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## **Act on Securities Trading (Securities Trading Act)**

### **Chapter 1 Purpose, definitions and legal basis for regulations**

#### **Section 1-1 Purpose of the Act**

The purpose of this Act is to lay the basis for secure, orderly and efficient trading in financial instruments.

#### **Section 1-2 Investment services, financial instruments etc.**

"Investment services" means the following services when these are provided on a commercial basis:

1. reception and transmission, on behalf of investors, of orders in relation to financial instruments, as well as the execution of such orders,
2. dealing in financial instruments for own account,
3. active management of investors' portfolios of financial instruments on a client-by-client basis and in accordance with investors' mandates,
4. underwriting in respect of issues or other public offerings as mentioned in chapter 5, or the placing of such issues or offerings,
5. marketing of financial instruments.

"Financial instruments" means:

1. transferable securities,
2. units in collective investment undertakings,
3. money-market instruments,
4. financial futures/forward contracts, including equivalent cash-settled financial instruments,
5. forward interest-rate agreements (FRAs),
6. interest-rate and currency swaps as well as swaps related to shares and share-price indexes, or
7. options to acquire or dispose of any instrument listed in 1 to 6, including index options, options on currency and on interest rates as well as equivalent cash-settlement instruments.
8. commodity derivatives

"Transferable securities" means:

1. shares and other securities equivalent to shares,

2. bonds and other debt instruments that are negotiable on the capital market,
3. any other securities normally dealt in and conferring the right to acquire any such transferable security by subscription or exchange, or giving rise to a cash settlement.

“Commodity derivatives” means financial futures/forward, option or swap contracts connected with commodities or services. A derivatives contract which is subject to trading on a stock exchange or an authorised market, is always deemed to be financial.

### **Section 1-3 Investment firm, credit institution and qualifying holding**

"Investment firm" means an undertaking that provides investment services.

"Credit institution" means an undertaking as mentioned in the Financial Institutions Act (No. 40 of 10 June 1988) section 1-5 subsection 3.

"Qualifying holding" means a direct or indirect holding which represents at least 10 per cent of the share capital or of the voting rights or which otherwise makes it possible to exercise substantial influence over the management of the undertaking. In this context shares owned by close associates of the shareholder, cf. section 1-15, rank on a par with shares owned by such shareholder.

### **Section 1-4 Close associates**

"Close associate" means

1. the spouse or a person with whom the shareholder cohabits in a relationship akin to marriage,
2. the shareholder's under-age children, and under-age children of a person as mentioned in subsection 1 with whom the shareholder cohabits,
3. an undertaking within the same group as the shareholder,
4. an undertaking in which the shareholder himself or a person as mentioned in subsections 1, 2 or 5 exercises influence as mentioned in the Private Limited Companies Act and the Public Limited Companies Act section 1-3 second paragraph or the General and Limited Partnerships Act section 1-2 second paragraph,
5. a party with whom the shareholder must be assumed to be acting in concert in the exercise of rights accruing to the owner of a financial instrument.

### **Section 1-5 Clearing**

"Clearing" means business activity which consists in entering as party to, or otherwise guaranteeing the performance of, agreements related to trade in financial instruments as mentioned in section 1-2 second paragraph subparagraphs 4 to 8 and commitments related to loans of financial instruments.

### **Section 1-6 Application of this Act to trading in a regulated market**

The ministry may provide that any provisions of this Act which concern financial instruments quoted on a stock exchange shall entirely or in part apply to financial instruments quoted on an authorised market under section 2-1 first paragraph of the Stock Exchange Act.

The ministry may provide that competence which is assigned under chapter 4 of this Act to the stock exchange shall be assigned to Kredittilsynet.

## **Section 1-7 Application of this Act to trading in and activities connected with commodity derivatives**

Trading in or activities that are mainly connected with financial instruments as mentioned in section 1-2 second paragraph subparagraph 8 shall only be governed by the following provisions of this Act: chapter 1, sections 2-5 and 2-6, chapter 6, section 9-2, section 9-3 second paragraph first sentence, section 9-4 first and third paragraphs, and chapters 10, 12 and 14.

