



FINANSTILSYNET

THE FINANCIAL SUPERVISORY
AUTHORITY OF NORWAY

Circular

Transfer of inspection and approval of prospectuses to Finanstilsynet

CIRCULAR:

12/2010

DATE:

16.04.2010

RECIPIENTS:

Investment firms

Issuers of transferable securities and
issuers listed on Oslo Børs or Oslo Axess
Competent authorities in EU/EEA countries
responsible for the approval of prospectuses

FINANSTILSYNET

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1. Introduction

The Ministry of Finance has decided that the operative inspection and approval of prospectuses for transferable securities, which is currently performed by Oslo Børs (the Oslo Stock Exchange), will be transferred to Finanstilsynet with effect from 1 May 2010 (the transfer date). This is an element of the adaptations to the common European regulations in the securities area, which are preconditioned on the inspection and approval of prospectuses having to be performed by bodies that are competent authorities of the member states by 2011 at the latest.

Finanstilsynet's goal is for the inspection and approval to continue under the same principles, procedures, etc. that Oslo Børs has been using. The implications of this include that the interpretation of relevant legal sources, information, etc. that have comprised the basis of the inspection and approval of prospectuses at Oslo Børs, will as a general rule be continued and applied in the same manner after Finanstilsynet takes over prospectus inspection and approval. All EEA prospectuses and individual other documents related to such, cf. section 3 below, must from 1 May 2010 be sent to the e-mail address prospekter@finansstilsynet.no. Inspection and approval processes that are on-going under the auspices of Oslo Børs as at the transfer date will automatically be continued by Finanstilsynet. This means that prospectuses that have been sent to Oslo Børs prior to 1 May 2010, will be automatically transferred and their processing continued at Finanstilsynet after this date. The deadlines concerned for the inspection and approval will not be interrupted, but will be based upon the relevant date of submission to Oslo Børs prior to 1 May 2010. Refer also to Oslo Børs's circular No. 4/2010.

2. Summary

- The operative inspection and approval of EEA prospectuses, which until now has been conducted by Oslo Børs, will be transferred as at 1 May 2010 to Finanstilsynet.
- Other documents that will also be inspected and approved by Finanstilsynet after 1 May 2010 include: supplement prospectuses, documents containing equivalent information, and summaries with respect to section 7-2 of the Norwegian Securities Trading Regulations. Cross-border use of EEA prospectuses in to and out of Norway shall now be co-ordinated by Finanstilsynet.

- Beginning 1 May 2010, the above-mentioned documents must be submitted to the e-mail address: prospekter@finanstilsynet.no.
- Annual overviews of publicly disclosed information shall also after 1 May 2010 only be submitted to Oslo Børs and may as before be published through Oslo Børs' established functionality.
- Registration as a professional investor shall as at 1 May 2010 occur with Finanstilsynet.
- Approved prospectuses will also be able to be published at Oslo Børs's website after 1 May 2010.
- A list of prospectuses that have been approved by Finanstilsynet in the latest 12 months after 1 May 2010 will be published at Finanstilsynet's website. Prospectuses that have been approved in the 12 months preceding 1 May 2010 will appear on a list at Oslo Børs's website.
- For an overview of checklists, legal sources, approved prospectuses and other relevant documentation, refer to Finanstilsynet's website, www.finanstilsynet.no.

3. Documents that are encompassed by the transfer of the inspection and approval of prospectuses

Firstly, the transfer encompasses **EEA prospectuses** that are prepared in connection with offers of subscription or purchase, or admission to trading of transferable securities, cf. section 7-7, first subsection, of the Norwegian Securities Trading Act. EEA prospectuses that will have cross-border utilisations are also encompassed by the transfer and shall be co-ordinated by Finanstilsynet.

Furthermore, **supplement prospectuses** with respect to section 7-15 of the Securities Trading Act are encompassed by the transfer.

