

Finanstilsynet

Norway

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Regulations to the Securities Trading Act (Securities Trading Regulations)

Made by the Ministry of Finance on 29 June 2007 pursuant to Act of 7 December 1956 No. 1 on the supervision of credit institutions, insurance companies and securities trading, etc. (Financial Supervision Act) section 4; Act of 12 June 1981 No. 52 on securities funds section 2-1; Act of 29 June 2007 No. 74 on regulated markets (Stock Exchange Act) section 24 and Act of 29 June 2007 No. 75 on securities trading (Securities Trading Act) section 1-3, section 1-4, section 2-2, section 3-2, section 3-8, section 3-10, section 3-11, section 4-2, section 4-3, section 5-4, section 5-5, section 5-6, section 5-7, section 5-12, section 6-1 fourth subsection, section 6-10, section 6-23 subsection (2), section 7-4, section 7-5, section 7-8, section 7-11, section 7-12, section 7-13, section 7-14, section 9-10, section 9-11, section 9-12, section 9-13, section 10-10, section 10-11, section 10-12, section 10-13, section 10-14, section 10-17, section 10-18, section 10-19, section 10-20, section 11-3, section 11-4, section 15-1, section 15-2, section 15-3, section 15-8, section 16-1 and section 17-1, cf. EEA Agreement Annex IX No. 29a (Directive 2003/6/EC), No. 29ab (Directive 2003/124/EC), No. 29ac (Directive 2003/125/EC), No. 29b (Directive 2003/71/EC), No. 29ba (Regulation (EC) No. 809/2004 amended by Regulation (EC) No. 1787/2006 and Regulations No. 211/2007), No. 29f (Directive 2004/72/EC), No. 29g (Directive 2004/109/EC), No. 30c (Directive 97/9/EC), No. 30ca (Directive 2004/39/EC), No. 30cab (Directive 2006/73/EC), No. 30cac (Regulation (EC) No. 1287/2006), and Annex XXII No. 10d (Directive 2004/25/EC).

PART 1. SCOPE AND DEFINITIONS

Chapter 1. Scope

Section 1-1. *Area of application*

These regulations provide supplementary provisions to Act of 29 June 2007 No. 75 on securities trading.

Section 1-2. *Application of the Securities Trading Act and Securities Trading Regulations to management companies for securities funds*

For management companies for securities funds with a licence to provide active portfolio management and investment advice, cf. Act of 12 June 1981 No. 52 on securities funds section 2-1, subsections (2) and (4), the Securities Trading Act section 9-11 to section 9-18, section 9-20, section 9-21, section 9-22, subsection (1), section 10-2, subsection (3), section 10-3, section 10-9, section 10-11, section 10-12, section 10-13 and section 10-16 and regulations issued pursuant to these provisions shall apply insofar as appropriate.

Section 1-3. *Application of the Securities Trading Act to investment firms with a restricted range of services*

(1) Investment firms that only provide investment services as mentioned in the Securities Trading Act section 2-1, subsection (1) nos. 1 and 5 are excepted from the Securities Trading Act section 10-17 and the present regulations section 10-31 to section 10-35.

(2) Investment firms that do not hold client funds and that solely provide investment advice in connection with the acquisition of businesses, business strategies and the like, are exempted from the following provisions of the Securities Trading Act and regulations

issued pursuant thereto: section 8-4, section 9-14, section 9-15, section 9-16, section 9-20, section 10-2, subsection (3) nos. 1 and 2 and section 10-3.

(3) Investment firms as mentioned in subsection (2) shall at the point in time mentioned in section 10-10 issue a clear declaration to potential clients that the firm is not subject to the general rules for investment firms. Such firms cannot provide services in another EEA state under the rules of the Securities Trading Act section 9-23.

Section 1-4. *Application of the Securities Trading Act to credit institutions*

(1) Investment firms that are credit institutions that only provide investment services as mentioned in the Securities Trading Act section 2-1, subsection (1) no. 1 and no. 5 are excepted from the Securities Trading Act section 10-17 and these regulations section 10-31 to section 10-35. The same applies to branches of such firms when the branch only provides investment services as mentioned in the first sentence.

(2) Investment firms that are credit institutions are excepted from the Securities Trading Act section 9-10, subsections (2), (5) and (7) and these regulations section 9-3 to section 9-6.

(3) Investment firms that are banks and that only provide investment services as mentioned in the Securities Trading Act section 2-1, subsection (1) no. 1 and no. 5, are excepted from the Securities Trading Act section 9-12 and regulations made pursuant to this provision if the bank:

- a) is a member of the Norwegian Banks' Guarantee Fund, and
- b) does not handle clients' financial instruments or assets beyond transmitting settlements.

Chapter 2. Definitions

Section 2-1. *Definition of commodity derivatives, etc.*

(1) The term 'commodity derivatives' as mentioned in the Securities Trading Act section 2-2, subsection (5) no. 2 means:

- (a) Options, futures, swaps, forward rate agreements and all other derivative contracts with commodities as the underlying that are either settled financially or may be settled financially if one or more of the parties so desires.
- (b) Options, futures, swaps and all other derivative contracts with commodities as the underlying that may be settled physically, provided they are traded on a regulated market or a multilateral trading facility.
- (c) Options, futures, swaps and all other derivative contracts with commodities as the underlying which have the characteristics of other financial derivatives and which may be settled physically and are not for commercial purposes, cf. Regulation (EC) No. 1287/2006 Article 38 (4). In the assessment of whether the contracts have the characteristics of other financial derivatives, emphasis shall *inter alia* be placed on whether they are settled and cleared by recognised clearing houses or are encompassed by arrangements for the payment or provision of margin, cf. Regulation

(EC) No. 1287/2006 Article 38 (1).

(2) The term ‘commodities’ means assets as mentioned in Regulation (EC) No. 1287/2006 Article 2 (1).

(3) The term ‘other instruments’ in the Securities Trading Act section 2-2, subsection (5) no. 5 means:

- (a) Options, futures, swaps, forward rate agreements and all other derivative contracts with climate variations, freight rates, emission permits, inflation rates or other official economic statistics as the underlying that either shall be settled financially or may be settled financially if one or more of the parties so desire.
- (b) All other derivative contracts with assets, rights, obligations, indexes or measures as the underlying that have the characteristics of other financial derivatives. In the assessment of whether the contracts have the characteristics of other financial derivatives, emphasis shall *inter alia* be placed on whether the contracts are traded on a regulated market or on a multilateral trading facility, whether they are settled and cleared by recognised clearing houses or are encompassed by arrangements for the payment or provision of margin, cf. Regulation (EC) No. 1287/2006 Article 38 (3) and 38 (4).

Part 2. General provisions

Chapter 3. General rules of conduct

I. MARKET MANIPULATION

Section 3-1. *Scope of the provisions of this subchapter*

(1) This subchapter lays down further rules concerning market manipulation and the reporting of suspicious transactions.

(2) Section 3-2 applies to financial instruments which are traded, or for which admission to trading has been requested, on a regulated market in Norway. Section 3-2 applies correspondingly to actions undertaken in Norway in connection with financial instruments which are traded, or for which admission to trading has been requested, on a regulated market in another EEA state.

(3) Section 3-4 applies to investment firms and credit institutions, including the employees of such undertakings.

Section 3-2. *Market manipulation*

(1) In the assessment of whether orders to trade given or transactions undertaken constitute market manipulation under the Securities Trading Act section 3-8, subsection (2) no. 1, the following factors, among others, shall be taken into account:

- (a) whether or to what extent orders to trade given or transactions undertaken represent a significant proportion of the daily trading volume in the relevant financial instrument on the regulated market concerned, in particular when these orders or transactions

lead to a significant change in the price of the financial instrument,

- (b) whether or to what extent orders to trade given or transactions undertaken by individuals with a significant buying or selling position in a financial instrument lead to a significant change in the price of the financial instrument or related derivatives or underlying assets admitted to trading on a regulated market
- (c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument admitted to trading on a regulated market,
- (d) whether or to what extent orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily trading volume in the relevant financial instrument on the regulated market concerned, and such orders or transactions may be associated with significant changes in the price of a financial instrument admitted to trading on a regulated market,
- (e) whether or to what extent orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed,
- (f) whether or to what extent orders to trade given change the best bid or offer prices in a financial instrument admitted to trading on a regulated market, or more generally change the order book available to market participants, and the orders are removed before they are executed, and
- (g) whether or to what extent orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices or valuations are calculated and lead to price changes which have an effect on such prices or valuations.

(2) In the assessment of whether trading orders or transactions constitute market manipulation under the Securities Trading Act section 3-8, subsection (2) no. 2, the following factors, among others, must be taken into account:

- (a) the extent to which a person or related party of such person have disseminated incorrect or misleading information concerning a financial instrument before or after the person concerned has given orders to trade or executed transactions in the financial instrument,
- (b) the extent to which a person or related party of such person have prepared or distributed an investment recommendation concerning a financial instrument before or after the person concerned has given orders to trade or executed transactions in the financial instrument,
- (c) the investment recommendation is erroneous, biased or demonstrably influenced by material interests.

Section 3-3. *Accepted market practices*

In the assessment of what shall be regarded as accepted market practices, Finanstilsynet shall, among other things, take the following factors into account:

- (a) the level of transparency of the relevant market practice to the whole market,

- (b) the need to safeguard the operation of the market, including well functioning market forces and the proper interplay of the forces of supply and demand,
- (c) the degree to which the relevant market practice has an impact on market liquidity and efficiency,
- (d) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice,
- (e) the risk inherent in the relevant practice for the integrity of directly or indirectly related markets in the EEA area,
- (f) the outcome of any investigation of the relevant market practice by competent authorities in the EEA area, in particular whether the relevant market practice breaches rules or regulations designed to prevent market abuse or codes of conduct, and
- (g) the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instruments traded and the types of actors participating in the market.

Section 3-4. *Requirements for content of notification pursuant to the Securities Trading Act section 3-11*

- (1) Notification pursuant to the Securities Trading Act section 3-11 shall contain:
 - (a) a description of the transaction, including the type of order and type of trade,
 - (b) information about the reasons why the party subject to the reporting obligation suspects that the transaction may constitute insider trading or market manipulation,
 - (c) information on the identity of the person on behalf of whom the transaction was carried out and of any other parties to the transaction,
 - (d) information on the capacity in which the party subject to the reporting obligation operates (for own account or on behalf of a third party), and
 - (e) any other information which may be relevant in reviewing the transaction to which the suspicion of insider trading or market manipulation relates.
- (2) If all the information mentioned in subsection (1) is not available at the time of notification, the notification shall include at least the reasons why the notifying person suspects that the transaction may constitute insider trading or market manipulation. All remaining information mentioned in subsection (1) shall be provided to Finanstilsynet as soon as it becomes available.
- (3) Notification pursuant to the Securities Trading Act section 3-11 may be given to Finanstilsynet by post, telefax, telephone or by such other means as Finanstilsynet determines. Finanstilsynet may require that information provided by telephone be followed up with written notification.

II. INVESTMENT RECOMMENDATIONS

Section 3-5. *Scope of the provisions of this subchapter*

(1) The provisions of this subchapter apply to any person who on a professional basis prepares or transmits investment recommendations relating to financial instruments or the issuers of such which are intended for a distribution channel or the general public. For investment firms that prepare investment recommendations the rules of section 9-23 to section 9-28 shall also apply.

(2) The rules of section 3-9 subsections (1) and (2) and section 3-11 subsections (1) and (2) apply only to investment recommendations that are prepared by individuals whose main business is to prepare such recommendations.

(3) The rules of section 3-9 subsection (3) and section 3-11 subsections (3) and (4) apply only to investment recommendations that are prepared by an investment firm or credit institution.

(4) The provisions of this subchapter do not apply to investment advice as mentioned in the Securities Trading Act section 2-4 unless it is probable that the recommendation will be distributed or published and thereby regarded as an investment recommendation under subsection (1).

(5) The provisions of this subchapter do not apply to the press where the press is subject to satisfactory self-regulation.

Section 3-6. *Definitions of central concepts in this subchapter*

(1) 'Person' means a natural or legal person.

(2) 'Investment recommendation' means an analysis, report, article or other form of written or verbal information that recommends or suggests an investment or investment strategy.

(3) 'Information that recommends or suggests an investment or investment strategy' means:

(a) if the information has been prepared by a person whose main business is the preparation of investment recommendations: information that directly or indirectly expresses a specific investment recommendation concerning one or more financial instruments or issuers of such, for example information giving an opinion as to the present or future value or price of the financial instrument.

(b) if the information was prepared by persons other than those covered by (a): information that directly expresses a specific investment recommendation concerning one or more financial instruments, for example a recommendation to buy, sell or hold a financial instrument.

(4) 'Person whose main business is to prepare investment recommendations' means:

(a) independent analysts

(b) investment firms

- (c) credit institutions
 - (d) any other person whose main business is to prepare investment recommendations, and
 - (e) a natural person who works for a person as mentioned in (a) to (d) in an employment relationship or in another manner.
- (5) 'Issuer' means the issuer of financial instruments to which an investment recommendation relates, directly or indirectly.
- (6) 'Financial instruments' means instruments covered by the Securities Trading Act section 2-2.
- (7) 'Distribution channel' means a channel through which information is, or is likely to become, available to a large number of persons.
- (8) 'Corporate related party' means a legal person covered by the Securities Trading Act section 2-5 nos. 3 to 5.
- (9) 'Investment bank services' means investment services as mentioned in the Securities Trading Act section 2-1 subsection (1) no. 2 and ancillary services as mentioned in the Securities Trading Act section 2-1 subsection (2) nos. 3 and 6.
- (10) 'Person who prepares an investment recommendation' means the natural person(s) who prepares the recommendation, and the legal person(s) responsible for its production.
- (11) 'Person who transmits a recommendation' means the natural person(s) and legal person(s) who on their own responsibility transmit a recommendation prepared by a third party.

Section 3-7. *Information about the person who prepares an investment recommendation*

Whoever prepares an investment recommendation shall ensure that the recommendation discloses clearly and prominently the name and job title of the natural persons(s) who prepared the recommendation, as well as the identity of the legal person(s) responsible for its production.

Section 3-8. *General requirements in relation to investment recommendations*

- (1) Whoever prepares an investment recommendation shall exercise due care to ensure that:
- (a) facts are clearly distinguished from interpretations, estimates, opinions and other non-factual information,
 - (b) all sources are regarded as reliable, and that any doubt about a source's reliability is clearly indicated,
 - (c) all projections, price targets and price estimates are clearly labelled as such and the material assumptions made in producing them are clearly indicated,
 - (d) the recommendation comes across as reasonable and prudent.
- (2) Whoever has prepared an investment recommendation must, upon Finanstilsynet's request, be able to substantiate the recommendation as reasonable and prudent.

Section 3-9. *Additional requirements in relation to investment recommendations prepared by a person whose main business is to prepare such recommendations*

(1) If the person preparing an investment recommendation is a person whose main business is the preparation of such recommendations, that person shall, in addition to complying with the requirements set forth in section 3-8, exercise due care to ensure that the following are clearly described in the investment recommendation:

- (a) all important sources, including the relevant issuer, and whether the investment recommendation has been disclosed to that issuer and whether the recommendation has been amended following this disclosure,
- (b) any basis of evaluation or methodology used to evaluate and price a financial instrument or issuer or to set a price target,
- (c) the meaning of any recommendation made, such as 'buy', 'sell' or 'hold', including the time horizon of the investment to which the recommendation relates,
- (d) any risk associated with the recommendation, including an analysis of the relevant assumptions underlying the recommendation,
- (e) the planned frequency, if any, of planned updates of the recommendation and any major changes in the previously announced guidelines for coverage of the financial instrument or issuer,
- (f) date of the preparation and release of the recommendation, as well as the date and time for any price mentioned of a financial instrument,
- (g) any changes in the investment recommendation in relation to an earlier investment recommendation concerning the same security or issuer that have been prepared during the 12-month period immediately preceding its release, as well as the date of the earlier recommendation.

(2) If the person preparing an investment recommendation is a person whose main business is the preparation of such recommendations, the recommendation shall make clear and prominent reference to any relevant industry standard or other self-regulation.

(3) Investment firms and financial institutions shall, when preparing an investment recommendation, ensure that the supervisory authority responsible for oversight of the undertaking is indicated clearly in the recommendation.

Section 3-10. *General requirements for information concerning conflicts of interest*

(1) Whoever prepares an investment recommendation must clearly disclose in the recommendation all relationships and circumstances that may reasonably be expected to influence the objectivity of the recommendation.

2) Disclosure as provided for in subsection (1) shall invariably be made in cases where:

- (a) the person preparing the investment recommendation has a material owner interest or other financial interest in one or more of the financial instruments to which the recommendation relates,
- (b) a material conflict of interest exists between the person preparing the investment recommendation and the issuer of one or more of the financial instruments to which

the recommendation relates.

(3) If a legal person is responsible for the preparation of an investment recommendation, disclosure as provided for in subsection (1) shall invariably include:

- (a) the nature of interests or conflicts of interest of the legal person and of corporate related parties that may reasonably be expected to be known to the natural persons preparing the recommendation,
- (b) the nature of interests or conflicts of interest of the legal person and of corporate related parties that are known to natural persons who have not participated in the preparation of the investment recommendation, provided that such persons may reasonably be expected to have had access to the recommendation before it was released or became publicly available.

(4) This section involves no obligation to breach information barriers that have been established in order to avoid conflicts of interest between the divisions of an undertaking.

Section 3-11. *Additional requirements for disclosure of conflicts of interest by persons whose main business is to prepare investment recommendations*

(1) If the person preparing an investment recommendation is a person whose main business is to prepare such recommendations, that person shall, in addition to complying with the requirements set forth in section 3-10, ensure that at least the following are clearly described in the investment recommendation:

- (a) shares in the issuer held by the person or by any corporate related party, when such shareholding exceeds 1/20 of the share capital or may reasonably be expected to influence the objectivity of the recommendation,
- (b) shares held by the issuer in the person preparing the investment recommendation or in any corporate related party, when such shareholding exceeds 1/20 of the share capital or may reasonably be expected to influence the objectivity of the recommendation,
- (c) other material financial interests held by the person preparing the investment recommendation or by any corporate related party in relation to the issuer,
- (d) whether the person preparing the recommendation or any corporate related party is a market makers or liquidity provider in the financial instruments of the issuer,
- (e) whether the person preparing the recommendation or any corporate related party has been lead manager or co-lead manager over the past twelve months of any publicly disclosed offer of financial instruments of the issuer,
- (f) whether the person preparing the investment recommendation or any corporate related party has provided investment banking services to the issuer of the relevant financial instruments over the past twelve months, provided that this would not entail the disclosure of confidential business or trade information, and
- (g) whether the person or any corporate related party is party to an agreement with the issuer relating to the production of a recommendation.

