a) Calculation of premiums
 - b) Surrender and right of transfer
 - c) Bonus
 - d) Solvency and collective consolidation
9. Legal forms of association
10. Risk assessment, such as:
- a) Qualifying periods
 - b) Incorrect information
 - c) Other limitations to the insurance company's liability
 - d) Reinsurance

Section 9 Those mediating fund units or providing investment advice on fund units shall possess knowledge of

1. Chapter 8, section 16, Chapter 9, sections 1, 3–7, 14 and 23–27 of the Securities Market Act (2007:528),
2. Chapters 2 and 7 and Chapter 8, sections 1, 2 and 4 of Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities where applicable,
3. Articles 2, 3, 26, 44, 45, 58, 72, 73 and 76 in the delegated regulation for MiFID II where applicable,
4. Chapters 1–5a, 8 and 9 of the Swedish UCITS Act (2004:46), where applicable,
5. Chapter 29 of Finansinspektionen's regulations (FFFS 2013:9) regarding investment funds and Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website, where applicable.

6. Chapters 1, 3–10 and 12 of the Alternative Investment Fund Managers Act (2013:561) where applicable, and

7. Chapter 13, sections 1–10 and Chapter 14, sections 1–4 of Finansinspektionen's regulations (FFFS 2013:10) regarding alternative investment fund managers, where applicable.

Section 10 Those mediating fund units shall, in addition to the stipulations of section 9, possess knowledge of:

1. Chapter 9, section 8 of the Securities Market Act (2007:528),

2. Articles 55–57 the delegated regulation for MiFID II,

3. the difference between mediating fund units and mediating unit-linked insurance,

4. the difference between mediating fund units and the marketing of fund units and other financial instruments, and

5. the difference between mediating fund units and investment advice on fund units and other financial instruments.

Section 11 Those providing investment advice on fund units shall, in addition to the stipulations in section 9, possess knowledge of:

1. Articles 54 and 55 of the delegated regulation for MiFID II,

2. the difference between investment advice on fund units and investment advice on other financial instruments,

3. the difference between investment advice on fund units and the marketing of fund units and other financial instruments, and

4. the difference between investment advice on fund units and mediating fund units.

Those providing investment advice on fund units to consumers shall also possess the knowledge as set forth in Chapter 4, section 3 of Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities.

Chapter 2, sections 5 and 6 and Chapter 5, section 1 of the Insurance Mediation Act (2005:405) stipulate that those providing investment advice on fund units to others than consumers shall possess appropriate knowledge of the activity to be conducted.

Section 12 Those mediating insurances, mediating fund units or providing investment advice on fund units to others than consumers shall, when necessary, update their knowledge of the relevant areas set forth in sections 3–11.

For those providing investment advice on fund units to consumers, the provisions set forth in Chapter 4, section 5 of Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities apply.

General guidelines

Those mediating insurances, mediating fund units or providing investment advice on fund units should update their knowledge, for instance in the event of substantial changes to the regulations which are relevant to their operations and with consideration for product development of their area of activity.

Section 13 Those mediating insurances shall have practical experience that is adapted to the activity to be conducted and the insurances to be mediated. Those who only mediate insurances that supplement a product or service on an ancillary basis to their primary occupational activities need not possess any practical experience.

For those providing investment advice on fund units to consumers, the provisions set forth in Chapter 4, section 6 of Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities apply.

General guidelines

The requirement for practical experience to be adapted to the insurances to be mediated means that consideration should be given to whether it refers to simple, standardised products or more complex products and whether it applies to life insurances or non-life insurances. It should also be considered whether the mediation shall refer to only one or several insurance classes or groups of insurance classes.

The requirement for practical experience to be adapted to the activity to be conducted means that consideration should be given not only to the insurances to be mediated, but also the customer categories to which the mediation shall pertain.

Those mediating insurances as their primary occupational activities should, as a rule, have worked, over a total period of time of at least two years during the past five years, with such work tasks under the qualified supervision of an insurance intermediary or with equivalent work tasks for an insurance undertaking.

Section 14 Those mediating insurances, mediating fund units or providing investment advice on fund units shall have taken a test that shows that he or she has the knowledge required in accordance with sections 2–12. The test shall have been provided or approved by someone with knowledge of the subject areas to which the test refers and by someone knowledgeable about how the test is devised in accordance with accepted testing development methods. Furthermore, the test shall be conducted in a secure and reliable manner that guarantees the tested person's skills.

For those providing investment advice on fund units to consumers, the provisions set forth in Chapter 4, section 4 of Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities apply.

As for insurance mediation, Finansinspektionen, after application by the insurance intermediary, may decide on waivers from the proficiency test requirement, if there are special grounds and the knowledge can be proven in another manner.

General guidelines

The test should be devised in a way that ensures its validity, that is to say that the test measures what it is intended to measure, and its reliability, that is to say that the test is reliable and is free from random influence.

Section 15 Those mediating insurances, mediating fund units or providing investment advice on fund units to consumers shall, in the verification as set forth in Chapters 10 and 11, and in Finansinspektionen's supervision, be able to present evidence of the content, scope and result of the test as set forth in section 14, first paragraph and Chapter 4, section 4 of Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities.

Chapter 3

Section 4 The management of a legal person which shall mediate fund units shall include a person who is familiar with the content of

1. Chapter 8, sections 9–11, 16 and 22 and Chapter 9, sections 1, 3, 4–9, 14 and 23–27 of the Securities Market Act (2007:528),
2. Chapters 2, 3 and 7 and Chapter 8, sections 1, 2 and 4 of Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities where applicable,
3. Articles 2, 3, 21–26, 28–37, 44, 45, 58, 72, 73 and 76 in the delegated regulation for MiFID II where applicable,
4. Articles 55–57 and 65 of the delegated regulation for MiFID II,
5. Chapters 1–5a, 8 and 9 of the Swedish UCITS Act (2004:46), where applicable,
6. 5. Chapter 29 of Finansinspektionen's regulations (FFFS 2013:9) regarding investment funds and Commission Regulation (EU) No. 583/2010, where applicable.
7. Chapters 1, 3–10 and 12 of the Alternative Investment Fund Managers Act (2013:561) where applicable, and
8. Chapter 13, sections 1–10 and Chapter 14, sections 1–4 of Finansinspektionen's regulations (FFFS 2013:10) regarding alternative investment fund managers.

Section 5 The management of a legal person that shall mediate investment advice on fund units shall include someone who is familiar with the content of

1. The provisions of section 4 points 1–3, 5 and 6 with the exception of Chapter 9, section 8 of the Securities Market Act (2007:528),
2. Chapter 4 of Finansinspektionen's regulations (FFFS 2017:2) regarding investment services and activities, and
3. Articles 54 and 55 of the delegated regulation for MiFID II.

These regulations shall enter into force on 1 August 2017 in respect of Chapter 2, section 7 and on 3 January 2018 for the remaining regulations.

ERIK THEDÉEN

Claudia Bäckström