Documents containing equivalent information, prepared on the basis of the exception provisions in section 7-4, No. 4/6, and section 7-5, No. 5/7, of the Securities Trading Act, must also be inspected by Finanstilsynet after the transfer date. With respect to the tangible content requirements for documents containing equivalent information, after 1 May 2010 these will also correspond to the content requirements that Oslo Børs has established as being sufficient and which correspond in general to the stock exchange's content requirements for informational documents for larger transactions. The tangible content requirements for documents containing equivalent information will appear on a checklist published at Finanstilsynet's website. In general, the content requirements for documents containing equivalent information will correspond to the content requirements for informational documents that follow from section 3.5 of Oslo Børs's set of rules on "Continuing Obligations of stock exchange listed companies".

All documents prepared on the basis of the above-mentioned exception provisions in the Securities Trading Act must be submitted to Finanstilsynet for inspection as regards the

requisite information in the document. Documents that shall be used both as informational documents with respect to section 3.5 of Oslo Børs's set of rules on "Continuing Obligations of stock exchange listed companies" and as documents containing equivalent information with respect to the exception provisions in section 7-4, No. 4/6, or section 7-5, No. 5/7, of the Securities Trading Act must be submitted to Finanstilsynet for inspection. Finanstilsynet will process the matter at a pace sufficient for the document to be able to be used as an informational document with respect to the stock exchange.

"Pure" offer documents prepared pursuant to chapter 6 of the Securities Trading Act in connection with mandatory or voluntary bids in connection with takeovers shall continue to be inspected and approved by Oslo Børs. After 1 May 2010, such must be sent to Oslo Børs's e-mail address dokumenter@oslobors.no. The same applies for **"pure" informational documents** prepared pursuant to Oslo Børs's set of rules on "Continuing Obligations of stock exchange listed companies", where these are not to be used as documents containing equivalent information.

With respect to documents that are prepared as **combined offer documents** pursuant to chapter 6 of the Securities Trading Act and **documents containing equivalent information** pursuant to chapter 7, that part of the document that concerns the requirements for offer documents shall be inspected by Oslo Børs, whereas the requirements that concern documents containing equivalent information shall be inspected by Finanstilsynet. On this basis, it is recommended that such combined documents be prepared in a manner enabling both Finanstilsynet and Oslo Børs to carry out the imposed review in as expedient a manner as possible. Such combined documents must be submitted simultaneously both to Finanstilsynet and Oslo Børs, to the e-mail addresses prospekter@finansstilsynet.no and dokumenter@oslobors.no respectively. The managers/advisers will receive separate replies for the two parts from Finanstilsynet and Oslo Børs.

The transfer of the inspection and approval of prospectuses also encompasses the review of **summaries** that are prepared in connection with transferable securities that have been admitted to trading on a regulated market for more than 18 months being admitted to trading on another regulated market, cf. section 7-2, letter (e), of the Norwegian Securities Trading Regulations.

Registration Prospectuses (national prospectuses) prepared on the basis of section 7-10 in the Securities Trading Act are not encompassed by the change, and must, as previously, only be sent to the Register of Business Enterprises for registration.

4. Submission of annual overview of publicly disclosed information

According to section 5-11 subsection (1) of the Securities Trading Act, issuers must prepare at least once annually an overview of all information they have publicly disclosed based on legal obligations during the past 12 months. The overview must be submitted to the prospectus authority and be published with respect to the rules for the publishing of prospectuses. It has been proposed that this provision be abrogated in connection with the revising of the Prospectus Directive.

Oslo Børs has already established a system for the preparation, submission and public disclosure of annual overviews, cf. Oslo Børs's circular No. 5/2007. In anticipation of the obligation to prepare such an overview being abrogated, Finanstilsynet is taking the underlying basis to be that submission of annual overviews to Oslo Børs fulfils the requirements in the Securities Trading Act with respect to the filing with the competent authority responsible for the approval of prospectuses. The issuers thus do not need to file overviews with Finanstilsynet. Publication of the annual overview may be done according to established practice by using the Oslo Børs' functionality for this, or alternatively by publishing the overview according to the regulations on publication of prospectuses. Imposition of any possible sanctions due to breaches of the obligation to submit such to Oslo Børs will however be performed by Finanstilsynet, and not Oslo Børs.