(2) In addition to the requirements of subsection (1), information must be disclosed on what organisational and administrative arrangements, including information barriers,

have been introduced to prevent and avoid conflicts of interest. Subsection (1) involves no obligation to breach effective information barriers that have been established in order to avoid conflicts of interest between the divisions of an undertaking.

(3) Investment firms and credit institutions shall when preparing an investment recommendation ensure the disclosure of whether salary, fee or bonus arrangements of the natural and legal persons engaged in preparing the recommendation are tied to investment banking transactions performed by the investment firm, credit institution or corporate related party. Where such persons have received or purchased shares of the issuer prior to a public offering of such shares, this fact, and the price at which the shares were acquired and the date of the acquisition, shall also be disclosed.

(4) Investment firms and credit institutions shall disclose, on a quarterly basis, the proportion of all investment recommendations prepared that are 'buy', 'sell', 'hold' or the equivalent, as well as the proportion of issuers corresponding to each of these categories to which the investment firm or the credit institution has supplied material investment banking services over the previous twelve months.

Section 3-12. *Investment recommendations of restricted scope*

Where fulfilling the requirements of section 3-9 to section 3-11 would be disproportionate in relation to the length of the recommendation distributed, it shall suffice that the recommendation includes a clear and prominent reference to the place where the requisite information can be easily and directly accessed by the public, for example the website of the entity responsible for preparing the recommendation.

Section 3-13. *Non-written investment recommendations*

Where an investment recommendation is given by non-written means, it shall, for the purpose of fulfilling the requirements of section 3-7 to section 3-11, suffice that the recommendation includes a clear and prominent reference to the place where the requisite information can be easily and directly accessed by the public, for example the website of the entity responsible for preparing the recommendation.

Section 3-14. *General requirements in relation to the dissemination of investment recommendations*

(1) Whoever disseminates an investment recommendation through a distribution channel or to the general public shall disclose their name and any job title clearly and prominently in the recommendation.

(2) Whoever disseminates an investment recommendation and makes material changes to the recommendation shall clearly indicate the changes made. If a change as mentioned in the first sentence consists of a change to the direction of the investment recommendation, such as a change of the recommendation to 'buy' into one to 'sell' or to 'hold' or vice versa, section 3-7 to section 3-10 of these regulations apply correspondingly.

(3) A legal person who disseminates an investment recommendation that has been changed in material respects shall have written guidelines to ensure that those receiving the recommendation are directed to where they can have access to the identity of the person who prepared the recommendation, the investment recommendation itself, and

any disclosures of the financial interests and conflicts of interest of the persons who prepared the recommendation, provided that such disclosures are publicly available.

(4) Whoever disseminates a summary of an investment recommendation shall ensure that the summary is clear and not misleading. The summary shall indicate where the recommendation is available, and where disclosures of the financial interests and conflicts of interest of the persons who prepared the recommendation are to be found, provided that such disclosures are not included in the recommendation and are publicly available.

Section 3-15. *Additional requirements for investment firms, credit institutions and persons who work for such undertakings*

In addition to the requirements of section 3-14, investment firms and credit institutions, and natural persons who under contract of employment or otherwise work for such undertakings, shall at least ensure that:

- (a) the name of the relevant supervisory authority appears on the investment recommendation
- (b) the requirements of section 3-11 have been complied with, unless the person who prepared the investment recommendation has already released it through a distribution channel or to the general public
- (c) the requirements of section 3-7 to section 3-10 have been complied with, if the investment recommendation has been changed in material respects.

Chapter 4. Disclosure obligations

Section 4-1. *Requirements in relation to notifications*

(1) Notification as mentioned in the Securities Trading Act Section 4-2 subsection (2) shall indicate:

- (a) the name of the issuer of the shares,
- (b) the date on which the proportion of shares held reached, exceeded or fell below the thresholds set in the Securities Trading Act section 4-2 subsection (2),
- (c) name of the entity subject to the disclosure obligation, including the name of the shareholder,
- (d) the number of shares the notification encompasses,
- (e) the subsequent situation with regard to voting rights, including the percentage of the votes and shares of the company held by the entity concerned,
- (f) what percentage of the votes and shares of the company the entity concerned holds in the form of rights to shares,
- (g) the circumstance that triggered the disclosure obligation and whether such circumstance applied to the entity concerned himself or to any related party as mentioned in the Securities Trading Act section 2-5,
- (h) the chain of controlled undertakings through which the shares or rights are owned,

(i) where the notification concerns rights to shares as mentioned in the Securities Trading Act section 4-2 subsection (5) the notification shall also contain a description of the rights, including information on the date and time that the rights will or can be exercised and the date and time of their expiry.

(2) If the obligation to notify under this section rests with more than one person, a joint notification may be submitted. Submitting a joint notification does not release the individual person from his responsibilities under the Securities Trading Act section 4-2 and this section.

(3) The issuance or withdrawal of proxies may be disclosed by notification provided the proxy only applies to the next general meeting and this is specified in the notification.

Section 4-2. *Voting rights attached to shares of foreign issuers having Norway as their home state*

Equivalent to shares and rights to shares as mentioned in the Securities Trading Act section 4-2 subsection (2) are - in addition to voting rights attached to shares as mentioned in the Securities Trading Act section 4-2 subsection (3) - voting rights that may be exercised pursuant to other forms of transfers of voting rights pertaining to shares of foreign issuers having Norway as their home state.

Section 4-3. *Other circumstances*

Under the Securities Trading Act section 4-2 subsection (2) 'other circumstances' comprise

- (a) entry into or termination of an agreement concerning financial collateral,
- (b) issuance or withdrawal of a proxy,
- (c) entry into an agreement pursuant to the Public Limited Companies Act section 4-2 subsection (2),
- (d) establishment or dissolution of a group relationship pursuant to the Securities Trading Act section 2-5 no. 3,
- (e) entry into or cessation of binding cooperation pursuant to the Securities Trading Act section 2-5 no. 5,
- (f) corporate actions that alter the distribution of voting rights,
- (g) entry into or cessation of an agreement concerning transfer of voting rights as mentioned in section 4-2.

Section 4-4. *Exceptions in respect of holdings acquired for certain purposes*

- (1) The Securities Trading Act section 4-2 does not apply to:
 - (a) shares and rights to shares acquired solely to secure settlement within a period of three trading days after execution of the trade concerned, or
 - (b) shares or rights to shares acquired or sold by a market maker where the shares or the rights reach, exceed or fall below the 5% threshold, provided the market maker does not influence the management of the company or exert pressure on the company to get it to acquire the shares or the rights or to support the price.

(2) Shares or rights to shares in the trading portfolio of an investment firm or credit institution shall not be included in the institution's holdings if the institution does not exercise the voting rights or otherwise use the voting rights to influence the management of the company, and the shares or the rights to shares in the trading portfolio do not individually exceed the 5% threshold.

(3) A market maker who trades shares or rights to shares of an issuer having Norway as its home state shall, without undue delay, notify Finanstilsynet if the party concerned wishes to make use of the exception in subsection (1)(b). The market maker shall indicate the issuer to which this applies. Corresponding notification shall be given upon cessation of the market making activity.

Section 4-5. *Exceptions from the consolidation requirements in respect of foreign management companies and investment firms*

(1) The obligation to consolidate pursuant to the Securities Trading Act section 4-2 subsection (6), cf. section 2-5 no. 3, does not apply to the holdings of investment firms and management companies from an EEA country other than Norway, as dealt with in Directive 2004/109/EC, Article 12(4) first paragraph and Article 12(5) first paragraph, on the terms and conditions set forth in the said Directive, Article 12(4) and (5), and Commission Directive 2007/14/EC, Article 10.

(2) In respect of holdings of investment firms and management companies from countries outside the EEA, the exception in subsection (1) applies correspondingly where the undertaking fulfils the requirements of Directive 2004/109/EC, Article 23(6), and Directive 2007/14/EC, Article 23.

Section 4-6. *Nominee-registered shares of foreign issuers having Norway as their home state*

(1) Anyone who on behalf of others possesses in his own name shares issued by foreign companies having Norway as their home state shall comply with the disclosure provisions in the Securities Trading Act chapter 4 and the present regulations as if the party concerned were the owner of the shares. The first sentence does not alter the shareholder's obligation to disclose his own holdings.

(2) Subsection (1) first and second sentence does not apply to shares held in conjunction with nominee registration provided the nominee is only able to exercise voting rights pursuant to further instructions from the shareholder, and such instructions exist in written or electronic form.

Section 4-7. *Equity capital certificates*

The provisions of the present chapter apply correspondingly to equity capital certificates and rights to equity capital certificates.

Chapter 5. Ongoing and periodic information requirement, publication, etc.

I. ONGOING INFORMATION

Section 5-1. *Delayed publication*

In the event of delayed publication pursuant to the Securities Trading Act section 5-3, the regulated market concerned shall, without making a request, be promptly notified of the situation, including the background for the postponement.

II. PERIODIC INFORMATION

Section 5-2. *Statements by responsible persons*

With regard to Norwegian issuers, the board members and the manager effectively in charge shall issue statements pursuant to the Securities Trading Act section 5-5 subsection (2) no. 3 and section 5-6 subsection (2) no. 3.

Section 5-3. *Information concerning transactions with related parties*

(1) Subsection (2) applies to share issuers who are required to prepare consolidated accounts pursuant to the Accounting Act section 3-9 subsections (1) and (2), in accordance with national legislation implementing Regulation (EC) No. 1606/2002 or corresponding rules in non-EEA countries.

(2) With regard to significant transactions with related parties, as these are defined in international accounting standards in accordance with the Accounting Act section 3-9, the half-yearly report pursuant to the Securities Trading Act Section 5-6 subsection (4) shall at least provide information concerning:

- (a) Related parties' transactions carried out during the first six months of the current financial year that have had a significant impact on the undertaking's financial position or profits/losses during the period
- (b) Any changes in related parties' transactions described in the last annual report that may have a significant impact on the undertaking's financial position or profits/losses during the period.

(3) With regard to share issuers who are not required to prepare consolidated accounts, the half-yearly report shall at least contain information on the transactions referred to in Directive 78/660/EC, Article 43(1)(7b) of related parties as described in the international accounting standard for information concerning related parties.

Section 5-4. *Half-yearly financial reports by issuers who are not required to prepare consolidated accounts*

(1) Half-yearly financial reports by issuers who are not required to prepare consolidated accounts shall fulfil the requirements of this section.

(2) The condensed balance sheet and profit and loss account shall show the individual headings and subtotals included in the latest annual financial report of the issuer. Further

items shall be included if omitting them would lead to the half-yearly financial report not giving a true and fair view of the assets, liabilities, financial position and earnings of the issuer. In addition, comparative information shall be given on the balance sheet and profit and loss account for the same period of the preceding financial year.

(3) The explanatory notes shall contain sufficient information for the half-yearly financial report to be compared with the annual accounts. The notes must also ensure that the user gains a correct understanding of significant quantitative changes and of the trend in the period concerned which are reflected in the balance sheet and the profit and loss account.

(4) The half-yearly financial report shall contain information on operating revenues and operating profit/loss distributed by business area and for the same period of the preceding year. The figures must if necessary be reworked to enable comparison.

(5) The half-yearly financial reports shall contain information that is essential to an assessment of the company's financial situation. The company shall mention all special factors that have had a bearing on its business and profit/loss in the relevant period, including seasonal fluctuations and their effect on the half-yearly profit/loss.

Section 5-5. *Quarterly reports by share issuers*

(1) Issuers of shares shall submit quarterly reports in accordance with requirements for interim reporting in the international accounting standards as implemented in Norwegian law in accordance with the Accounting Act section 3-9 for the four quarters of the financial year. The quarterly report for the second quarter also comprises, with the additional requirements set out in the Securities Trading Act section 5-6, the issuer's half-yearly report.

(2) Issuers who are required to prepare consolidated accounts pursuant to the Accounting Act Section 3-9, subsections (1) and (2), in accordance with national legislation implementing Regulation (EC) No. 1606/2002 or corresponding rules in non-EEA countries, shall use the international accounting standard for interim reporting when preparing quarterly reports.

(3) Where the issuer is not required to prepare consolidated accounts, the quarterly report shall at least contain a condensed balance sheet and condensed profit and loss account with explanatory notes. In preparing the quarterly report, the issuer shall follow the same principles for recognising and measuring as when preparing annual financial reports. Section 5-4 applies correspondingly to quarterly reports for issuers who are not required to prepare consolidated accounts.

(4) If the quarterly financial report has been audited or reviewed by auditors, the audit or review shall be made public together with the quarterly financial report. If the quarterly financial report has not been audited or reviewed by auditors, the issuer must make a clear statement to that effect in the report.

(5) Quarterly reports shall be made public in accordance with the Securities Trading Act section 5-12 as soon as possible after the end of the quarter, but at the latest two months after. The Securities Trading Act section 5-12 subsection (2) applies correspondingly to quarterly reports. The issuer shall ensure that quarterly reports remain available to the public for at least five years.

Section 5-6. *Exceptions in respect of half-yearly reporting*

(1) Issuers founded before 1 July 2005 (the date of entry into force of Directive 2003/71/EC) who only have debt instruments guaranteed by the Norwegian state admitted to trading on a regulated market are excepted from the Securities Trading Act Section 5-6.

(2) Finanstilsynet may make exceptions from the Securities Trading Act Section 5-6 for issuers founded before the date of entry into force of the Prospectus Directive who only have debt instruments guaranteed by a Norwegian municipality or county municipality admitted to trading on a regulated market.

Section 5-7. *Issuers from non-EEA states having Norway as their home state*

(1) Issuers from non-EEA states having Norway as their home state shall be deemed to fulfil the requirements mentioned in the Securities Trading Act:

- (a) Section 5-5 subsection (2) no. 2 where the issuer is required under the law of the third country to fulfil equivalent requirements as set out in Directive 2007/14/EC, Article 13,
- (b) Section 5-6 subsection (4) where the issuer is required under the law of the third country to fulfil equivalent requirements as set out in Commission Directive 2007/14/EC, Article 14,
- (c) Section 5-5 subsection (2) no. 3 and section 5-6 subsection (2) no. 3 where the issuer is required under the law of the third country to fulfil equivalent requirements as set out in Directive 2007/14/EC, Article 15,
- (d) Section 5-5 subsection (3) first and second sentences where the issuer is required under the law of the third country to fulfil equivalent requirements as set out in Directive 2007/14/EC, Article 17,
- (e) Section 5-5 subsection (3) third sentence where the issuer is required under the law of the third country to fulfil equivalent requirements as specified in Directive 2007/14/EC, Article 18.

(2) Issuers from non-EEA states having Norway as their home state shall be deemed to fulfil the requirements mentioned in the Securities Trading Act section 5-8(a) where the issuer is required under the law of the third country to fulfil equivalent requirements as set out in Directive 2004/25/EC, Article 10.

(3) A regulated market may except issuers from non-EEA states having Norway as their home state from the obligation under the Accounting Act section 3-3b to provide an account of their policies and practice for corporate governance in cases where the issuer is subject to an equivalent requirement under the law of its home state or under the listing requirements of an authorised market place outside the EEA on which the issuer's securities are also quoted. The management report shall in such case state where the account is publicly available. A foreign requirement shall in no case be deemed equal to the Accounting Act section 3-3b if it does not include a consistency check corresponding to that provided for by the Auditors Act section 5-1 first paragraph.

Section 5-8. *Equity capital certificates*

The provisions of this chapter apply correspondingly to equity capital certificates.

Section 5-9. *Requirements as to public disclosure of information under the Securities Trading Act*

- (1) Public disclosure of information under the Securities Trading Act Section 5-12 shall as far as possible take place simultaneously in Norway and other EEA countries.
- (2) Information as mentioned in subsection (1) shall be made public via media that can reasonably be expected to ensure that the information reaches the general public across the entire EEA.
- (3) Annual and interim reports as mentioned in the Securities Trading Act section 5-5 and section 5-6 and in regulations made pursuant to those provisions may be published in the media by notice indicating the internet page at which the information is available. Such notice must indicate an internet page other than the internet page of the regulated market concerned to which information under the Securities Trading Act section 5-12 subsection (1) is to be sent for storage.
- (4) The issuer shall ensure that information as mentioned in subsection (1) is sent to the media in a manner that ensures communication security, minimises the risk of data disruption and unauthorised access and that provides certainty as to the source of the information.
- (5) Information mentioned in subsection (1) must be sent to the media in a manner that clearly identifies the issuer, the subject matter of the information and the time and date of the transmission. Furthermore, it should be clearly stated that the information is subject to disclosure pursuant to the Securities Trading Act Section 5-12.
- (6) The issuer shall be able, upon request by Finanstilsynet, to provide the following information:
 - (a) name(s) of the person(s) who sent the information to the media,
 - (b) confirmation that the security requirements of subsection (4) are complied with,
 - (c) the time and date the information was sent to the media
 - (d) the medium used to send the information, and
 - (e) any restrictions imposed on the information by the issuer.

Section 5-10. *Public disclosure of choice of home state*

In instances where the issuer has chosen Norway as its home state, cf. the Securities Trading Act section 5-4 subsection (4), the choice must be published in the same manner as mentioned in the Securities Trading Act section 5-12.

Section 5-11. *Other recognised accounting principles equivalent to IFRS*

- (1) The following accounting standards are deemed to conform to international accounting standards adopted under Regulation (EC) No 1606/2002 for the preparation of annual financial reports, half-yearly financial reports and quarterly financial reports:

- (a) IFRS, provided the notes to the financial statements contain an explicit and unreserved statement of compliance with all requirements of international accounting standards in accordance with IAS 1 Presentation of Financial Statements, or
- (b) the generally accepted accounting principles (GAAP) of Japan, or
- (c) the generally accepted accounting principles (GAAP) of the USA.

(2) For financial years starting before 1 January 2012, issuers from non-EEA countries having Norway as their home state may prepare annual financial reports, half-yearly financial reports and quarterly financial reports under the generally accepted accounting principles (GAAP) of China, Canada, South Korea or India.