The ministry may issue Regulations to provide that section 2-1, section 2-2 and section 2-3 may be applicable to trading in financial instruments as mentioned in section 1-2 second paragraph subparagraph 8.

## **Chapter 2 General trading rules, duty of confidentiality etc.**

### **Section 2-1 Misuse of information**

Subscription for, purchase, sale or exchange of financial instruments which are quoted, or for which quotation has been applied for, on a Norwegian stock exchange or a Norwegian authorised market, or incitement to such dispositions, must not be undertaken by anyone who has information about the financial instruments, the issuers thereof or about other factors, which is likely to influence the price and which is not publicly available or commonly known in the market. The same applies to entry into, purchase, sale or exchange of option or futures/forward contracts or equivalent rights connected with such financial instruments or incitement to such dispositions.

The first paragraph applies only to the misuse of information as mentioned in the first paragraph. The first paragraph does not prevent the normal performance of option or futures/forward contracts previously entered into upon the expiry of such contracts.

The first paragraph does not apply to dispositions made on behalf of a State when such disposition is part of the monetary and foreign exchange policy of the State concerned.

### **Section 2-2 Duty of confidentiality in connection with information and prohibition against giving advice**

Persons who by virtue of their holding in the issuing undertaking or by virtue of their work, assignment or office become privy to information as mentioned in section 2-1 first paragraph must not pass such information to unauthorised parties. Persons as mentioned in the first sentence are under duty to show due care when handling information as mentioned in section 2-1 first paragraph so that the information does not come into the possession of unauthorised parties.

Persons as mentioned in the first paragraph, and who are privy to such information as mentioned, must not give advice to others about trading in the financial instruments to which the information pertains.

An undertaking with financial instruments quoted on a stock exchange or with financial instruments quoted on an authorised market, shall maintain lists of persons who receive information as mentioned in section 2-1, first paragraph, and who are not employees or officers of the undertaking. If the information in question has to be transmitted to a stock exchange or to an authorised market under section 5-7 or section 6-8, cf. section 5-7, of the Stock Exchange Act, the list shall be attached to such transmission, and also be sent to

Kredittilsynet. The undertaking is required to have the lists in its safekeeping for at least ten years

### **Section 2-3 Investigation Requirement**

No member of the board, member of the control committee or auditor associated with the issuing undertaking may subscribe for or incite anyone to subscribe for, purchase, sell or exchange financial instruments which have been issued by the undertaking, without properly investigating whether there exists such information as mentioned in section 2-1 first paragraph about the financial instruments or their issuer in the undertaking. The first sentence applies correspondingly to a deputy member or observer to the board of the issuing undertaking. The first sentence also applies correspondingly to senior employees of the undertaking and senior employees and board members of an undertaking in the same group who can normally be expected to have access to information as mentioned in section 2-1 first paragraph.

The investigation requirement also applies upon entry into, purchase, sale or exchange of option or futures/forward contracts or corresponding rights connected with financial instruments issued by the undertaking as well as to incitement to such dispositions.

### **Section 2-4 Trading in another regulated market in the European Economic Area (EEA)**

Section 2-1, first paragraph, and section 2-2 first and second paragraphs apply correspondingly to acts carried out in Norway when the financial instruments in question are traded in another regulated market in the European Economic Area (EEA).

### **Section 2-5 Prohibition of unreasonable business methods**

No-one may employ unreasonable business methods when trading in financial instruments.

Good business practice shall be observed in approaches to the general public or to individuals which contain an offer or encouragement to make an offer to purchase, sell or subscribe for financial instruments or which are otherwise intended to promote trade in financial instruments.

### **Section 2-6 Prohibition of price manipulation**

Nobody may seek by fraudulent means to influence the price of a financial instrument quoted on a Norwegian stock exchange or on a Norwegian authorised market.