The above applies for issuers with Norway as their home state. Issuers with Norway as their host state shall as previously send annual overviews to the prospectus authority in their respective home states.

5. Publication of prospectuses

Pursuant to section 7-19, first subsection, of the Securities Trading Act, prospectuses must at the latest be published at the start of the period of the offer or upon admission to trading. The alternative manners of publishing a prospectus appear in the second subsection of said provision. After 1 May, an approved prospectus must also be published with respect to the rules for the publishing of prospectuses pursuant to section 7-19, second subsection, of the Securities Trading Act. Finanstilsynet will until further notice not be offering publication of prospectuses at its own website, cf. the last alternative in the referenced provision. Approved prospectuses will however also be able to be published through Oslo Børs's functionality after 1 May, cf. the third alternative.

6. Registration as a professional investor

In section 7-4, No. 8, of the Securities Trading Act, an exception is made from the prospectus obligation pursuant to section 7-2 for offers concerning subscription or purchase of transferable securities that (in full or in part) are directed towards professional investors. Pursuant to section 7-1, second and third subsections, of the Securities Trading Act, legal entities and physical persons fulfilling the conditions specified in the provision may request to be registered as professional investors with the prospectus authority. Finanstilsynet will publish a form at its website with instructions for the procedure for registering as a professional investor. In addition, an overview will be published of all registered professional investors, which will be updated on an on-going basis.

7. Effectuation of the inspection and approval of prospectuses during the transitional period

From the stroke of midnight ushering in 1 May 2010, new drafts of prospectuses must be submitted to Finanstilsynet for inspection and approval.

Prior to this point in time, the first draft of prospectuses must be submitted to the relevant e-mail addresses at Oslo Børs. Inspection and approval processes that have been commenced prior to the transfer date will automatically be taken over and continued by Finanstilsynet. Since four officers in charge from Oslo Børs will be transferring along with the work to Finanstilsynet, an attempt will be made to also retain the same officer in charge for currently active inspection and approval processes after the transfer date.

From 1 May 2010, Finanstilsynet will publish relevant legal sources, checklists, etc. at its website on an on-going basis.

Finanstilsynet will also publish on an on-going basis at its website a list of prospectuses that have been approved by Finanstilsynet in the past 12 months, with a reference to where the prospectuses have been made available to the public and where they may be obtained, cf. section 7-11, second subsection, of the Securities Trading Act. In general, a list of prospectuses that have been approved by Oslo Børs during the course of the 12 months preceding 1 May 2010 will be available at Oslo Børs's website until further notice.

8. Continuation of the Oslo Børs's practices, interpretations, etc.

The operative inspection and approval of prospectuses that will be conducted by Finanstilsynet after 1 May 2010 will both in substance as well as in its process-related aspects represent a continuation of the inspection and approval of prospectuses that Oslo Børs has been conducting since 1 January 2006. This applies in relation to content requirements, applicable deadlines and procedures for inspecting and approving submitted prospectuses, case administration procedures, etc.

Oslo Børs's circulars No. 4/2004, 9/2005, 3/2006 and 2/2009 address the interpretation of the rules for prospectuses, etc. It follows however from Oslo Børs's circular No. 7/2008 that significant parts of a number of the circulars have been changed or abrogated. Finanstilsynet intends to continue the stock exchange's practices, interpretations, etc. connected with the parts of said Oslo Børs's circulars that continue to apply and be relevant in its effectuation of the inspection and approval of prospectuses after 1 May.

Finanstilsynet aims to prepare a supplementary and updated circular in the area of prospectuses during the course of 2010/2011. In addition, new interpretations, statements

from CESR (the Committee of European Securities Regulators), etc. will also continue to be published at Finanstilsynet's website on an on-going basis.

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