(3) The EEA Agreement Annex IX No. 29h (Regulation (EC) No. 1569/2007) establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities shall apply as regulations with such adjustments as are required by Annex IX, Protocol 1 to the agreement and the agreement in general.

Chapter 6. Mandatory bid obligation and the voluntary bid in connection with takeovers

I. REQUIREMENT AS TO GUARANTEE UPON SUBMISSION OF A MANDATORY BID

Section 6-1. *Requirements on the guarantor*

A guarantee for settlement in connection with a mandatory bid may only be posted by a financial institution that is authorised to conduct business in Norway. The guarantor may not be a company in the same group as the bidder.

Section 6-2. *Principal liability guarantees*

(1) A guarantee shall be a principal liability guarantee or a guarantee that gives equivalent or better security for settlement. The guarantee must be posted in favour of the shareholders who accept the mandatory bid and must be posted as security for correct settlement.

(2) A shareholder who has accepted in full or in part settlement in a form other than cash shall be entitled to demand cash settlement under the guarantee based upon the cash alternative the bidder is required to give, if the agreed settlement does not take place.

(3) The guarantee declaration may be given in Norwegian, Danish, Swedish or English. If English is used, the declaration must include the Norwegian term "selvskyldnergaranti".

Section 6-3. *Guarantee amount*

(1) The guarantee amount shall at a minimum correspond to the amount obtained by multiplying the total number of shares of the company that is the subject of the bid by the bid price. To the amount thereby obtained shall be added an amount corresponding to

four weeks' late payment interest on the amount, cf. Act of 17 December 1976 No. 100 on late payments, etc. 'Bid price' means, in those cases where settlement is also offered in a form other than money, the cash alternative that the offeror is required to give.

(2) If the company considers seeking a write-down of the guarantee when the period of the bid expires, this shall be indicated in the guarantee declaration.

Section 6-4. *Norwegian law*

The guarantee shall be regulated by Norwegian law, and this shall be made clear in the guarantee declaration.

Section 6-5. *Multiple guarantors*

The total guarantee amount may be apportioned between one or more financial institutions. It shall in such cases be possible to raise a claim against any guarantor with suspensory effect for all guarantors, and this must be clear from the offer document and guarantee declaration. It may however be requested in the guarantee declaration or the offer document that claims be directed to a particular guarantor who will be responsible for the practical coordination of incoming claims.

Section 6-6. *Time limits and guarantee period*

The guarantee must have been issued at the latest simultaneously with the presentation of the bid and be valid during the period of the bid, the settlement period and for a period of four weeks from expiry of the time limit for settlement. It shall be possible to bring claims under the guarantee during four weeks from the expiry of the time limit for settlement. In cases where the period of the bid according to the offer document can be extended by the offeror, the guarantee declaration shall make it clear that the time limit for raising claims under the guarantee will be automatically extended by the same margin.

Section 6-7. *Approval*

The text of the guarantee shall be approved by the takeover supervisory authority and must contain a precise specification of the guarantor, offeror, name of the company that has issued the shares, dated offer document, the conditions for making claims under the guarantee and any requirements imposed as to documentation, the place where claims are to be delivered under the guarantee stating the postal and visiting addresses and the time limit for reporting claims under the guarantee stating date and time. If claims under the guarantee must be presented in writing or other formal requirements apply, they must be indicated explicitly.

Section 6-8. *Publishing in the offer document*

A copy of the guarantee declaration shall be incorporated in the offer document.

Section 6-9. *Forwarding of guarantee declaration to supervisory authority*

The original guarantee declaration or a confirmation from the guarantor shall be sent to the takeover supervisory authority prior to the dispatch of the offer document.

Section 6-10. Write-downs of guarantee

- (1) The takeover supervisory authority may upon application accept a reduction of the guarantee by the following amounts:
 - (a) the final amount paid for shares purchased under the bid, including a corresponding portion of the amount set aside for late payment interest, based on information on how many shares were accepted for transfer under the bid
 - (b) the final amount paid for shares documented as purchased outside the bid during the period of the bid, including a corresponding portion of the amount set aside for late payment interest
 - (c) an amount corresponding to the number of shares for which acceptances do not exist, including a corresponding portion of the amount set aside for late payment interest, however such that a margin remains for any disputed or unclear acceptances of approximately 10% of this amount. In special cases the margin may be lowered. Requests for write-downs of that part of the guarantee that encompasses shares for which acceptances do not exist may be sent at the earliest two days after expiry of the acceptance period.
- (2) Such reduction presupposes that the takeover supervisory authority deems the information to be satisfactorily documented and that the remaining guarantee amount will provide satisfactory security.
- (3) The following must at a minimum appear on the application:
 - (a) number of acceptances received
 - (b) any shares purchased outside the bid
 - (c) the amount by which the guarantee is sought to be reduced, calculated pursuant to subsection (1)(a) to (c)
 - (d) a listing showing the total number of accepted shares
 - (e) late payment interest for 4 weeks calculated on the total sum outstanding on the guarantee after the write-down
 - (f) a statement of any rejected or disputed acceptances.

In addition, a copy must be submitted of an on-screen printout from the Norwegian Central Securities Depository showing the number of shares accepted as at the date from which the write-down is to be effective. The information must be confirmed by the financial institution responsible for settlement in connection with the bid.

- (4) The original guarantee declaration will be returned by the takeover supervisory authority subject to submission of a new declaration based upon the written-down guarantee amount.
- (5) The takeover supervisory authority may pursuant to the Securities Trading Act Section 6-15 levy a fee on the bidder to cover expenses incurred on processing the application for write-down of the guarantee amount.

II. MANDATORY BID OBLIGATION UPON THE ACQUISITION OF RIGHTS OR OTHER INTERESTS CONNECTED WITH SHARES

Section 6-11. *Mandatory bid obligation upon actual acquisition*

(1) Where the acquisition of the right to become the owner of shares must be considered to be actual acquisition of the shares, the stock exchange may impose a mandatory bid obligation on the party who through such acquisition receives the right to become the owner of shares that together with the other shares of the party concerned represent more than 1/3 of the votes of a stock exchange listed company.

III. TAKEOVER BIDS WITH LINKS TO MORE THAN ONE STATE

Section 6-12. *Introductory provisions*

(1) These regulations set out further rules concerning takeover bids as mentioned in the Securities Trading Act section 6-23.

(2) 'Takeover supervisory authority' means the takeover supervisory authority as defined in the Securities Trading Act section 6-4.

(3) 'Bid' means a bid falling within the scope of the Securities Trading Act chapter 6.

Section 6-13. *Territorial application and supervisory authority*

(1) Where a company with its registered office in Norway has been admitted to trading on a regulated market in Norway, supervision of the bid will be conducted by the Norwegian supervisory authority. The Securities Trading Act applies to such bids.

(2) Where a company with its registered office in Norway has not been admitted to trading on a regulated market in Norway, but has been admitted to trading on a regulated market in another EEA state, supervision of the bid will be conducted by the takeover supervisory authority of the state where the regulated market to which the company has been admitted to trading is located, except as otherwise provided in section 6-14 subsection (1).

(3) Subsection (1) shall, except as otherwise provided in section 6-14 subsection (2), apply correspondingly to takeover bids for:

1. a company with its registered office in an EEA state other than Norway whose shares or other securities that are comparable to shares have not been admitted to trading on a regulated market in the EEA state in which the company has its registered office, if
 - a) the company's shares or other securities that are comparable to shares have only been admitted to trading on a Norwegian regulated market
 - b) the company's shares or other securities that are comparable to shares have been admitted to trading on regulated markets in several EEA states, if admission to trading first took place in Norway,
 - c) the company's shares or other securities that are comparable to shares have been admitted to trading simultaneously on a Norwegian regulated market and on one

or more regulated markets in other EU/EEA states, provided the company notifies the Norwegian takeover supervisory authority and the relevant regulated market on the first day of trading that it has chosen the Norwegian takeover supervisory authority, or

- d) the company's shares or other securities that are comparable to shares were as at 20 May 2006 already admitted to trading on several regulated markets and the admission to trading occurred simultaneously, provided the company notifies the Norwegian takeover supervisory authority and the relevant regulated market on the first day of trading that it has chosen the Norwegian supervisory authority, unless the relevant competent authorities have through an agreement prior to 20 June 2006 established that a different competent authority shall have the responsibility in relation to the bid.
2. a company with its registered office in a state outside the EEA area whose shares have been admitted to trading on a Norwegian regulated market, unless the takeover supervisory authority has granted a dispensation pursuant to the Securities Trading Act Section 6-23 subsection (3).

Section 6-14. *Choice of law for bids with connections to several EU/EEA states*

(1) For bids mentioned in section 6-13 subsection (2), the following applies:

1. matters of a legal nature related to information to employees of the company and company law questions, including questions concerning the thresholds at which mandatory bid obligations are triggered, possible exemptions from the obligation to present a bid and exceptions from the mandatory bid obligation, will be dealt with under Norwegian law
2. matters of a legal nature related to the bidding process, including matters concerning the compensation offered in connection with the bid, and in particular the bid price, the bid procedure, information on the bidder's decision to present a bid, the content of the offer document and publication of the bid, will be dealt with under the rules of the EU/EEA state, to which the regulated market to which the company's shares or other securities that are comparable to shares have been admitted to trading, belongs to, and will be monitored by the takeover supervisory authority in that state.

(2) For bids coming under section 6-13 subsection (3), the following applies:

1. matters of a legal nature related to the bidding process, including questions concerning the compensation offered in connection with the bid, and in particular the bid price, the bid procedure, information on the bidder's decision to present a bid, the content of the offer document and publication of the bid, will be dealt with under Norwegian law.
2. matters of a legal nature related to information to employees of the company and company law questions, including matters concerning the thresholds at which mandatory bid obligations are triggered, possible exemptions from the obligation to present a bid and exceptions from the mandatory bid obligation, will be dealt with under the rules of the EU/EEA state in which the company has its registered office, and be monitored by the takeover supervisory authority in this state.

Chapter 7. Prospectus requirements for public offerings and admission to trading

I. EXCEPTIONS FROM THE OBLIGATION TO PREPARE A PROSPECTUS

Section 7-1. Professional investors

(1) The exception from the prospectus obligation for offers addressed to professional investors, cf. the Securities Trading Act Section 7-4, no. 8, applies to offers that are addressed to:

- (a) financial institutions, investment firms, insurance companies, fund management companies for securities funds, pension funds and other legal entities that have been approved or are regulated with respect to their activities in the financial markets,
- (b) EEA states, EEA central banks, the European Central Bank, local authorities in EEA states and international institutions such as the IMF,
- (c) other legal entities whose sole business mission is to invest in securities.

(2) Other legal entities may request to be registered as professional investors with the competent prospectus authority provided the entity concerned meets at least two of the following requirements according to its latest annual financial statements:

- (a) average number of employees at least 250,
- (b) in accounting terms a balance sheet of at least EUR 43,000,000
- (c) annual net turnover of at least EUR 50,000,000

(3) Natural persons may request to be registered as professional investors with the competent prospectus authority provided the person concerned meets at least two of the following requirements:

- (a) has performed an average of at least 10 securities transactions of significant size per quarter for the past four quarters
- (b) has a securities portfolio with a market value of at least EUR 500,000
- (c) works or has worked in the financial sector for at least one year in a position that requires familiarity with securities investment.

Section 7-2. Securities admitted to trading on another regulated market

The provisions of the Securities Trading Act Section 7-3 do not apply in connection with admission to trading of securities that have already been admitted to trading on another regulated market provided the following conditions have been met:

- (a) the securities, or securities in the same class, have been listed for more than 18 months
- (b) for securities that were admitted to trading on a regulated market for the first time after 1 July 2005 (entry into force of Directive 2003/71/EC), an approved prospectus must have been prepared in connection with admission to trading on the second market that was made available to the public in accordance with Directive 2003/71/EC, Article 14.
- (c) for securities that are not subject to the provision of (b) and that were admitted to

trading for the first time after 30 June 1983, a prospectus must have been prepared that was approved in accordance with the requirements of Directive 80/390/EEA or Directive 2001/34/EC,

- (d) the ongoing obligations in connection with listing on the second regulated market must be met,
- (e) the person requesting admission to trading of securities on a regulated market with reference to this exception provision shall prepare a summary to be made available to the general public in a language as mentioned in the Securities Trading Act section 7-17
- (f) the summary mentioned in (e) shall be made available to the general public in Norway in accordance with the rules of the Securities Trading Act section 7-19, and
- (g) the summary mentioned in (e) has a content that accords with the Directive's Article 5 No. 2. The summary shall state where the latest prospectus is available and where financial information that the issuer publishes in compliance with the provisions concerning ongoing obligations is available.

II. IMPLEMENTATION OF PROSPECTUS CONTROL

Section 7-3 *Orders, etc.*

As a part of its control of prospectuses, Finanstilsynet may:

- (a) impose a disclosure obligation on the issuer, offeror or persons seeking admission to trading, and persons in their employment who have a determinative influence or are subject to a determinative influence,
- (b) impose a disclosure obligation on auditors and management of the issuer, offeror or persons seeking admission to trading, as well as financial intermediaries,
- (c) temporarily prohibit the issuer from implementing an offer for up to 10 business days if there are reasonable grounds to believe that the prospectus rules have been violated, or
- (d) prohibit announcements for up to 10 business days if there are reasonable grounds to suppose that the prospectus rules have been violated.

Section 7-4. *Publication etc.*

A list of prospectuses that have been approved during the past 12 months shall be available at Finanstilsynet's website. The list shall state how a prospectus was made available to the public and where it may be obtained.

Section 7-5 to section 7-12. (Revoked as of 1 May 2010)

III. INFORMATION IN PROSPECTUSES

Section 7-13. *Drawing up of EEA prospectuses, etc - implementation of Regulation (EC) No. 809/2004*

(1) EEA Agreement Annex IX No. 29ba (Regulation (EC) No. 809/2004 implementing Directive 2003/71/EC of the European Parliament and the Council as regards information in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, as amended by Regulation (EC) No. 1787/2006 and Regulation (EC) No. 211/2007) shall apply as regulations with such adjustments as are required by Annex IX, Protocol 1 to the agreement and the agreement in general.

(2) EEA prospectuses shall contain such information as is required pursuant to Regulation (EC) No. 809/2004, cf. subsection (1).

Section 7-14. Information in prospectuses requiring registration

(1) Prospectuses to be registered pursuant to the Securities Trading Act section 7-10 (prospectuses requiring registration) shall contain information indicating the procedure for determining the price and number of securities to be offered or a maximum price. Such information may however be omitted if the investors are given the right to withdraw any acceptances within a set period after the publication of the price. The period may not be shorter than two days.

(2) Prospectuses requiring registration shall at a minimum contain the following information:

(a) Identity of those who have prepared the prospectus.

The name, organisation number or date of birth, and any job title of those who are responsible for the prospectus must be stated.

(b) Information about the offeror, including:

1) name, registered office and organisation number

2) legal form of organisation and date of founding

3) purpose and main business

4) equity capital

5) the rules for conversion, exchange or subscription of convertible bonds, exchangeable bonds and bonds with stock acquisition rights

6) authority to increase capital or repurchase own shares

7) last annual financial statements, and interim financial statements released after the end of the preceding financial year

8) pro forma figures presented for the last interim period and the last financial year if the offeror has been merged, demerged, acquired an undertaking of a size corresponding to that of the offeror, or sold or wound up the major part of its business after the end of the preceding financial year, and such information is essential to an understanding of the future business

9) conditions of material significance to the offeror's business that have arisen after the end of the preceding financial year

10) the offeror's administration, management and supervisory body (stating name,

address and position) if shares issued by the offeror are being offered or admission to trading of such is being sought.

(c) Information on the offer/securities, including:

- 1) type and quantity
- 2) rights associated with the securities
- 3) withholding tax on dividends
- 4) the date from which the securities give the right to dividends
- 5) acceptance period
- 6) guarantors
- 7) restrictions on the securities' transferability, including which markets they may be traded in
- 8) clearing house (bank)
- 9) settlement period
- 10) whether the securities are to be registered in a securities register and who shall be the account controller for the issuer.

(3) Where offers for subscription or purchase apply to securities guaranteed by one or more legal persons, information as mentioned in subsection (2)(b) shall also be given in respect of the guarantors. The same applies to issuers when the issuer of shares or bonds is a party other than the offeror of bonds or purchase rights.

(4) For offers for subscription or purchase of convertible bonds, exchangeable bonds, bonds with stock acquisition rights, or purchase rights, information must be given indicating the type of share or bond they give rights to, as well as the conditions for conversion, exchange or subscription.

(5) It must be stated on the front page of the prospectus that the prospectus has been registered with the Register of Business Undertakings for reasons of public verifiability, but that neither the competent prospectus authority nor other public authority has undertaken any form of control of the prospectus.

IV. BASE PROSPECTUSES

Section 7-15. *Prospectuses drawn up as base prospectuses*

(1) Prospectuses the preparation of which is required pursuant to the Securities Trading Act section 7-7 (cf. section 7-2 and section 7-3), may be drawn up as base prospectuses if the offer or application for admission to trading relates to

- a) non-equity securities issued as a part of an issue programme as further defined in subsection (2) or
- b) non-equity securities issued continuously or repeatedly by financial institutions where
 - 1) pursuant to law the proceeds of the issue of the securities are to be placed in assets that provide sufficient cover for obligations relating to the securities up to

maturity

- 2) upon the insolvency of the issuer the capital is able to cover the principal and interest due, cf. also Regulations of 23 April 2003 No. 549 concerning notification and announcement upon the reorganisation and winding up of credit institutions.

(2) 'Issue programme' means a plan which permits the issue of non-equity securities, including purchasing rights or subscription rights (warrants), that are of a similar type and/or class, provided such issues take place continuously or repeatedly within a specified issue period.

(3) 'Securities issued continuously or repeatedly' means expansions of securities series or at least two separate issues of securities of a similar type and/or class within a period of 12 months.

(4) Base prospectuses are subject to the rules for prospectuses in the Securities Trading Act chapter 7 and regulations pursuant thereto except as otherwise provided by this subchapter.

Section 7-16. *Content of base prospectuses*

A base prospectus shall contain all relevant information on the issuer and the securities that are being offered or for which admission to trading is sought, cf. the Securities Trading Act Section 7-13, as well as meet the content requirements for base prospectuses as set out in these regulations section 7-13, cf. Regulation (EC) No. 809/2004. A base prospectus may also encompass supplements pursuant to Section 7-17 and final conditions pursuant to Section 7-18.

