

Finansinspektionen's Regulatory Code

Publisher: Finansinspektionen, Sweden, www.fi.se
ISSN 1102-7460



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Regulations

amending Finansinspektionen's regulations (FFFS 2011:1) regarding remuneration systems in credit institutions, investment firms and fund management companies licensed to conduct discretionary portfolio management;

FFFS 2014:22

Published on
9 July 2014

decided on 26 June 2014.

Finansinspektionen prescribes¹ pursuant to Chapter 5, section 2, point 5 of the Banking and Financing Business Ordinance (2004:329), Chapter 6, section 1, point 10 of the Securities Market Ordinance (2007:572), and section 18, point 10 of the Swedish UCITS Funds Ordinance (2013:588) with regard to Finansinspektionen's regulations (FFFS 2011:1) regarding remuneration systems in credit institutions, investment firms and fund management companies licensed to conduct discretionary portfolio management

in part that Chapter 1, sections 2–4, Chapter 2, sections 3 and 7, Chapter 3, section 3, Chapter 4, sections 4, 6, 7 and 9 and the heading immediately preceding Chapter 4, section 9 shall have the following wording,

in part that three new sections, Chapter 2, sections 2 a, 10 and 11, shall be inserted and new headings immediately preceding Chapter 2, sections 10 and 11 shall have the following wording:

Chapter 1

Section 2 These regulations apply to

1. banking companies,
2. savings banks,
3. members' banks,
4. credit market companies,
5. credit market associations,
6. investment firms, and
7. fund management companies licensed to conduct discretionary portfolio management in accordance with Chapter 1, section 4 of the Investment Funds Act (2004:46).

Section 3 These regulations shall, in accordance with what is set forth in Chapter 3, section 4 of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968), be applied at group or subgroup level.

¹ Cf. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338, Celex 32013L0036).

Section 4 In these regulations, terms and expressions shall have the following meaning:

1. *Employees whose work duties have a material impact on the undertaking's risk profile:* Employees that the undertaking has identified in accordance with Chapter 2, section 3 or in accordance with Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile.

2. *Discretionary pension benefit:* A pension benefit that an undertaking grants to an employee on an individual basis as part of that employee's variable remuneration package. This does not include accrued benefits earned by the employee under the terms of the undertaking's pension scheme.

3. *Remuneration:* All remuneration and benefits issued to an employee (e.g. cash salary and other cash remuneration, remuneration in the form of shares or share-linked instruments, pension provisions, severance payments, company cars).

4. *Remuneration policy:* The grounds and principles for how remuneration shall be determined, applied and monitored, as well as for how the undertaking defines employees whose work duties have a material impact on the undertaking's risk profile.

5. *Capital Requirements Regulation:* Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

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

7. *Variable remuneration:* Remuneration, the amount or size of which is not predetermined. Variable remuneration does not include commission-based salary not linked to future risk assumptions that may alter the undertaking's profit and loss statement or balance sheet.

8. *Senior management:* The managing director, the deputy managing director and other members of the management group or a similar body that report directly to the board of directors or the managing director.

Chapter 2

Section 2 a The remuneration policy shall contain criteria for determining fixed remuneration, and criteria for determining variable remuneration. In the remuneration policy, these criteria shall be clearly differentiated.

Section 3 An undertaking shall annually conduct an analysis with the purpose of identifying employees whose work duties have a material impact on the undertaking's risk profile. In the analysis, the undertaking shall take into account all risks to which the undertaking is or may become exposed, including the risks associated with the undertaking's remuneration policy and remuneration system. The analysis shall be documented.

Section 7 An undertaking may not grant guaranteed variable remuneration at any other time than in conjunction with the hiring of new staff and if there are special grounds for so doing. The undertaking shall limit such remuneration to the first year of employment.

Redemption of previous employment contracts

Section 10 An undertaking shall ensure that remuneration packages used for the purpose of replacing or redeeming previous employment contracts agree with the undertaking's remuneration policy and that they are consistent with the provisions of Chapter 4.

Disclosure

Section 11 An undertaking shall on its website explain how it meets the requirements regarding remuneration policy and remuneration systems imposed on the undertaking in these regulations.

If the undertaking does not have a website, it shall be able to publicly provide the information in a different manner.

Chapter 3

Section 3 An undertaking that is significant with respect to size, internal organisation and the nature, scope and complexity of its activities shall have a remuneration committee which shall conduct an independent assessment of the undertaking's remuneration policy and remuneration systems. In cases where there is more than one significant undertaking in a consolidated situation in accordance with Article 18 of the Capital Requirements Regulation, a joint remuneration committee may be appointed for all undertakings in the group. The members of the remuneration committee shall have sufficient knowledge and experience in issues relating to risk management and remuneration.

The chairman and other members of the remuneration committee shall be members of the undertaking's board of directors and may not be employed by the undertaking.

The second paragraph does not apply to employee representatives appointed in accordance with the Board Representation (Private Sector Employees) Act (1987:1245).

Chapter 4

Section 4 An undertaking shall base variable remuneration to employees whose work duties have a material impact on the undertaking's risk level on both the employee's performance and the overall performance of both the business unit and the undertaking. Both financial and non-financial criteria shall be taken into account in the assessment of the employee's performance.

The financial and non-financial criteria used by the undertaking as a basis for remuneration decisions shall be specified and documented.

Section 6 An undertaking shall ensure that at least 40 per cent of the variable remuneration to employees whose work duties have a material impact on the undertaking's risk profile, whose variable remuneration over a period of one year totals at least SEK 100,000, is deferred over a period of not less than three to five years before it is paid or the right of ownership passes to the employee. The undertaking shall take into account the business cycle, the risks of the business, the employee's responsibility, the employee's tasks and the size of the variable remuneration when determining the share of the variable remuneration that will be deferred and the length of the deferral period.

The undertaking shall defer at least 60 per cent of the variable remuneration for members of senior management and other employees whose work duties have a material impact on the undertaking's risk profile, who receive particularly high amounts of variable remuneration.

An undertaking may pay deferred remuneration once a year evenly distributed over the period of time for which the remuneration was deferred (pro rata). The first payment may be made at the earliest one year after the decision to grant variable remuneration.

Section 7 An undertaking that is significant with respect to size, internal organisation and the nature, scope and complexity of its activities shall ensure that at least 50 per cent of the variable remuneration to an employee who is a member of senior management consists of

- a) shares, participations or other instruments in the undertaking that are linked to the undertaking's shares or participations, or other equivalent instruments for undertakings whose shares or participations are not admitted to trade on a regulated market, or
- b) other instruments in accordance with Articles 52 or 63 of the Capital Requirements Regulation or other instruments in accordance with Commission Delegated Regulation (EU) No 527/2014 of 12 March 2014 supplementing Directive (EU) No 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration.

Where possible, the undertaking shall allow the variable remuneration components within the meaning of the first paragraph to consist of a balance of instruments in a and b.

The first paragraph shall be applied to both the deferred portion of the variable remuneration and the portion not deferred.

Loss of remuneration

Adjustment of variable remuneration

Section 9 An undertaking shall ensure that variable remuneration to employees whose work duties have a material impact on the undertaking's risk profile, including deferred remuneration, is only paid or passed to the employee to an extent justifiable by the undertaking's financial situation and the performance of the undertaking, the business unit in question and the employee. The variable remuneration shall also be able to be cancelled in full for the same reasons. The undertaking shall in its remuneration policy specify the criteria for the application of this section.

These regulations shall enter into force on 2 August 2014.

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