Section 7-17. *Supplements to base prospectuses*

The Securities Trading Act Section 7-15 applies correspondingly.

Section 7-18. *Final conditions*

(1) Final conditions in connection with an offer or admission to trading may appear in the base prospectus, in a supplement to the base prospectus or be distributed separately.

(2) If the final conditions for an offer do not appear in the base prospectus or a supplement thereto, information on the conditions for each offer must be distributed to the investors and forwarded to the supervisory authority as soon as possible, and if possible before the start of the period of the offer.

(3) If the offer price and the number of securities offered do not appear in the base prospectus, in a supplement thereto or in the final conditions, the criteria and/or the conditions for the determination of these elements must appear in the base prospectus, a supplement thereto or the final conditions. For the offer price a maximum price may alternatively be indicated.

Section 7-19. *Validity of base prospectuses*

(1) Base prospectuses prepared in connection with issue programmes, cf. section 7-15, subsection (1)(a), have a validity of up to 12 months.

(2) Base prospectuses prepared in connection with non-equity securities that are issued continuously or repeatedly by credit institutions, cf. section 7-15, subsection (1)(b), are valid until the period of issue of the securities has expired.

Chapter 8. Own account trading

Section 8-1. *Exception from the prohibition against trading in derivatives etc.*

The prohibition against issuing, or trading for own account in, financial instruments as mentioned in the Securities Trading Act section 8-2 subsection (1) first sentence does not encompass:

- a) disposal of subscription rights to shares and equity capital certificates on the basis of a pre-emptive right, cf. Private Limited Companies Act section 10-4, Public Limited Companies Act section 10-4 and Financial Institutions Act section 2b-24,
- b) disposal of warrants as mentioned in the Private Limited Companies Act section 11-12 and the Public Limited Companies Act section 11-12, provided that such warrants were acquired on the basis of a pre-emptive right, and
- c) options on shares and equity capital certificates in another company in the same group as the employer undertaking and rights to shares and equity capital certificates in the employer undertaking or other company in the same group as the employer undertaking when the options and rights are issued by this undertaking.

Section 8-2. *Exception from the prohibition against disposal of financial instruments earlier than 12 months after the acquisition*

The provision concerning a lock-in period of 12 months in the Securities Trading Act section 8-2 subsection (1) third sentence does not apply:

- (a) upon disposal of shares as a result of an offer to purchase all shares in a company that was made to all the shareholders on the same terms, provided the shares were acquired before the offer was made public,
- (b) to employees and officers of investment firms that only provide investment services in connection with financial instruments as mentioned in the Securities Trading Act section 2-2 subsection (5) no.2, and
- (c) upon disposal of shares and equity capital certificates in the employer undertaking or other company in the same group as the employer undertaking, where the shares and the equity capital certificates are acquired as a result of the exercise of options or subscription rights programmes for the employees, provided the shares and equity capital certificates are disposed of within 30 days.

Part 3. Investment firms

Chapter 9. Authorisation, conditions and cross-border activity, etc.

I. DEFINITIONS, ETC.

Section 9-1. Definitions

For the purpose of these regulations, part 3:

- a) *distribution channels* means distribution channels as defined in section 3-6, subsection (7).
- b) *durable medium* means a device on which the client may store personally addressed information, such that the information is available in unaltered form for as long as it is appropriate.
- c) *associated person*:
 - 1) any board member, partner or the like, member of the management or tied agent of the investment firm,
 - 2) any board member, partner or the like or member of the management of a tied agent of the investment firm,
 - 3) any employee of the investment firm or tied agent of the investment firm, and any other natural person whose services are placed at the disposal of and that are controlled by the investment firm or a tied agent of the investment firm and who participates in the firm's provision of investment services, or
 - 4) any natural person who is directly involved in the provision of services to the investment firm or tied agent of the investment firm under an agreement on outsourcing of the firm's investment services.
- d) *financial analysts* means associated persons who prepare the content of investment analyses
- e) *undertaking group* means a group of undertakings of which the investment firm forms part that consists of a parent company, subsidiaries and entities in which the parent company or subsidiaries have ownership interests, as well as entities that are managed on a unified basis as mentioned in Directive 83/349/EC, Article 12 (1).
- f) *Outsourcing* means an arrangement based upon a service provider carrying out tasks that would otherwise have been performed by the investment firm itself.
- g) *securities financing* means lending or borrowing of financial instruments, repurchase or reverse repurchase transactions, buy-sell back or sell-buy back transactions as defined in Regulation (EC) No. 1287/2006, Article 2 (10).
- h) *senior management* means the person or persons participating in the actual management of the investment firm, cf. the Securities Trading Act section 9-9, subsection (1).
- i) *active portfolio management* means investment services as mentioned in the Securities Trading Act section 2-1 subsection (1) no. 4.

Section 9-2. *Requirements as to medium for delivery of information to clients*

(1) Where in part 3 of these regulations it is required that information to the client be given in writing, such information shall be given on paper unless the client gives his consent to the information being given using another durable medium.

(2) Investment firms may give information as mentioned in section 10-10 to section 10-15 and section 10-27 subsection (2) on a website page if the information is not addressed to the client personally, and:

- (a) the client has given an email address to the investment firm
- (b) the client expressly consents to the information being given on a website page
- (c) the client is informed electronically of the website's internet address, as well as where on the website page the information may be found, and
- (d) the information is updated and continually available on the website page as long as the client may reasonably be expected to need the information.

**II. OBLIGATION OF ACQUIRER TO GIVE NOTIFICATION
OF COMPANY SHAREHOLDERS**

Section 9-3. *Scope of the provisions of this subchapter*

This subchapter applies to investment firms which are not credit institutions.

Section 9-4. *Purpose*

The provisions in this chapter 9 subchapter II shall put the supervisory authorities in a position to assess whether a shareholder is deemed fit to ensure sound and prudent management of the investment firm, as mentioned in the Securities Trading Act section 9-10. The supervisory authority shall be given the possibility to maintain oversight over large shareholders in the firm in order to prevent an owner from abusing his position and his influence over the business activities of the firm.

Section 9-5. *Definitions*

(1) In this chapter 9 subchapter II 'qualifying holding' means any direct or indirect holding in an investment firm which

- (a) represents at least 10 per cent of the share capital or the voting rights, or
- (b) otherwise makes it possible to exercise substantial influence over the management of the firm.

(2) In this context shares owned by persons or undertakings associated with the shareholder, cf. the Securities Trading Act Section 2-5, rank on a par with shares owned by such shareholder.

Section 9-6. *Obligation to notify changes in shareholder structure*

(1) The acquisition of a qualifying holding in an investment firm that is not a credit institution may only take place after the acquirer has notified Finanstilsynet thereof in advance.

(2) Subsection (1) applies correspondingly to any increase in a qualifying holding whereby the acquirer's portion of the share capital or voting rights in the firm reaches or exceeds 20 per cent, 33 per cent or 50 per cent of the share capital or the investment firm will otherwise be regarded as the acquirer's subsidiary.

(3) The provisions of subsections (1) and (2) apply correspondingly where disposal causes the size of a holding to fall below the thresholds mentioned.

(4) Acquisition of rights to shares is not encompassed by this section, unless the rights confer substantial influence over the company.

(5) Upon making notification pursuant to this section, the acquirer shall state the following:

(a) where the shareholder is a natural person;

- 1) name, national identity number and address,
- 2) the shareholder's work activity and board appointments over the past three years,
- 3) whether the shareholder has been subject to fit-and-proper testing in Norway or another EEA state in the course of the last year, and confirmation of the same,
- 4) the shareholder's proportion of the shares and voting rights in the company in per cent,

(b) where the shareholder is a legal person:

- 1) name, organisation number and address
- 2) name of shareholder who owns directly or indirectly 10 per cent or more of the legal person,
- 3) names and addresses of the board members and management,
- 4) proportions of the shares and voting rights in the investment firm, in per cent,
- 5) whether the shareholder is under supervision in Norway or another EEA state, and confirmation of the same.

(6) Finanstilsynet may under any circumstances request further information and documentation beyond that mentioned in subsection (5)(a) and (b).

III. GENERAL REQUIREMENTS AS TO THE ORGANISATION OF THE BUSINESS

Section 9-7. *General organisational requirements*

(1) Investment firms must at all times ensure that they:

- (a) have documented decision-making procedures and an organisational set-up that makes functions and areas of responsibility clear,
- (b) make persons associated with the company aware of procedures that apply within their individual areas of responsibility,
- (c) have internal control routines that ensure that decisions and the firm's internal routines are complied with at all levels in the firm

- (d) hire employees who have the requisite competence and knowledge,
 - (e) have an effective system for reporting and disseminating relevant information inside the firm,
 - (f) ensure that persons who perform several tasks for the investment firm perform each of these in accordance with good business practices.
- (2) The investment firm shall have routines and systems for management of information that ensure the requisite security and confidentiality.
- (3) Investment firms shall have an appropriate business continuity plan that aims to safeguard or restore important data and functions and the provision of investment services in the event of system failure.
- (4) Investment firms shall monitor and regularly assess the firm's systems, internal control functions and arrangements established in accordance with subsections (1) and (3), and initiate measures to remedy any shortcomings.

Section 9-8. Verification of compliance

- (1) Investment firms shall have guidelines and procedures to identify any risk of failure of the firm to fulfil its obligations under the Securities Trading Act and regulations made pursuant to the Securities Trading Act. The firm shall initiate preventive measures and procedures to limit such risks and enable Finanstilsynet to conduct supervision of the firm.
- (2) Investment firms shall have an effective and independent control function which shall:
- (a) check that the firm is fulfilling its obligations under subsection (1)
 - (b) regularly assess whether the guidelines, procedures and measures mentioned are sufficiently effective,
 - (c) assess any measures initiated to remedy non-compliance with the body of rules, and
 - (d) provide advice and guidance on the investment firm's obligations under the Securities Trading Act to the firm's management, employees and others who provide investment services on behalf of the firm.
- (3) In order to ensure that the control function is able to discharge its assigned tasks in an effective and independent manner, the investment firm must ensure that:
- (a) the control function has the requisite authority, expertise, resources and access to relevant information
 - (b) an employee is appointed with primary responsibility for the firm's control function and for reporting to the firm's management as mentioned in section 9-12 subsection (2)
 - (c) persons involved in the firm's control function are not involved in the provision of the services or functions under their oversight, and
 - (d) the remuneration of persons involved in the firm's control function is not determined in a manner that affects, or is liable to affect, their objectivity.

Section 9-9. Risk management

- (1) An investment firm shall ensure that it:
 - (a) has appropriate guidelines and procedures for risk management to identify risks associated with its activities, systems and processes,
 - (b) establishes relevant risk exposure limits,
 - (c) has effective risk management routines in light of the firm's risk exposure limits,
 - (d) monitors compliance with the firm's guidelines and routines for risk management,
 - (e) monitors the adequacy of measures taken by the firm to remedy any shortcomings in its guidelines and routines and ensures that they are maintained,
- (2) An investment firm shall have an independent risk management function with the following tasks:
 - (a) to ensure compliance with the guidelines and procedures mentioned in subsection (1), and
 - (b) to give advice and report on the firm's risk management as mentioned in section 9-12 subsection (2)

Section 9-10. Internal audit

An investment firm shall have an independent internal audit unit. The internal audit shall:

- (a) have an audit plan enabling it to assess whether the firm's systems, internal controls and routines are sufficient and effective
- (b) give recommendations on the basis of the assessments made under (a),
- (c) check that the recommendations are followed, and
- (d) report on the results of the internal audit's procedures as mentioned in section 9-12 subsection (2)

Section 9-11. Adjustments and exceptions in consideration of the nature, extent and complexity of the activities

- (1) A firm shall adapt the requirements set out in section 9-7 subsection (1) and section 9-8 subsection (1) to the firm's nature, extent and complexity.
- (2) A firm may omit to fulfil the requirements of section 9-8 subsection (3)(c) and (d), section 9-9 subsection (2) and section 9-10 if the firm can demonstrate that the requirements are not in reasonable proportion to the firm's nature, extent and complexity. In addition, the following conditions shall apply:
 - (a) Exceptions from the requirement of section 9-8 subsection (3)(c) and (d) require that the control function remain effective.
 - (b) Exceptions from the requirement of section 9-9 subsection (2) require in addition that guidelines and procedures for risk management be sufficient and effective.

Section 9-12. Responsibilities of the management

(1) The responsibility for ensuring that the firm complies with its obligations under the Securities Trading Act and regulations made pursuant to the Securities Trading Act lies with the senior management of the investment firm. The management shall assess and regularly review the arrangements and procedures initiated to fulfil the company's obligations, and initiate measures to remedy any shortcomings. If appropriate, the investment firm shall ensure that its board is subject to corresponding obligations.

(2) The senior management and the board shall receive written reports on the investment firm's compliance with statutes and regulations, risk management and internal auditing on a regular basis, (cf. section 9-8 subsection (3)(b), section 9-9 subsection (2)(b), and section 9-10(d)). Such reports shall specify *inter alia* whether preventive measures have been initiated in order to remedy any shortcomings. The management shall receive such reports at least once a year.

Section 9-13. Handling of appeals

(1) An investment firm shall have clear and available procedures enabling it to process complaints from non-professional clients in a proper and expeditious manner.

(2) An investment firm shall be able to document such complaints and the procedure employed.

IV. OUTSOURCING

Section 9-14. Conditions for outsourcing

(1) An investment firm that outsources important operational functions or the provision of investment services retains the full responsibility for such activity. The investment firm shall in this respect ensure that the outsourcing:

- (a) does not entail delegation of the responsibility incumbent upon the senior management of the investment firm,
- (b) does not entail changes in the investment firm's obligations to its clients,
- (c) does not change significant assumptions upon which the investment firm's licence was based.

(2) An investment firm shall exercise due care upon entering into or terminating an agreement on outsourcing. When outsourcing, an investment firm is under a particular obligation to:

- (a) take adequate measures if the contractor fails to perform the assignment sufficiently efficiently or the assignment is in other respects not performed in accordance with law and regulations
- (b) have the expertise required to supervise, and manage the risk associated with, the outsourced activities in an effective manner,
- (c) ensure that the outsourcing contract can be terminated by the investment firm without detriment to the continuity and quality of the services provided to its clients,

- (d) ensure that the contractor has the requisite competence, capacity and the licences required to perform the relevant tasks,
 - (e) ensure that the contractor performs the tasks in an efficient manner and that the investment firm has suitable routines for assessing the execution of the tasks,
 - (f) ensure that the contractor conducts supervision of the outsourced functions and manages the risk associated with the assignment,
 - (g) ensure that the contractor notifies the investment firm of changes or events that may significantly affect the contractor's ability to perform the outsourced tasks,
 - (h) ensure that the contractor is required to cooperate with relevant supervisory authorities,
 - (i) ensure that the investment firm, its auditors and Finanstilsynet have actual access to information connected with the outsourced activities and to the premises of the contractor, and that Finanstilsynet has the possibility to conduct supervision,
 - (j) ensure that the contractor treats confidential information concerning the investment firm or its clients in the proper manner,
 - (k) ensure that the investment firm and the contractor have a preparedness plan for continued activity in the case of unforeseen events and carry out regular testing of the contractor's back-up routines if relevant to the outsourced activities.
- (3) The rights and obligations of the investment firm and the contractor shall be regulated in a written agreement.

Section 9-15. *Supplemental conditions for outsourcing when the supplier is domiciled in a third country*

- (1) The investment service 'active portfolio management' for non-professional clients may only be outsourced to a contractor whose home state is outside the EEA provided Finanstilsynet has been notified in advance. Such outsourcing may take place if Finanstilsynet does not, within a reasonable period after receiving the notification, put forward objections or prohibit the outsourcing.
- (2) Notification under subsection (1) is not necessary where the investment firm satisfies itself that
- (a) the contractor has a licence or is registered to provide the relevant service and is subject to satisfactory supervision, and
 - (b) satisfactory cooperation on supervision has been established between Finanstilsynet and the contractor's supervisory authority

V. MEASURES FOR THE PROTECTION OF CLIENT ASSETS

Section 9-16. *Protection of clients' financial instruments and assets*

Investment firms that safekeep financial instruments and assets on behalf of clients shall:

- (a) maintain updated registers and accounts which at all times differentiate between the assets of the different clients, and between the assets of the clients and the firm's own

assets,

- (b) regularly reconcile internal registers and accounts with corresponding registers and accounts with a third party that safekeeps client assets,
- (c) ensure that financial instruments that are safekept with a third party are kept separate from the firm's or the third party's financial instruments and that this is clear from the accounts and registers of the third party,
- (d) ensure that the investment firm's funds are not deposited in a client account,
- (e) maintain internal routines to limit the risk of client assets being lost or reduced in consequence of misuse, deficient administration, deficient registration or negligence.

Section 9-17. *Safekeeping of clients' financial instruments*

(1) Financial instruments in the safekeeping of an investment firm on behalf of its clients may be deposited on account with a third party. The investment firm shall exercise sufficient care in selecting such a third party and regularly assess the third party and its arrangements for the safekeeping and protection of the clients' financial instruments. The investment firm shall have a particular eye to qualifications and reputation, in addition to rules and market practice that might negatively affect the client's rights.

(2) In the case of deposition in states where depositing of financial instruments is subject to special regulation or oversight, the investment firm shall ensure that the instruments are deposited with a third party that is subject to such regulation or supervision.

(3) Deposition of clients' financial instruments with a third party whose home state is outside the EEA that has no deposition rules is only permitted where:

- (a) the financial instrument or the investment service connected with the financial instrument necessitates deposition in the state concerned, or
- (b) the financial instruments are in safekeeping on behalf of a professional client who requests in writing that the investment firm deposit the instruments in the relevant state.

Section 9-18. *Safekeeping of client funds*

(1) Investment firms that accept client funds shall immediately place them in client accounts in:

- (a) a central bank,
- (b) a credit institution licensed in accordance with Directive 2006/48/EC,
- (c) a bank licensed in a non-EEA state, or
- (d) an approved money market fund, unless the client has made a reservation against this.

(2) 'Approved money market fund' means a securities fund licensed under national rules implementing Directive 85/611/EC (the UCITS Directive), or that is subject to supervision and has been awarded a licence under national rules in an EEA state, and that fulfils the following conditions:

- (a) the fund's primary investment goal is to preserve the net value of its assets,

- (b) the fund shall solely invest in high-quality money market instruments with a maturity or residual maturity of up to 397 days or with periodic interest rate adjustment that accords with such a maturity and with a weighted average maturity of up to 60 days. The fund may in addition invest in deposits in credit institutions in order to achieve the fund's goals, and
- (c) redemption of shares in the fund shall entail disbursement of the funds on the same day or the day after the demand for redemption is presented.

(3) A money market instrument is of high quality, cf. subsection (2) no. 2, when it has the highest credit rating from all approved rating agencies that have evaluated the instrument. A money market instrument that has not been credit rated shall not be deemed to be of high quality. 'Approved rating agency' means an agency that regularly and on a professional basis evaluates money market funds and is an approved rating agency under the provisions of Regulations of 14 December 2006 No. 1506 on capital requirements for commercial banks, savings banks, finance companies, financial holding companies, investment firms and management companies for securities funds etc (Capital Requirements Regulations).

(4) Investment firms that do not deposit their client funds in a central bank shall exercise sufficient care in selecting a credit institution, bank or money market fund. The investment firm shall regularly assess the credit institution, bank or money market fund and the arrangements for the safekeeping of the funds. The investment firm shall have a particular eye to qualifications and reputation in addition to rules and market practices that might negatively affect the rights of the clients.

Section 9-19. *Use of clients' financial instruments*

(1) An investment firm may not enter into an agreement on securities financing connected with financial instruments that the firm has in safekeeping on behalf of clients or otherwise utilise the financial instruments of clients for the firm's own account or the accounts of other clients, unless the client has expressly given their consent in advance to such and further conditions for such use have been agreed. A non-professional client shall give advance consent in writing or make use of a corresponding mechanism.

(2) An investment firm may not enter into an agreement on securities financing connected with financial instruments that the firm has in safekeeping on behalf of clients in an collective account with a third party, or otherwise utilise the financial instruments of clients that are in safekeeping in such accounts for the firm's own account or the accounts of other clients, unless at least one of the following conditions has been fulfilled in addition to the conditions set out in subsection (1):

- (a) all clients who have financial instruments that are stored in the collective account have given their express advance consent in accordance with subsection (1), or
- (b) the investment firm has systems and control routines ensuring that only financial instruments belonging to clients who have given express advance consent in accordance with subsection (1) are used in this manner.

(3) In order to ensure that any losses may be distributed correctly, the investment firm's registers shall contain information on clients who have given their consent with respect to

subsection (1) and the number of financial instruments utilised that belong to each one of these clients.

Section 9-20. *Declaration by external auditor*

The firm's external auditor shall at least once each year report to Finanstilsynet on the extent to which the investment firm's routines for the protection of its client assets are in accordance with the Securities Trading Act section 9-11 subsections (3) and (4) and the provisions in the present regulations section 9-16 to section 9-19.

VI. RETENTION OF DOCUMENTATION

Section 9-21. *Requirements as to period of retention*

(1) An investment firm shall retain the documentation required under the Securities Trading Act and regulations made pursuant to the Securities Trading Act for at least 5 years.

(2) Documents showing the respective obligations and rights of the investment firm and the client in connection with an agreement to provide services, or the conditions for such, shall also be retained for the duration of the client relationship. To the extent that Finanstilsynet finds it necessary for the purpose of discharging its supervisory functions, Finanstilsynet may in special cases order the investment firm to retain documentation as mentioned for a longer period.

(3) In the event of revocation of the investment firm's licence to provide investment services, documentation under subsection (1) shall be retained until the five-year period has expired.

Section 9-22. *Requirements as to medium for retaining information*

Information as mentioned in section 9-21 subsection (1) shall be retained in a medium that:

- (a) allows Finanstilsynet at all times to gain access to the information and reconstruct the main phases of the investment firm's processing of each transaction,
- (b) enables corrections or other changes to the information to appear, including the content of the information before any corrections or changes, and
- (c) renders it impossible to manipulate or change the information in an illegitimate manner.

VII. CONFLICTS OF INTEREST

Section 9-23. *Conflicts of interest that may be harmful to clients*

Investment firms shall identify possible conflicts of interest that may arise in the business operations and that may be to the detriment of the client. The investment firm shall at a minimum assess whether the firm, an associated person or a person who is connected to the firm through direct or indirect ownership:

- (a) could achieve a financial gain or avoid a financial loss at the expense of the client,

- (b) has a different interest than the client as regards the result of the provision of the investment service or the execution of the transaction,
- (c) has financial or other grounds to prioritise the interests of another client or other groups of clients ahead of the client's interests
- (d) conducts the same type of activity as the client, or
- (e) will be remunerated for providing the investment service to the client from a person other than the client in the form of money, goods or services beyond the standard commission for the service.

Section 9-24. Guidelines for conflicts of interest

(1) Investment firms shall have written guidelines for handling conflicts of interest. The guidelines shall be adapted to the firm's size and organisation as well as the nature, extent and complexity of its activities. Regard shall be had to circumstances that the firm is or should have been aware of and that may give rise to conflicts of interest connected with other companies in the undertaking group.

(2) The guidelines shall at a minimum include:

- (a) an indication of conditions that may involve conflicts of interest connected with the individual investment services performed by or on behalf of the firm and that may involve a real risk of impairment of the client's interests, and
- (b) an indication of routines to be followed and measures to be initiated to handle such conflicts of interest.

(3) Routines and measures as mentioned in subsection (2)(b) shall be suited to ensuring that associated persons who participate in activities involving a conflict of interest under subsection (2)(a) do so with the necessary degree of independence. Routines and measures shall take into consideration the firm's, including the undertaking group's, size and activities, as well as the degree of risk of harm to the client's interests. In order to ensure the necessary independence, the investment firm shall assess the need for, *inter alia*:

- (a) routines for the proper exchange of information between different parts of the firm,
- (b) special oversight of associated persons who primarily conduct activities for or provide services to clients who may have conflicting interests, or clients who may have interests that conflict with the firm's own interests,
- (c) removal of direct linkage between the salaries of associated persons who perform different types of activities if conflicts of interest may arise between such activities,
- (d) measures to prevent or limit the possibility that improper influence may be exerted on an associated person's performance of investment services or ancillary services, and
- (e) measures to prevent or oversee an associated person's simultaneous or subsequent participation in specific investment services or ancillary services if such participation is liable to impair the handling of conflicts of interest.

(4) If the introduction and implementation of routines and measures under subsection (3) fails to ensure a sufficient degree of independence, the investment firm shall initiate such

further or alternative measures as are necessary and appropriate to achieve such independence.

Section 9-25. *Information to clients*

If the implementation of measures under section 9-24 and the Securities Trading Act section 9-11 subsection (1) no. 2 is not sufficient to safeguard client interests in a satisfactory manner, the firm shall inform the client of possible conflicts of interest, cf. the Securities Trading Act section 10-10 subsection (2). Information shall be given in writing and be sufficiently detailed for the client to make an informed choice with regard to the investment service or the ancillary service to which the conflict of interest relates. The information shall take into account the expertise, knowledge and experience of the client.

Section 9-26. *Documentation of services and activities that give rise to harmful conflicts of interests*

Investment firms shall document which investment services and ancillary services have been performed or are being performed by or on behalf of the firm where a conflict of interest has arisen or may arise, and which involve a real risk of harm to the interests of one or more clients.

Section 9-27. *Investment analysis*

(1) 'Investment analysis' means a recommendation as mentioned in section 3-6 subsection (2) that has been prepared by the investment firm and which:

- (a) is designated or described as an investment analysis or equivalent term, or which has otherwise been presented as an objective or independent explanation of the conditions encompassed by the recommendation, and
- (b) is not regarded as investment advice under the Securities Trading Act section 2-4 subsection (1).

(2) When an investment firm prepares an investment recommendation that is not encompassed by subsection (1), the recommendation shall be termed marketing material and contain a clear statement to the effect that the recommendation was not prepared in accordance with the rules regulating investment analyses. A corresponding explanation shall be given when such marketing material is presented orally.

(3) The rules on investment recommendations in section 3-6 to section 3-15 otherwise apply.

Section 9-28. *Further organisational requirements for investment firms that prepare and distribute investment analyses*

(1) This section applies to investment firms that prepare or commission the preparation of investment analyses as mentioned in section 9-27 subsection (1) if the analysis is to be disseminated to the firm's clients or to the general public, or there are reasonable grounds to presume that such dissemination will take place. The section does not apply to investment firms that only disseminate others' investment analyses to clients or the general public, and the following conditions are met:

- (a) the investment analysis was not prepared by a company in the same undertaking group as the investment firm
 - (b) the investment firm does not significantly change the recommendations in the investment analysis,
 - (c) the investment recommendation is not presented as if it had been prepared by the investment firm, and
 - (d) the investment firm checks that the party who has prepared the analysis is subject to requirements corresponding to those set out in the present regulations concerning investment analyses or has established guidelines that contain such requirements.
- (2) An investment firm shall ensure that measures established under section 9-24 are implemented in relation to financial analysts who participate in the preparation of the investment analysis and other associated persons with areas of responsibility or business interests that may come into conflict with the interests of the persons to whom the investment analysis is disseminated.
- (3) An investment firm shall in addition have routines and procedures to ensure:
- (a) that financial analysts and associated persons with a knowledge of
 - 1) the probable date of the publication of the investment analysis
 - 2) content of the investment analysis that is not available to the clients or the general public, or
 - 3) content of the investment analysis that cannot easily be inferred from publicly available information,
 may not trade on their own account or on others' account (including the investment firm's account) in the financial instruments encompassed by the investment analysis, or in any derivative financial instrument, before the recipients of the investment analysis have had a reasonable opportunity to trade on the basis of it. This does not apply to ordinary market making activities performed in good faith or to the execution of unsolicited client orders.
 - (b) that financial analysts and associated persons involved in the preparation of the investment analysis are made aware of the rules on own account trading in the Securities Trading Act chapter 8,
 - (c) that the investment firm, financial analysts and other associated persons who are involved in preparing the content of the investment analyses do not receive remuneration from persons who have a special interest in the main content of the analysis,
 - (d) that the investment firm, financial analysts and relevant persons involved in the preparation of investment analyses do not offer issuers advantageous investment analyses, and
 - (e) that parties other than financial analysts are not permitted to review a draft version of an investment analysis in order to check factual information in the analysis prior to its dissemination, with the exception of a review performed to ensure compliance with the firm's legal obligations. This only applies if the investment analysis contains a

recommendation or price target.

(4) 'Derivative financial instrument' in subsection (3) means a financial instrument the price of which is closely linked to changes in the price of another financial instrument dealt with in an investment analysis, and which contains a derivative element based on this other financial instrument.

VIII. NORWEGIAN INVESTOR COMPENSATION SCHEME

Section 9-29. *Members*

The following shall be members of the Norwegian Investor Compensation Scheme:

- (a) investment firms licensed under the Securities Trading Act section 9-1 to provide investment services as mentioned in the Securities Trading Act section 2-1 subsection (1) nos. 1 to 7, and
- (b) management companies for securities funds licensed under Act of 12 June 1981 No. 52 relating to securities funds (Securities Funds Act) section 2-1 subsection (2), cf. subsection (1), to provide investment services as mentioned in the Securities Trading Act section 2-1 subsection (1) no. 4.

Section 9-30. *Foreign firms with branches in Norway*

(1) An investment firm which establishes a branch in Norway under the Securities Trading Act section 9-24 is not required to be a member of the Scheme insofar as coverage of the branch's activities in Norway is concerned. Such firm may, in respect of the branch's activities in Norway, join the Scheme as a supplement to the investor compensation scheme in the branch's home state if the latter scheme is not deemed to give the branch's clients coverage equal to that available under the Norwegian scheme. In such case, the principles of Annex II to Directive 97/9/EC shall apply. The same applies to management companies for securities funds as mentioned in the Securities Trading Act section 2-12 that establish branches in Norway and are licensed by their home state authorities to provide investment services as mentioned in the Securities Trading Act section 2-1 subsection (1) no. 4.

(2) An investment firm which establishes a branch in Norway under the Securities Trading Act section 9-25 is required to be a member of the Norwegian Investor Compensation Scheme insofar as coverage of the branch's activities is concerned. Finanstilsynet may consent to the branch not being required to be a member of the Scheme if the branch's activities in Norway are covered by a satisfactory compensation scheme. Section 9-44 applies regardless of whether or not the branch is exempt from the requirement to post collateral. The same applies to management companies for securities funds as mentioned in the Securities Trading Act section 2-13 that establish branches in Norway and are licensed by their home state authorities to provide investment services as mentioned in the Securities Trading Act section 2-1 subsection (1) no. 4.

Section 9-31. *Purpose, organisation, articles of association, etc of the Scheme.*

(1) The Compensation Scheme shall, in the event of a member's insolvency, cf. section 9-37, provide cover for claims arising from that member's handling of client assets and financial instruments, cf. section 9-32.

(2) The Scheme is a legal person in its own right. No member has a proprietary right to any portion of the Scheme's assets. Neither bankruptcy nor composition proceedings may be instituted against the Scheme.

(3) The Scheme's highest authority is its general meeting, cf. section 9-45. The Scheme is managed by a board of directors, cf. section 9-46. The Scheme shall have articles of association that are approved by the Ministry of Finance. Changes to the articles of association shall also be approved by the Ministry of Finance.

(4) The Scheme may impose a reporting requirement on its members and order such documents and information to be submitted as are necessary for the Scheme to compute fees, expenses on guarantees or for coverage of claims, or that the Scheme otherwise deems to be necessary for its activities. Finanstilsynet's duty of confidentiality does not prevent Finanstilsynet from providing information as mentioned to the Scheme.

Section 9-32. *Coverage by the Scheme*

The Scheme shall cover claims arising from a member's inability to repay money or return financial instruments as mentioned in the Securities Trading Act section 2-2 subsection (1) and which are safekept, administered or managed by the member on behalf of clients in connection with investment and ancillary services.

Section 9-33. *Size of the Scheme*

The Scheme's total own funds must constitute at least NOK 50 million.

Section 9-34. *Members' fees*

(1) The members shall each year pay a fee to the Scheme, unless the Scheme's capital according to the latest annual financial statements exceeds the minimum required by section 9-33. The members shall pay a fee to cover the Scheme's annual expenses, unless the minimum requirement in section 9-33 has been reached and the Scheme's returns or fees from new members pursuant to section 9-36 at least cover such annual expenses.

(2) Each member pays an annual fee that comprises 0.8 percent of the member's total revenues from investment and ancillary services in the preceding year, a minimum of NOK 25,000 and a maximum of NOK 500,000. 'Total revenues from investment and ancillary services' means, for investment firms, item 4.1.30 - Sum of revenues from investment services and ancillary services - in the quarterly return for investment firms and, for management companies for securities funds, item 2.1.04 - Revenues from active portfolio management and item 2.1.05 - Revenues from ancillary services shown in the quarterly return for management companies for securities funds. The date for payment of the fee shall be determined in the articles of association of the Scheme.

(3) Finanstilsynet may decide that members as mentioned in section 9-29(b) shall pay a lower fee than that set out in subsection (2) insofar as assets managed on behalf of professional clients are concerned.

(4) The board of the Scheme may set lower fees for a particular year if it is clear that the receipts pursuant to such a fee will suffice for the Scheme's minimum requirement under section 9-33 to be met.

(5) For a branch as mentioned in section 9-30 subsection (1) a fee shall each year be paid to the Scheme calculated with a basis in the principles in Annex II to Directive 97/9/EC.

(6) If the Scheme's capital is insufficient in the event that claims are brought against the Scheme, the members are obligated to cover the excess such that their liability is in the first instance pro rata, subsidiarily joint and several. The individual member's pro rata liability is calculated using the method and the distribution key described in subsection (2).

Section 9-35. *Provision of guarantee*

(1) If the Scheme's capital falls below NOK 50 million, the Scheme shall ensure that the difference is covered by a principal liability guarantee.

(2) Expenses for the said guarantee will be apportioned annually on the members and be calculated using the method and the distribution key described in section 9-34 on the basis of the member's share of the total revenues from investment and ancillary services in the preceding year.

(3) Guarantees under this section may only be provided by:

(a) undertakings as mentioned in Act of 10 June 1988 No. 40 on Financing Activity and Financial Institutions section 1-4 first paragraph nos. 1 to 3,

(b) corresponding undertakings that have their head office in, have been granted a licence to conduct business in, and are subject to supervision by the competent authority of, another EEA state,

(c) corresponding undertakings which have their head office in, have been granted a licence to conduct business in, and are subject to supervision by the competent authority of, a state outside the EEA area, provided settlement under such guarantee has the same assurance as settlement under a guarantee provided by an undertaking as mentioned in (a) and (b).

Section 9-36. *Changes to membership*

(1) A new member shall pay a fee pursuant to section 9-34 for its first four years of operation even if the Scheme has attained its minimum own funds pursuant to section 9-33.

(2) A member shall also pay full fees for the operating year in which its membership ceases. Remitted fees are not reimbursed to withdrawing members.

Section 9-37. *Financial incapacity*

(1) Financial incapacity shall be deemed to have arisen where a composition with creditors (binding on all creditors) or liquidation proceedings are initiated against a member. The same applies where a credit institution licensed as an investment firm is placed under public administration, cf. the Guarantee Schemes Act, chapter 4.

(2) For members as mentioned in section 9-30 subsection (1), financial incapacity shall be deemed to have arisen when the Scheme has been informed by the authorities of the home state of a 'determination' or 'ruling' as mentioned in Directive 97/9/EC, Article 2, No. 2.

(3) For members as mentioned in section 9-30 subsection (2), financial incapacity shall be deemed to have arisen where processes corresponding to a composition with creditors (binding on all creditors) or liquidation proceedings are initiated in the investment firm's home state. The Scheme has an unlimited right to check that the requirements mentioned have been met and otherwise to check a client's rights in relation to the Scheme's own norms and procedures before it disburses compensation.

Section 9-38. *Coverage of claims and exceptions for individual clients*

(1) The Scheme shall, where a member is financially incapacitated as described in section 9-37, provide coverage for claims as mentioned in section 9-32 arising in connection with the performance of investment services as mentioned in section 9-29, and/or ancillary services as mentioned in the Securities Trading Act section 2-1, subsection (2) no. 1 or the Securities Trading Act section 2-1, subsection (4) no. 2. Even where a member has returned or had its licence revoked, the Scheme's liability will encompass claims as mentioned in section 9-32 which arose prior to such return/revocation.

(2) For Norwegian members the Scheme shall also cover claims related to activities performed under the Securities Trading Act section 9-23 or the Securities Trading Act section 2-8a, as well as activities engaged in by branches outside the EEA area, except as otherwise provided by Finanstilsynet.

(3) The Scheme will not cover claims arising out of transactions on which unappealable final criminal judgments have been delivered in respect of money laundering.

(4) Claims from the following clients will not be covered:

- (a) financial institutions, credit institutions, insurance companies and investment firms
- (b) securities funds and other collective management undertakings
- (c) pension funds
- (d) companies in the same group as the member institution
- (e) clients that are responsible for or have benefited from circumstances affecting the member when such conditions have caused the member's financial difficulties or contributed to a worsening of the member's financial situation.

Section 9-39. *Size of coverage*

(1) Coverage is provided for up to NOK 200,000 per client in the event of financial incapacity as mentioned in section 9-37.

(2) Where multiple clients utilise the member's services together, each shall be covered in accordance with subsection (1). Unit holders in legal persons as mentioned in section 9-38 subsection (4)(b) shall not be regarded as multiple clients who are utilising the member's services together.

Section 9-40. *Announcement and period allowed for reporting claims*

The Scheme shall in an appropriate manner inform the clients that a member is financially incapacitated as described in section 9-37. Client claims must be filed with the Scheme within five months of such announcement. A client who fails to submit his claim within this period forfeits his right to coverage. If the client has been prevented from filing a claim by the deadline, a new five-month period will begin to run once the impediment has ceased.

Section 9-41. *Settlement*

(1) The Scheme shall pay claims filed by the individual client as soon as possible and at the latest three months after the legitimacy and size of the claim have been established. In special cases, Finanstilsynet may extend the time limit by up to three months.

(2) Coverage for losses of financial instruments shall be established with reference to the instruments' market value at the time financial incapacity as described in section 9-37 arose. Coverage for cash and cash equivalents shall include any interest accrued up to the point at which financial incapacity as described in section 9-37 arose.

(3) If a client with a holding in the member is indicted for a criminal offence in connection with money laundering, the compensation scheme, regardless of the above deadline, shall suspend all disbursements pending an unappealable final judgment.

(4) Disputes concerning the Scheme's decisions may be appealed to Finanstilsynet pursuant to the Public Administration Act chapter VI. Disputes about whether a claim comes under the scheme and about the right to coverage under the scheme may be heard in a court of law.

Section 9-42. *Non-fulfilment of member obligations*

(1) Where a member fails to fulfil its obligations under the Securities Trading Act section 9-12, provisions laid down in this subchapter and pursuant to these provisions, the Scheme shall inform Finanstilsynet thereof. The Scheme and Finanstilsynet shall cooperate in taking appropriate measures to ensure that the member fulfils its obligations. Subject to Finanstilsynet's consent a member may, with at least 12 months' notice, be warned of possible exclusion from the Scheme. If a member, by the end of the said period, still fails to fulfil its obligations and Finanstilsynet has given its express consent, the Scheme may decide that the member concerned shall be excluded from the Scheme. The Scheme's liability will encompass claims as mentioned in section 9-32 arising before the date of exclusion.

(2) Where a branch established pursuant to section 9-30 subsection (1) fails to fulfil its obligations as mentioned in subsection (1), the authorities in the host state must be notified. Measures shall be taken corresponding to those under subsection (1), including possible exclusion of the branch from the scheme. The clients shall be informed that the supplemental coverage has lapsed and from what date. The Scheme's liability will encompass claims as mentioned in section 9-32 arising before the date of exclusion.

Section 9-43. *Rights of the Scheme to subrogate the rights of the clients*

Where the Scheme disburses compensation, the Scheme shall have the right to subrogate the rights of the clients in relation to the bankruptcy estate, claims in a composition with creditors (binding on all creditors) or claims in relation to a credit institution where a decision has been adopted to impose public administration, to the extent that the client has received full coverage for his claim against the member.

Section 9-44. *Obligation to inform clients*

A member shall, before doing business with a client, inform the client about the Norwegian Investor Compensation Scheme, including applicable amounts, coverage and scope. For firms that have established a branch in Norway, corresponding information about the insurance scheme that is relevant to the branch shall be given in Norwegian in an easily comprehensible form. Information under this section may be given by means of electronic communication if the client so desires.

Section 9-45. *General meeting*

(1) At the general meeting each member of the Scheme has one representative and one vote. A decision at the general meeting requires a majority of the votes cast, except as otherwise provided in the articles of association. Decisions concerning the adoption and alteration of the articles of association require the consent of at least two-thirds of the votes cast.

(2) The general meeting adopts the articles of association for the Scheme, elect members and alternates to the board and establishes instructions for the board.

(3) The annual report and financial statements shall be considered by the general meeting. The annual report and financial statements shall be subject to audit.

Section 9-46. *Board*

(1) The Scheme shall have a board consisting of five members. Four members and five alternates are elected by the general meeting. Finanstilsynet appoints one member and an alternate.

(2) The elected members and alternates are appointed for a term of two years. The board elects its chairman and vice-chairman to serve for one year at a time.

(3) In the composition of the board, emphasis shall be given to achieving a balanced representation of members of different sizes and types.

(4) The Board shall draw up articles of association for the Scheme and any amendments to the articles of association which shall be submitted to the general meeting for adoption.

(5) At least three members must vote in favour of a proposal for it to be a valid board decision.

(6) Minutes shall be kept of the board's meetings. Finanstilsynet may demand submission of the minutes of the board of the Scheme.

IX. CAPITAL STRUCTURE ETC.

Section 9-47. *Exception from the statutory requirement as to initial capital*

(1) Investment firms licensed to provide investment services mentioned in the Securities Trading Act section 2-1, subsection (1) nos. 1, 4 and 5, shall have initial capital amounting to at least EUR 125,000 in Norwegian currency.

(2) Notwithstanding subsection (1), an investment firm confined to providing investment services as mentioned in the Securities Trading Act section 2-1 subsection (1) nos. 1 and 5 and not authorised to handle clients' financial instruments or assets may have initial capital amounting to at least EUR 50,000 in Norwegian currency. The requirement as to initial capital may in such cases be met by contracting liability insurance. The liability insurance shall amount to at least EUR 1 million in Norwegian currency per insured event. The total coverage under the liability insurance during the course of a year may none the less be limited to a maximum of at least EUR 1.5 million in Norwegian currency. Finanstilsynet may adjust the guarantee amounts with reference to the consumer price index.

Section 9-48. *Composition of initial capital*

Paid-in share capital, a share premium reserve and other equity capital are regarded as initial capital.

Section 9-49. *Capital requirements*

Rules concerning capital requirements are set out in Regulations of 1 June 1990 No. 435 on the calculation of own funds of financial institutions, clearing houses and investment firms, Regulations of 22 October 1990, No. 875 on minimum capital requirements for financial institutions and investment firms, Regulations of 22 June 2000 No. 632 on minimum capital requirements in respect of market risk etc., for credit institutions and investment firms and Regulations of 14 December 2006 No. 1506 on capital requirements for commercial banks, savings banks, finance companies, financial holding companies, investment firms and management companies for securities funds. (Capital Requirements Regulations).

Section 9-50. *Large exposures*

Regulations of 10 December 1997 No. 1388 on the reporting of large exposures of credit institutions and investment firms and Regulations of 22 December 2006 No. 1615 on large exposures of credit institutions and investment firms apply to large exposures.

Section 9-51. Consolidation

Rules concerning consolidation are set out in Regulations of 31 January 2007 No. 121 on the application of capital adequacy rules on a consolidated basis etc.

Chapter 10. Investment firms' business activity

I. CLASSIFICATION OF CLIENTS

Section 10-1. Client categories

(1) Investment firms shall categorise their clients as, respectively:

- (a) non-professional clients,
- (b) professional clients, cf. section 10-2, or
- (c) eligible counterparties, cf. Securities Trading Act section 10-14 subsection (2).

(2) Investment firms shall inform their clients in writing of which category they belong to, of their right to request a different categorisation and of the significance categorisation has for the level of investor protection.

(3) Investment firms may on their own initiative or at the request of a client, in general or in the individual case, treat a professional client or an eligible counterparty as a non-professional client, or an eligible counterparty as a professional client.

(4) If a professional client or an eligible counterparty requests to be treated as a non-professional client, and the investment firm consents to this, the investment firm and the client shall enter into a written agreement to such effect. The agreement shall specify whether it applies generally or in respect of one or more particular transactions, investment services or types of product.

(5) Investment firms shall have written internal guidelines and routines for the categorisation of clients. Professional clients are responsible for keeping the investment firm continuously informed of any changes that may affect their classification. If the investment firm becomes aware that the client is no longer fulfils the conditions for categorisation as a professional client, the investment firm shall take appropriate action.

Section 10-2. Professional clients

The following clients are deemed to be professional in relation to all investment services and financial instruments:

- (a) eligible counterparties as mentioned in the Securities Trading Act section 10-14 subsection (2),
- (b) legal persons who meet at least two of the following three requirements as to the size of the undertaking:
 - 1) balance sheet total amounting to at least EUR 20,000,000 in Norwegian currency,
 - 2) annual net turnover amounting to at least EUR 40,000,000 in Norwegian currency,

- 3) own funds amounting to at least EUR 2,000,000 in Norwegian currency, and
- (c) other institutional investors whose main business is to invest in financial instruments, including special purpose vehicles.

Section 10-3. *Eligible counterparties*

(1) In addition to eligible counterparties as mentioned in the Securities Trading Act section 10-14 subsection (2), professional clients as mentioned in the present regulations section 10-2(b) will be regarded as eligible counterparties.

(2) A legal person that fulfils at least two of three criteria as mentioned in section 10-4 may request to be treated as eligible counterparties in relation to investment services or transactions in respect of which the party concerned is categorised as professional.

(3) An investment firm shall obtain from the client express confirmation that he consents to being treated as an eligible counterparty. Such confirmation may be obtained in a general agreement or in connection with individual transactions.

Section 10-4. *Non-professional clients who may request to be treated as professionals*

A non-professional client may ask to be treated as a professional client provided at least two of the following three criteria are satisfied:

- (a) the client has carried out transactions of significant size in the relevant market at an average frequency of 10 per quarter over the previous four quarters,
- (b) the size of the client's financial portfolio (cash deposits and financial instruments) exceeds EUR 500,000 in Norwegian currency,
- (c) the client is working or has worked in the financial sector for at least one year in a position that requires a knowledge of the relevant transactions or investment services.

Section 10-5. *Requirements on procedure for waiving protection as non-professional*

(1) Upon request, as mentioned in section 10-4:

- (a) the client shall notify the investment firm in writing that he wishes to be treated as a professional, either generally or in respect of a particular investment service or transaction, or type of transaction or product,
- (b) the investment firm must give the client a clear written warning of the investor protection and investor compensation rights the client stands to lose, and
- (c) the client must state in writing, in a separate document from the contract, that he is aware of the consequences of losing such protection.

(2) Before deciding to accept any request for waiver, the investment firm must take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the requirements stated in section 10-4.

(3) The investment firm may only accept a request as mentioned in section 10-4 if it can establish with reasonable certainty that the client has the requisite experience, knowledge and expertise to make investment decisions in respect of relevant investment services, financial instruments or transactions, and is aware the risks associated with them.

Section 10-6. *Classification of existing clients*

(1) An investment firm shall, no later than upon its first contact with established clients after these regulations have gone into effect, inform the clients whether they are classified as non-professional clients, professional clients or eligible counterparties.

(2) Investment firms which upon entry into force of these regulations have categorised their existing clients in accordance with these regulations are not required to undertake a new categorisation. The clients must none the less be informed of the conditions for categorisation.

Section 10-7. *Effects of the distinction between eligible counterparties/professional/non-professional clients*

(1) The following provisions do not apply to professional clients:

(a) section 10-9, section 10-10, section 10-12 subsection (1), section 10-13 subsections (2) and (4), section 10-14 subsections (1) to (3) and subsection (6), section 10-15,

(b) section 10-20,

(c) section 10-21 subsection (1) no. 2, section 10-21 subsections (2), (5), (6), (7) and (8), section 10-22 subsections (2) to (6), section 10-23,

(d) section 10-27 subsections (2) and (3),

(f) section 10-28 subsection (1)(c).

(2) In assessing whether the provision of investment advice and active portfolio management for a professional client is appropriate (cf. section 10-16), the investment firm may presume that such clients has sufficient experience and knowledge as mentioned in section 10-16 subsection (1)(c) in relation to the products, services and transactions in respect of which he has been classified as professional and that he is financially in a position to handle risk as mentioned in subsection (1)(b).

(3) In the assessment of whether the provision of investment services other than investment advice and active portfolio management to a professional client is appropriate (cf. section 10-17), the investment firm may presume that such client has the necessary experience and knowledge as mentioned in section 10-17 in relation to the investment services, transactions or products in respect of which the client is classified as a professional.

(4) For eligible counterparties the following provisions, in addition to the provisions mentioned in subsection (1), do not apply in respect of the provision of investment services:

(a) section 10-11, section 10-13 subsections (1), (3) and (5), section 10-14 subsections (4) and (5),

(b) section 10-17 to section 10-19,

(c) section 10-21 subsection (1) no. 1 and subsection (3) and section 10-24,

(d) section 10-25, section 10-26 and section 10-27 subsection (1),

(e) section 10-28 subsection (1)(a) and (b), subsections (2) and (3), section 10-29 and

section 10-30,
unless the eligible counterparty concerned so requests.

II. REMUNERATION FROM PARTIES OTHER THAN THE FIRM'S CLIENTS

Section 10-8. *Remuneration from parties other than the firm's clients*

- (1) An investment firm may in connection with its provision of investment services or ancillary services only receive remuneration from or provide remuneration to persons other than clients where:
- (a) the client is informed in writing, prior to the provision of the service, of the type and value of the remuneration, or the method of calculation if the value cannot be fixed, and
 - (b) the remuneration is likely to improve the quality of the service to the client and will not impair the firm's obligation to attend to the client's interests in the best manner possible.
- (2) Subsection (1) does not apply to actual expenses that enable or are necessary to carry out the investment service, including costs on depository banks, marketplaces, securities registers, clearing houses and legal support. Such expenses must, depending on their nature, not give rise to conflicts with the firm's obligation to act honestly, fairly and professionally in accordance with the best interests of its clients.
- (3) An investment firm may give information as mentioned in subsection (1)(a) in the form of a summary, if the investment firm undertakes to provide supplementary information at the client's request.

III. INFORMATION OBLIGATIONS OF INVESTMENT FIRMS TO CLIENTS

Section 10-9. *Marketing material, etc.*

- (1) All forms of information, including marketing information, addressed to the firm's existing or potential clients shall:
- (a) contain the name of the investment firm,
 - (b) not highlight potential benefits of an investment service or a financial instrument without also giving balanced information on the relevant risks,
 - (c) be adapted to the level of knowledge of the relevant client group and
 - (d) be formulated such that important declarations, warnings etc. appear in a clear and prominent manner.
- (2) If the information contains a comparison of investment services or ancillary services, financial instruments or persons who provide investment services or ancillary services:
- (a) the comparison must be relevant and presented in a reasonable and balanced manner,
 - (b) the sources of the information in the comparison must be stated, and
 - (c) the key data and assumptions employed must be described.

- (3) If information is given indicating the historical return of a financial instrument, a financial index or an investment service, the investment firm must ensure that:
- (a) such information is not the most prominent element in the information material,
 - (b) the information includes relevant information on returns over the preceding five years or over the shorter period during which the financial instrument has been offered, the financial index has been established or the investment service has been offered. Return shall be stated for whole twelve-month periods,
 - (c) the reference period and the source of the information are clearly indicated,
 - (d) a clear warning is given that historical return is not a reliable indicator of future return,
 - (e) if the information is based on amounts in a currency other than that used in the country where the client resides, the currency shall be stated along with a warning that the return may vary as a result of fluctuating exchange rates, and
 - (f) if the information is based upon gross return, the effect of fees, commissions or other expenses is stated.
- (4) If information mentioned in subsection (1) contains data or references to a simulated historical return the information shall relate to a financial instrument or a financial index and the following requirements must be met:
- (a) the simulated historical return must be based upon the actual historical return of one or more financial instruments or one or more financial indexes that correspond to or underlie the relevant financial instrument,
 - (b) the conditions in subsection (3)(a), (b), (c), (e) and (f) shall be met for the actual historical return in (a), and
 - (c) a clear warning shall be given that the figures refer to a simulated historical return and that historical return is not a reliable indicator of future return.
- (5) If the information mentioned in subsection (1) contains data concerning future return, the following applies:
- (a) the information must not be based upon or refer to simulated historical return,
 - (b) the information shall be based upon reasonable assumptions supported by objective data,
 - (c) if the information is based upon gross return, information shall be given on the effects of fees, commissions or other expenses, and
 - (d) a clear warning must be given that such prognoses cannot be used as reliable indicators of future return.
- (6) If reference is made to a particular tax effect, it shall be clearly indicated that the tax effect depends upon the situation of the individual client and may change in the future.
- (7) The name of a competent authority may not be used in a manner indicating that the authority recommends or approves the investment firm's products or services.

(8) Information in the investment firm's marketing material must accord with information given to clients in connection with the provision of investment services or ancillary services.

(9) Information as mentioned in section 10-12 to section 10-15 shall be included in marketing material that contains an offer from an investment firm to enter into an agreement concerning a financial instrument or to provide investment services or ancillary services when the offer to the client is accompanied by a reply form or instructions on how to respond to the offer. This does not apply if the client, in order to be able to respond to the offer or invitation, is referred to other documents that contain the information following from section 10-12 to section 10-15.

Section 10-10. *Information to clients prior to entry into agreement*

(1) In good time before an investment firm enters into an agreement on the provision of investment services or ancillary services, or before the actual provision of such services if such occurs before entry into an agreement, the investment firm must inform existing and potential clients of the conditions of the agreement. The client shall at the same time receive information as mentioned in section 10-12. The information must be given in writing or on a website page if the conditions in section 9-2 subsection (2) are met.

(2) The information stated in subsection (1) may be given immediately after an agreement has been entered into where:

- (a) the agreement at the client's request was entered into using remote communication that prevented the firm from giving the information earlier, or
- (b) the firm, independently of whether Act of 21 December 2000 No. 105 on information requirements and right of cancellation etc. in relation to remote sales and sales outside a fixed sales location section 7a is applicable, treats a non-professional client as a "consumer" under this provision.

Section 10-11. *Information to clients prior to provision of the individual investment services, etc.*

(1) Before an investment firm provides an investment service or ancillary service, existing and potential clients shall receive in good time the information that follows from section 10-12 to section 10-15. Section 10-10 subsection (1) last sentence and subsection (2) apply correspondingly.

(2) The investment firm shall within a reasonable period notify significant changes in the information given pursuant to section 10-12 to section 10-15. Notification of changes shall be in writing if the information was originally given in writing.

Section 10-12. *Information about the investment firm and its services*

(1) The investment firm must give the following information about the firm and its services to clients if it is relevant:

- (a) the name of the investment firm, its address and other relevant contact information so that the clients can communicate efficiently with the firm,
- (b) the languages the client may use when contacting the firm,

- (c) the communication methods that may be used, including for the transmission and receipt of orders,
- (d) that the firm has the requisite licence, as well as the name and address of the authority that has granted the licence,
- (e) if the investment firm conducts its activities through a tied agent, this shall be indicated together with the country in which the agent is registered,
- (f) a description of the reports the firm shall provide to the client pursuant to the Securities Trading Act section 10-11 subsection (8) and the present regulations section 10-21 to section 10-24, and how often and when such reports shall be given,
- (g) a brief description of the measures taken by the investment firm in connection with the firm's safekeeping of financial instruments and assets for the client, including any membership in security schemes, and
- (h) a brief description of the investment firm's guidelines concerning conflicts of interest as mentioned in section 9-24. The client may request a more detailed description. The description shall be in writing.

(2) An investment firm that provides active portfolio management services shall provide information that enables the client to assess the firm's management results. The information may be given in the form of an independent measure, for example a reference index, that is adapted to the client's investment objectives and the financial instruments included in the client's portfolio.

(3) In addition to subsection (2), investment firms that offer active portfolio management are required to indicate:

- (a) how and how often the value of the financial instruments included in the client's portfolio is calculated,
- (b) any outsourcing of the discretionary management of all or parts of the client's portfolio,
- (c) a specification of the measure (reference index or the like) that the return on the client's portfolio is to be compared with,
- (d) the types of financial instruments that may be included in the client's portfolio, and the types of transactions that can be carried out with such instruments, including any investment restrictions, and
- (e) the investment measures and the risk level to be reflected in the discretionary portfolio management, including any specific limitations.

Section 10-13. *Information about actual financial instruments and investment strategies*

(1) An investment firm shall provide information about the financial instruments and proposed investment strategies, including appropriate guidance and warnings about the risks associated with investments in the instruments concerned or the proposed strategies. The description shall, when relevant in relation to the type of instrument concerned and the client's expertise and level of knowledge, include the following:

- (a) the risk associated with the relevant types of instruments, including an explanation of

the effects of loan financing, either directly or in connection with the use of financial instruments, as well as the risk of losing the entire investment,

- (b) the volatility of the price of such instruments and any limitations on the available market for such types of instruments,
- (c) whether the transaction in the relevant instruments involves actual or potential obligations for the client, additional to the cost of acquiring the instruments, and
- (d) any margin requirements or similar obligations that apply to that type of instrument.

(2) An investment firm that provides information on a financial instrument that is encompassed by a public offering pursuant to the Securities Trading Act chapter 7 shall inform the client where and when the prospectus will be available.

(3) If a financial instrument consists of two or more different financial instruments or services, and the total risk is higher than the risk associated with the individual components, the investment firm shall provide a comprehensive description of the instrument's individual components and how the individual components affect the risk.

(4) If a financial instrument has been guaranteed by a third party, the information on the guarantee and the guarantor shall be sufficiently detailed to enable the client to make a reasonable evaluation of the guarantee.

(5) Simplified prospectuses for securities funds created under national rules that implement Directive 85/611/EC (the UCITS Directive) Article 28 fulfil the information requirements contained in subsections (1) to (4) and the Securities Trading Act section 10-11 subsection (2) no. 2, concerning information about the financial instruments.

Section 10-14. *Information about safekeeping of clients' financial instruments and assets*

(1) Where financial instruments or funds are deposited with a third party on behalf of an investment firm, the investment firm shall inform existing and potential clients thereof and of the investment firm's liability for the third party's acts and omissions, and of the consequences for the client if the third party becomes insolvent.

(2) Where a client's financial instruments are deposited in a collective account with a third party, the investment firm shall clearly inform the client that financial instruments are safekept in such an account and of the attending risks.

(3) If the client's financial instruments are safekept by a third party that is not subject to rules requiring separation of client assets from the investment firm's and the third party's own financial instruments, the investment firm shall clearly state the risks that this involves.

(4) If the safekeeping of financial instruments or assets is such that rules outside the EEA area are applicable, the investment firm shall state this and that the client's rights to the assets may deviate from what applies within the EEA.

(5) The client shall be informed if the investment firm has a security interest or other right of retention, including a set-off right, connected to the client's financial instruments, or assets and the applicable conditions. The same applies in respect of any rights of the

third party who safekeeps the client's financial instruments or assets on behalf of the firm.

(6) In good time before an investment firm enters into an agreement on securities financing connected with financial instruments that the firm is safekeeping for a client, or is otherwise using the instruments for its own or another client's account, the firm shall give the client written information about the firm's obligations when using the instruments, including the conditions for their return and associated risks.

Section 10-15. *Information about costs and fees*

(1) An investment firm shall give existing and potential clients the following information about costs and fees:

- (a) the total costs the client shall pay for the individual financial instrument, the investment service or ancillary service. The remuneration to the investment firm shall be specified separately. If the expenses cannot be specified precisely, the basis for the calculation shall be stated to enable the client to check the calculation,
- (b) if parts of the expenses under (a) are paid in foreign currency, the currency, exchange rates and fees shall be stated,
- (c) that expenses may accrue, including taxes, on the transactions or investment service that have not been paid or imposed by the investment firm, and
- (d) payment conditions or conditions for other services.

(2) Simplified prospectuses for securities funds created pursuant to national rules implementing Directive 85/611/EC (the UCITS Directive) Article 28 meet the information requirement under subsection (1) and the Securities Trading Act section 10-11, subsection (2) no. 4, concerning expenses and fees.

IV. OBTAINING INFORMATION ABOUT A CLIENT'S EXPERIENCE ETC.

Section 10-16. *Suitability test*

(1) In order to test the suitability of investment advice and active portfolio management, cf. the Securities Trading Act section 10-11 subsection (4), the investment firm shall obtain from the client or the potential client information that enables the firm to assess whether the individual transactions encompassed by the investment advice or the active portfolio management meet the following criteria:

- (a) they are in accordance with the client's investment goals,
- (b) they are such that the client is in a position financially to manage the risk, and
- (c) they are such that the client has the necessary experience and knowledge to understand the risk involved.

(2) When, in accordance with subsection (1), an investment firm obtains information about a client's financial position, the information shall, provided it is relevant, contain details of the client's income, assets, including liquid assets, investments and real estate as well as his normal financial obligations.

(3) When, in accordance with subsection (1), an investment firm obtains information about a client's investment objectives, the information shall contain details of the client's investment horizon, risk willingness, risk profile and aim of the investment.

(4) Where, for the purposes of providing investment advice or active portfolio management, an investment firm does not receive the information required pursuant to the Securities Trading Act section 10-11 subsection (4), the firm shall not provide active portfolio management or give advice to the client in relation to investment services or financial instruments.

Section 10-17. *Appropriateness test*

In order to test the appropriateness of providing investment services other than investment advice and active portfolio management, cf. the Securities Trading Act section 10-11 subsection (5), an investment firm shall decide whether or not the client has the necessary experience and knowledge to understand the risk associated with the product sought by or offered to him or the investment service concerned.

Section 10-18. *Information for use with suitability and appropriateness tests*

(1) Where an investment firm pursuant to section 10-16 and section 10-17 obtains or requests information about a client's knowledge and experience, the information shall insofar as it is relevant in relation to the client's classification cover the following conditions:

- (a) the types of services, transactions and financial instruments of which the client has knowledge,
- (b) The nature, number and frequency of the client's transactions in financial instruments and the period during which they were carried out, and
- (c) the client's education and work experience.

(2) The investment firm shall not encourage a client to omit to give the information required under section 10-16 and section 10-17.

(3) The investment firm may take a basis in the client information obtained unless the firm knows or ought to know that the information is obviously out of date, imprecise or incomplete.

Section 10-19. *Non-complex financial instruments*

Financial instruments may be deemed to be non-complex pursuant to the Securities Trading Act section 10-11 subsection (6) no. 1, if they:

- (a) are not encompassed by the Securities Trading Act section 2-2 subsection (1) no. 4 or subsection (2) no. 3,
- (b) can be quickly disposed of, redeemed or otherwise realised at a publicly available market price or prices that are made available or confirmed through systems for valuation that are independent of the issuer,
- (c) do not involve an actual or potential obligation for the client that exceeds the cost of acquiring the instrument and
- (d) sufficient information about the instrument's characteristics is publicly available and

can be expected to be easily understood by an average non-professional client such that the client is able to make a well-informed assessment of whether the transaction should be carried out.

Section 10-20. *Agreements with clients*

Investment firms that provide investment services other than investment advice to a new client for the first time after these regulations enter into force shall enter into a framework agreement with the client. The agreement shall be entered into in writing or other durable medium, and shall set out the investment firm's and the client's rights and obligations. The obligations of the parties may be described by references to other documents.

V. REPORTING TO CLIENTS

Section 10-21. *Order confirmation upon transmission*

- (1) An investment firm that has executed an order on behalf of a client shall:
 - (a) immediately give the client the most significant information connected with the execution of the order in writing, and
 - (b) as soon as possible and at the latest on the first business day after execution, send the client written confirmation that the order has been executed. If the investment firm receives confirmation from a third party, it shall be sent to the client at the latest on the first business day after the investment firm received the order confirmation/contract note.
- (2) Subsection (1)(b) does not apply if the order confirmation/contract note contains the same information as is immediately forwarded to the client by another firm.
- (3) Subsection (1)(a) and (b) does not apply to clients' orders connected with these clients' agreements concerning mortgage loans financed by the issuance of bonds. In such cases a transaction report shall be sent simultaneously with the conditions for the mortgage loan, and at the latest one month after the execution of the order.
- (4) The investment firm shall, in addition to complying with the requirements in subsections (1), (2) and (3), provide information about the status of the order if the client so requests.
- (5) For orders connected with a client's investment in securities funds that are executed periodically, the investment firm shall meet the requirements set out in subsection (1)(b), or provide the information following from subsection (6) at least every six months.
- (6) The order confirmation sent by the investment firm to the client under subsection (1)(b) shall, if possible and relevant, contain the following details:
 - (a) identification of the reporting firm,
 - (b) the client's name or other designation,
 - (c) trade date,
 - (d) time of the trade,

- (e) order type,
- (f) trading system,
- (g) information identifying the financial instrument,
- (h) buy/sell indicator,
- (i) type of order if other than buy/sell,
- (j) quantity,
- (k) unit price,
- (l) total remuneration,
- (m) total size of commissions and fees etc. and a specification of the individual elements if the client so requests,
- (n) the client's responsibility for settling the transaction, including deadlines for payment or delivery, and account information if such information has not already been given to the client, and
- (o) whether the investment firm itself, a person in the firm's undertaking group or other client of the investment firm was the client's counterparty in the trade, the client shall be informed thereof, unless the order was executed through a trading system that enables anonymous trading.

(7) Where the order is executed in parts, the investment firm may, when complying with the informational requirement of subsection (6)(k), choose to inform the client of the price of the individual part or the average price. If the firm states an average price, the firm shall, when the client so requests, state the price for each individual part.

(8) The investment firm may provide the information mentioned in subsection (6) by using standard codes, provided it simultaneously explains the codes that are used.

(9) This provision does not apply to active portfolio management.

Section 10-22. *Reporting obligations in the provision of an active portfolio management investment service*

(1) In the case of active portfolio management, the investment firm shall give each individual client a periodic overview of the management performed on behalf of that client. This does not apply if the client receives such an overview from another firm. The overview shall be in writing.

(2) A periodic overview as mentioned in subsection (1) shall contain the following information:

- (a) name of the investment firm,
- (b) name or other indication of the client's accounts,
- (c) report on the content of the portfolio and its valuation, including further details about the individual financial instruments, their fair value, cash holdings at the start and end of the reporting period and the portfolio's return in the period,
- (d) the client's total expenses accrued during the reporting period with specification the

management fee and the overall expenses incurred on order execution and, where relevant, an indication that a more detailed breakdown of expenses can be provided upon request,

- (e) a comparison of the portfolio's return in the reporting period with the reference index, if any, agreed between the investment firm and the client,
- (f) total dividends, interest and other disbursements to the client's portfolio received in the reporting period,
- (g) other corporate events of significance to the rights attached to the financial instruments included in the client's portfolio, and
- (h) information following from section 10-21 subsection (6)(c) to (l) for each individual transaction executed in the reporting period. This does not apply if the client chooses to receive such information after each individual transaction, cf. subsection (5).

(3) The investment firm shall provide clients with information as mentioned in subsection (1) every sixth month unless:

- (a) the client requests that the overview be given every third month,
- (b) the client chooses to receive information on executed transactions for each individual transaction. In such case the overview shall be provided at least once a year, or
- (c) the active portfolio management agreement between the investment firm and the client opens the way for a loan-financed portfolio, either directly or by the use of financial instruments. In such case the overview shall be provided at least once a month.

(4) The investment firm shall inform the client of his rights under subsection (3)(a). The exception in subsection (3)(b) shall not apply to transactions in financial instruments encompassed by the Securities Trading Act section 2-2 subsection (1) no. 4 or subsection (2)(c).

(5) The client is entitled to receive information on executed transactions in respect of every single transaction in the portfolio. In such case the investment firm shall, once the transaction has been executed, give the client significant information about the transaction in writing immediately.

(6) If a client as mentioned in subsection (5) is a non-professional client, the investment firm shall at the latest on the first business day after the execution send the client confirmation of the execution together with information as mentioned in section 10-21 subsection (6). If the investment firm receives confirmation of an executed order from a third party, such confirmation shall be forwarded to the client at the latest on the first business day after the firm received the confirmation from the third party. This does not however apply if the confirmation contains the same information as will immediately be sent to the client by another firm.

Section 10-23. *Requirements as to reporting of losses in respect of order execution and active portfolio management services*

(1) An investment firm that executes an order involving uncovered positions that may give rise to future obligations shall, in addition to complying with the requirements following from section 10-21, also report losses that exceed any limit set in advance.

(2) An investment firm that executes transactions on behalf of a client in connection with active portfolio management shall in addition to complying with the requirements following from section 10-22, also report potential losses that exceed a limit set in advance.

(3) Reporting as mentioned in subsections (1) and (2) must be carried out at the latest at the end of the business day on which the limit has been exceeded, or if the limit is exceeded on a day that is not a business day, at the latest at the end of the following business day.

Section 10-24. *Account statements of clients' financial instruments and assets*

(1) An investment firm that safekeeps financial instruments or assets on behalf of clients shall at least once each year send each client an account statement showing which financial instruments and assets the firm is safekeeping on behalf of the client. This does not apply if such account statement is provided in other periodic reporting. The information shall be in writing.

(2) Subsection (1) does not apply to credit institutions whose home state is within the EEA insofar as deposits in accounts in the institution are concerned.

(3) Account statement as mentioned in subsection (1) shall contain:

- (a) information on all financial instruments and funds safekept by the investment firm on behalf of the client at the end of the reporting period,
- (b) the extent to which the client's financial instruments or assets have been the object of securities financing, and
- (c) the extent to which the client has had revenues as a result of his financial instruments or assets having been the object of securities financing, and the basis for such earnings.

(4) Where the return on one or more unsettled transactions is included in the value of the client's portfolio, information to be given under subsection (3)(a) shall be based either on the trading or settlement date provided that the same basis is used consistently for all unsettled transactions on the account statement.

(5) An investment firm that safekeeps financial instruments or funds and which provides an active portfolio management investment service on behalf of a client may include the account statement given under subsection (1) in the periodic overview that shall be given to the client under section 10-22 subsection (1).

VI. BEST EXECUTION

Section 10-25. *Execution of orders on terms most favourable to the client*

(1) An investment firm shall, when executing a client order, give weight to the following criteria to determine the relative weight of the factors stated in the Securities Trading Act section 10-12 subsection (1):

- (a) the client's characteristics, including whether the client is categorised as non-professional or professional,
- (b) the nature of the order,
- (c) characteristics of the financial instruments included in the order, and
- (d) characteristics of the trading systems where the order can be entered.

(2) In this section and in section 10-27 'trading system' means a regulated market, MTF, systematic internaliser, market maker or other liquidity guarantor or entity with its home state outside the EEA that performs corresponding functions.

(3) If an order or part of an order is executed pursuant to specific instructions from a client, this is regarded as best execution under the Securities Trading Act section 10-12 subsection (1).

(4) In the execution of an order on behalf of a non-professional client, the best possible result is determined on the basis of the total remuneration payable by the client in connection with the execution of the order. In the calculation of the total remuneration, regard shall be had to the price of the financial instrument and the cost of order execution that include the client's total direct costs in connection with execution, including fees for the use of the trading system, clearing houses and securities registers as well as other costs and fees to a third party involved in execution of the order.

(5) In order to ensure the best results for the client when the order can be executed in several trading systems, and in order to compare the results that can be achieved for the client in the different trading systems mentioned in the investment firm's guidelines for order execution, the investment firm shall take into account its own commissions and costs that are incurred by executing the order on the different trading systems.

(6) The commissions of the investment firm shall not be formulated in such a way as to subject some trading systems to unfair differential treatment.

Section 10-26. *Best results for active portfolio management and receipt and transmission of orders*

(1) An investment firm shall implement the measures mentioned in subsections (2) to (6) when:

- (a) the firm in connection with active portfolio management places orders for execution with another firm, or
- (b) the firm in connection with the receipt and transmission of orders transmits an order for execution to another firm.

(2) An investment firm shall implement every reasonable measure to obtain the best possible result for the client with reference to the factors mentioned in the Securities Trading Act section 10-12 subsection (1). The relative weight of the factors shall be

determined in accordance with the criteria mentioned in these regulations section 10-25 subsections (1) and (4).

(3) An investment firm is deemed to have fulfilled its obligation under subsection (1) to the extent that an order is placed or transmitted in accordance with specific instructions from a client.

(4) An investment firm shall have guidelines to ensure compliance with subsection (2) The guidelines shall for each type of financial instrument the firm trades in, specify the entities with which it places or to which it transmits orders. The firm shall ensure that the specified entities have efficient procedures, systems and arrangements that ensure that the firm can fulfil its obligations under this provision. Investment firms shall provide appropriate information to their clients on their guidelines.

(5) An investment firm shall regularly monitor the guidelines established pursuant to subsection (4) to check their effectiveness, including in particular the results of order execution achieved by the entities specified in the guidelines, and see to necessary improvements.

(6) An investment firm shall assess the guidelines established pursuant to subsection (4) annually, or when changes occur of significance to the firm's continued ability to achieve the best results for the client.

Section 10-27. Order execution policy

(1) An investment firm shall annually evaluate its policy on order execution established pursuant to the Securities Trading Act section 10-12 subsection (2), including the firm's systems, procedures and arrangements for order execution. Such assessment shall also be carried out in the event of a change of significance to the firm's continued ability to achieve the best possible results for the clients in terms of the trading systems specified in the guidelines.

(2) The investment firm shall in good time before the provision of services give clients comprehensive information on its order execution policy, including:

- (a) an account of the firm's weighing up of the criteria mentioned in the Securities Trading Act section 10-12 subsection (1), cf. the present regulations section 10-25 subsections (1) and (4), or an account of the investment firm's weighing up process,
- (b) a list of the trading systems that the firm deems to be suitable for obtaining the best results in the execution of orders, and
- (c) a clear and prominent warning that specific instructions from a client may result in the investment firm's inability to implement the guidelines for ensuring the best result for the client.

(3) The information mentioned in subsection (2) shall be given in writing or on a website page provided the conditions in section 9-2 subsection (2) are met.

VII. HANDLING OF CLIENT ORDERS

Section 10-28. *Handling of orders*

- (1) An investment firm shall in the execution of orders ensure that:
 - (a) orders are registered and allocated immediately and accurately,
 - (b) comparable client orders are executed immediately and in the chronological order in which they were received, unless the nature of the order or the prevailing market conditions make this impossible or they are in conflict with the client's interests, and
 - (c) the client is informed of any significant problems in executing the order as soon as the firm has become aware of such problems.
- (2) An investment firm that is responsible for checking or carrying out settlement of executed orders shall initiate all reasonable measures to ensure that the client's financial instruments or assets received in connection with the settlement are immediately transferred to the account of the client concerned.
- (3) An investment firm may not misuse information on non-executed orders and shall initiate all reasonable measures to prevent individuals associated with the firm from misusing such information.

Section 10-29. *Order aggregation*

- (1) An investment firm may not execute a client order together with another client order or a transaction on its own account (aggregation), unless:
 - (a) it is improbable that aggregation in general will be to the detriment of the client,
 - (b) each client is apprised that aggregation may be to his detriment with respect to a specific client order, and
 - (c) the investment firm has effective guidelines for the distribution of non-executed aggregated orders, and these precisely indicate the conditions for reasonable allocation of aggregated orders and transactions, including the significance that order volume and price has for the allocation and processing of partially executed orders.
- (2) An investment firm that aggregates a client order with other client orders where the aggregated order is only partially executed shall distribute the relevant trades in accordance with the guidelines for order allocation.

Section 10-30. *Allocation of trades*

- (1) In the aggregation of transactions for its own account with one or more client orders, an investment firm shall not allocate the actual trades in a way that harms client interests.
- (2) An investment firm that aggregates a client order with a transaction on its own account where the aggregated order is only partially executed shall prioritise the client's order in the allocation. If the investment firm establishes that the transaction could not be executed on equally good terms without such aggregation, the investment firm may none the less allocate the transaction on pro rata basis in accordance with the guidelines for order allocation, cf. section 10-29 subsection (1)(c).

(3) An investment firm shall in the guidelines for order allocation as mentioned in section 10-29 subsection (1)(c) establish routines to prevent transactions on own account that are aggregated with client orders from being reallocated in a manner detrimental to client interests.

VIII. VOICE RECORDINGS

Section 10-31. *Documentation of orders received*

(1) An investment firm shall establish satisfactory routines for voice recording of all orders and indicative orders to buy, sell or subscribe financial instruments that have been received by telephone. An investment firm shall furthermore establish satisfactory routines for the retention of documentation of received orders and indicative orders through other communications channels.

(2) An investment firm may not execute orders received by telephone if no voice recording has been made.

Section 10-32. *Retrieval of voice recordings*

Voice recordings shall at a minimum be retrievable using the following search criteria:

- (a) Time of the conversation.
- (b) Employee of the firm who received the order.

Section 10-33. *Retention of documentation*

(1) Sound recordings and other documentation as mentioned in section 10-31 shall be retained for at least three years reckoned from the date the recording was made or the documentation received.

(2) Finanstilsynet may in special cases order an investment firm to retain sound recordings and documentation as mentioned in section 10-31 and section 10-32 beyond the period stated in subsection (1).

(3) Satisfactory retention procedures shall be employed.

Section 10-34. *Information requirement*

(1) Upon the establishment of any client relationship, the investment firm shall inform the client in writing:

- (a) that sound recordings are made of all orders,
- (b) that documentation of orders received through other communications channels is also retained,
- (c) that the retention period is at least three years, and
- (d) that the sound recording may be retrieved using special criteria. The criteria that may be used for retrieval shall be specified separately.

(2) Information as mentioned in subsection (1) may be given in information as mentioned in section 10-10.

Section 10-35. *Right of inspection*

Investment firms shall establish internal routines for employees' and employee representatives' access to information as mentioned in section 10-31. The routines shall at least indicate what official purposes and what procedures shall permit such access.

IX. TRANSACTION REPORTING

Section 10-36. *Scope*

The provisions of section 10-37 to section 10-39 apply to investment firms licensed under the Securities Trading Act section 9-1 and branches of foreign investment firms, cf. Securities Trading Act section 9-24 subsection (1). However, the said provisions do not apply to transactions performed by branches of Norwegian investment firms in another EEA state, cf. Securities Trading Act section 9-23.

Section 10-37. *Reportable transactions*

(1) 'Transaction to be reported under the Securities Trading Act section 10-18' means any purchase or sale of a financial instrument quoted on a regulated market on behalf of a client or for the own account of a party subject to the reporting obligation. The reporting obligation applies irrespective of whether the transaction was performed on a regulated market.

(2) Finanstilsynet may by regulations make further provision concerning reportable transactions.

Section 10-38. *Customer identification*

Transaction reports shall contain the following data on the client: eleven-digit personal identity number, business enterprise organisation number, D-number¹ or, if the client has no such number, another unique identification code.

Section 10-39 *Identification of financial instruments*

Transaction reports shall contain the following data in order to identify and classify the financial instrument concerned:

- (a) International Securities Identification Number (ISIN) pursuant to ISO 6166, or
- (b) Alternative Instrument Identifier (AII) as further determined by Finanstilsynet.

X. SYSTEMATIC INTERNALISATION

Section 10-36. *Systematic internalisation*

¹ A five-digit "D-number" is assigned to foreign nationals not holding a Norwegian personal identity number who wish to register with the Brønnøysund Register Centre.

Further rules on systematic internalisation are set out in Commission Regulation (EC) No. 1287/2006, cf. section 15-1.

XI. PUBLICATION OF INFORMATION ON EXECUTED TRANSACTIONS

Section 10-37. *Publication of information on executed transactions*

Further rules on the publication of information on executed transactions set out in Commission Regulation (EC) No. 1287/2006, cf. section 15-1.

Chapter 11. Operation of multilateral trading facilities

Section 11-1. *Operation of multilateral trading facilities*

Further rules on the operation of multilateral trading facilities are set out in Commission Regulation (EC) No. 1287/2006, cf. section 15-1.

Part 4. Clearing and settlement of transactions in financial instruments

Chapter 12. Set-off of certain financial instruments

Part 5. Supervision, sanctions, etc.

Chapter 13. Supervision

I. SUPERVISION OF ISSUERS' ONGOING INFORMATION REQUIREMENT

Section 13-1. *Supervision of compliance with the Securities Trading Act sections 5-2 and 5-3*

Supervision of compliance with the Securities Trading Act section 5-2 and section 5-3 shall be exercised by a regulated market.

II. OVERSIGHT OF THE FINANCIAL REPORTING OF STOCK EXCHANGE LISTED ISSUING UNDERTAKINGS

Section 13-2. *Issuing undertakings*

(1) The provisions of subchapter II apply to issuers of transferable securities which are traded or for which admission to trading has been requested on a regulated market in the EEA with Norway as their home state, cf. Securities Trading Act section 5-4.

(2) The provisions of subchapter II do not apply to the state, Norges Bank, municipalities, county municipalities, municipal and county municipal undertakings and inter-municipal companies.

Section 13-3. *Financial reporting*

The present regulations apply to financial reporting in the form of:

- a. annual financial statements and management reports
- b. interim financial statements
- c. pro forma figures and corresponding statements with additional information in prospectuses approved by the competent prospectus authority or registered in the Register of Business Undertakings in accordance with the Securities Trading Act chapter 7.

Section 13-4. *Oversight of financial reporting*

(1) Finanstilsynet shall establish arrangements for the selection of undertakings and documents as mentioned in section 13-3 that are to be subject to examination.

(2) Finanstilsynet shall arrange its inspections with a view to identifying significant reporting anomalies.

Section 13-5. *Submissions to Finanstilsynet*

(1) Documents as mentioned in section 13-3, as well as the board's proposal for annual financial statements, management report, declarations by persons responsible at the issuer and the audit report shall be sent to Finanstilsynet as soon as they are available.

Objections by the corporate assembly and the supervisory board to the management board's proposal shall also be sent to Finanstilsynet as soon as they are available, cf. Securities Trading Act section 5-5 subsection (7).

(2) Finanstilsynet will make further requirements as to reporting by issuers for the purpose of selection pursuant to section 13-4 subsection (1).

(3) The documents shall be sent to Finanstilsynet by electronic means.

Section 13-6. *Information requirement*

Finanstilsynet may require information as mentioned in the Securities Trading Act section 15-2 subsection (7) to be disclosed orally or in writing within a set period. Finanstilsynet may require documents to be submitted, including technically retained information and printouts from storage media.

Section 13-7. *Obligation to report suspicion that financial reporting does not give a true and fair view*

Notification as mentioned in the Securities Trading Act section 15-2 subsection (7), shall be given in writing and contain the name and position of the notifier, as well as an account of why the notifier considers that the issuer undertaking's financial reporting does not give a true and fair view as required by the relevant rules for financial reporting.

Section 13-8. *Measures to ensure correct financial reporting etc.*

If the financial reporting in documents is not in accordance with the law or regulations, Finanstilsynet may order the issuer undertaking to:

- a) change its future accounting practices,

- b) correct errors in the next report, giving information about the circumstance in notes to the accounts, and
- c) to publicly disclose additional information by notification to the stock exchange or by other means.

Section 13-9. *Presentation of new annual financial statements and a new management report*

If the financial reporting in:

- (a) the annual financial statements and/or management report,
- (b) the half-year the financial statements and/or half-yearly management report, and/or
- (c) the quarterly report,

deviates significantly from that required by law or regulations, Finanstilsynet may order the issuer undertaking to submit new reports as mentioned in (a) to (c) within a set period.

Section 13-10. *Cumulative daily fine*

The Financial Supervision Act section 10 second paragraph on a cumulative daily fine applies correspondingly to orders made pursuant to section 13-8 and section 13-9.

Section 13-11. *Appeal board*

(1) An appeal board shall be appointed to resolve appeals against decisions pursuant to the Securities Trading Act section 15-1 subsection (3), cf. these regulations section 13-8, section 13-9 and section 13-10; the Securities Trading Act section 15-2 subsection (7), cf. these regulations section 13-5, section 13-6 and section 13-7; and the Securities Trading Act section 15-7 subsection (5).

(2) The appeal board may in an appeal case try all aspects of the decisions that are the subject of appeal.

Section 13-12. *Composition of the appeal board*

(1) The appeal board shall consist of five members with personal alternates who are appointed by the ministry for a four-year period. Upon first-time appointment, three members will be appointed for four years and two members for two years, while all alternates will be appointed for two years. The board shall have a chairperson and a deputy chairperson. The board shall be composed in such a way as to ensure a high level of accounting and legal competence.

(2) If both a member and his/her personal alternate are prevented from attending, the chairman will summon one of the other alternates. The appeal board is quorate if at least four of the persons summoned appear.

(3) In the absence of the chairperson the work of the appeal board will be headed by the deputy chairperson, alternatively by a member.

Section 13-13. *Case handling*

(1) Cases before the appeal board are considered under the rules of the Public Administration Act chapter VI with the following changes and additions:

(2) Appeals shall be submitted in writing. An appeal shall contain a complete account of errors in the application of the law, in the facts or in the handling of the case that are alleged to exist in the decision that is being appealed. Where it is alleged that Finanstilsynet's decision has an incorrect or deficient basis in facts, the appeal shall contain a comprehensive and complete account of the facts that the appellant believes should be taken as a basis. If such an account has been given to Finanstilsynet at a prior stage, reference may be made thereto. Where the decision of Finanstilsynet and the appeal board involve an exercise of judgement, the appeal should cite those factors that the appellant considers to be of significance in the exercise of such judgement.

(3) The appeal board shall in the prescribed manner resolve the matter on the basis of the case documents that are available when it receives the appeal. If special grounds exist the appeal board may decide to hold an oral hearing. The appeal board will decide which parts of the case are to be examined orally. The appeal board may call upon the parties and witnesses to give evidence to the appeal board directly.

(4) Decisions and rulings concerning the preparation of a case by the appeal board will be made by the board's chairperson or, on the chairperson's authority, by one of the other members.

Section 13-14. *Compensation and coverage of expenses*

The ministry will establish the compensation payable to the appeal board members and make decisions concerning the board's secretariat. Finanstilsynet may establish that the expenses on compensation to the appeal board members and the secretariat as well as other expenses that accrue in connection with the appeal should be met by the appellant in the event that the appeal board decides against the appellant.

III. TRAFFIC DATA

Chapter 14. Supervision of investment firms with their head office in another EEA state

Section 14-1. *Scope*

The provisions of this chapter apply to investment firms licensed to provide investment services in Norway pursuant to the Securities Trading Act section 9-1 or section 9-25, and firms that conduct activities through a branch pursuant to section 9-24.

Section 14-2. *Reporting*

Firms as mentioned in section 14-1 are required each quarter to complete and submit to Finanstilsynet the quarterly report that is appended to these regulations. The report shall be completed in the manner prescribed by the relevant guide issued by Finanstilsynet.

Section 14-3. *Deadline for submission*

The quarterly report shall be sent to Finanstilsynet by the following deadlines

First quarter:	30 April
Second quarter:	30 July
Third quarter:	30 October
Fourth quarter:	30 January

Chapter 15. Implementation of Commission Regulation (EC) No. 1287/2006

Section 15-1. *Implementation of Commission Regulation (EC) No. 1287/2006*

EEA Agreement Annex IX No. 30cac. (Commission Regulation (EC) No. 1287/2006) implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive applies as regulations with such adjustments as follow from Annex IX, Protocol 1 to the Agreement and the Agreement in general.

Part 6. Effective date and changes in other regulations

Chapter 16. Commencement

Section 16-1. *Commencement*

(1) Chapters 1, 2, 3, 7, 9, 10, 14, section 15-1, chapters 16 and 17 of the present regulations enter into force on 1 November 2007. Chapters 4, 5, 6, section 13-1, section 13-2, section 13-3, section 13-4, section 13-5, section 13-6, section 13-7, section 13-8, section 13-9 and section 13-10 of these regulations enter into force on 1 January 2008, nonetheless such that section 5-2 to section 5-8 and section 5-11 are effective for accounting periods starting on 1 January 2008 or later. Section 13-11 to section 13-14 of the regulations will enter into force at a date determined by the ministry.

(2) The following regulations are abolished as from 1 November 2007:

- Regulations of 26 September 1996 No. 948 on investment firms' own account trading as an element in a firm's normal asset management, including notification of such trading,
- Regulations of 26 September 1996 No. 950 on investment firms' obligation to keep a record of orders received and executed
- Regulations of 14 October 1996 No. 985 on investment firms' initial capital
- Regulations of 18 March 1997 No. 1053 on quarterly reports for investment firms
- Regulations of 7 November 1997 No. 1149 on entry into force and transitional provisions for Act of 19 June 1997 No. 79 on securities trading
- Regulations of 18 December 2002 No. 1685 on issuance requirements in connection with investment firms' trading in listed call warrants and put warrants without the agency of a clearing house

- Regulations of 7 March 2003 No. 289 on investment firms' outsourcing
- Regulations of 9 July 2003 No. 954 on investment firms' obligation to make notification of their shareholders
- Regulations of 7 November 2003 No. 1322 on investment firms' obligation to voice record orders received and to retain documentation of orders received
- Regulations of 1 July 2005 No. 783 on the preparation and dissemination of investment recommendations etc
- Regulations of 1 July 2005 No. 785 on market abuse and reporting of suspicious transactions
- Regulations of 9 December 2005 No. 1422 on information in prospectuses
- Regulations of 9 December 2005 No. 1423 on the implementation of prospectus control
- Regulations of 9 December 2005 No. 1424 on exceptions from the prospectus requirement
- Regulations of 9 December 2005 No. 1425 on transitional rules in connection with changes in prospectus rules in the Securities Trading Act chapter 5
- Regulations of 22 December 2005 No. 1672 on the Norwegian Investor Compensation Scheme
- Regulations of 20 December 2006 No. 1561 on authorised marketplaces for transferable securities
- Regulations of 8 June 2007 No. 602 on base prospectuses.

Decision of 6 December 2006 No. 1679 on delegation of authority to Finanstilsynet pursuant to the Securities Trading Act section 8-12 subsection (3) is revoked as of the same date.

(3) The following regulations are revoked as of 1 January 2008:

- Regulations of 15 December 1997 No. 1307 on requirements as to guarantee when presenting a mandatory bid
- Regulations of 18 December 2002 No. 1613 on investment firms' exemption from the obligation to disclose large shareholdings
- Regulations of 13 October 2005 No. 1198 on oversight of listed issuer undertakings' financial reporting

Chapter 17. Amendments to other regulations

Section 17-1. Amendments to other regulations

From 1 November 2007 the following amendments will be made to other regulations: -