Fraudulent influence is deemed to include the spreading of incorrect or misleading information, or entering into spurious agreements for the purpose of:

1. influencing someone to subscribe for, purchase or sell financial instruments or rights to financial instruments, or to abstain from doing so,
2. influencing the subscription price, or
3. influencing the conversion ratio in connection with merger or demerger of companies.

## **Chapter 2a The right of employees etc., of certain undertakings to trade for own account**

### **Section 2a-1 Area of application**

The provisions of this chapter apply to employees of:

1. investment firms
2. management companies for securities funds,
3. financial institutions,
4. undertakings forming part of a financial group with the exception of estate agencies and debt collection agencies,
5. pension funds, and
6. Postbanken BA, Norges Kommunalbank, the Government Industrial and Regional Development Fund, the State Housing Bank, the National Insurance Fund, Norges Bank, the Government Bank Investment Fund and the Government Bank Insurance Fund, who normally have knowledge of or are engaged in investment services or management of financial instruments for the account of the undertaking or of customers of the undertaking.

The ministry may in regulations decide that the provisions of this chapter shall apply to other employees engaged in the management of public funds and other employees in public institutions carrying on financial activities than those mentioned in the first paragraph subparagraph 6.

The provisions of section 2a-2 to section 2a-6 apply correspondingly to employees of Norwegian branches of an undertaking whose head office is in another EEA state in regard to trading of financial instruments quoted on a Norwegian stock exchange or issued by a Norwegian undertaking.

The ministry may make exceptions from section 2a-2 and section 2a-3 for employees of branches of a Norwegian undertaking where this is considered necessary for the undertaking owing to competitive considerations. Exceptions may only be made in cases where the employees are encompassed by equivalent rules in the home state. Exceptions may not be made for trading of financial instruments quoted on a Norwegian stock exchange or issued by a Norwegian undertaking.

### **Section 2a-2 General rules on employees' own-account trading**

Employees may not issue or trade for own account financial instruments as mentioned in section 1-2 second paragraph subparagraphs 4 to 7. However, this does not apply to acquisition of options on shares or primary capital certificates in the employer undertaking when the options are issued by the undertaking. Other financial instruments, with the exception of units in securities funds, may be disposed of no earlier than 12 months after acquisition.

Employees may not finance acquisitions of financial instruments with loans secured on their own financial instruments. Employees may not sell financial instruments which they do not own or borrow financial instruments.

Employees may not purchase, sell or subscribe financial instruments when the employer undertaking has made a decision regarding purchase, sale or subscription of the instrument concerned, or when a customer order has been placed for the instrument concerned. This applies until the day after the trade is executed. The first sentence does not apply if the employee was not aware, and was not in a position to be aware, that such a decision had been made or customer order placed. Nor does the first sentence apply in the

case of subscription in accordance with pre-emption rights under the Private Limited Companies Act or the Public Limited Companies Act, or of acceptance of offers to all shareholders on equal terms.

Employees may not purchase financial instruments from the employer undertaking or sell financial instruments to the employer undertaking. This also applies in the case of securities funds for which the employer undertaking is the managing company. This prohibition does not apply to acquisition of shares or primary capital certificates issued by the undertaking or to rights to such shares or primary capital certificates issued by the undertaking, or to acquisition of units in securities funds managed by the employer undertaking.

Employees shall notify the counter-party in advance if a trade is to be undertaken for the employee's own account.

Kredittilsynet may in special cases make exceptions from the provisions of the first and second paragraph.

### **Section 2a-3 Special rules on own-account trading by employees of certain types of undertaking**

Employees of undertakings as mentioned in section 2a-1 first paragraph subparagraphs 2 to 6 may not when trading for own account utilise an investment firm which regularly provides investment services of substantial scope to the employer undertaking. This does not apply in the case of subscription in accordance with pre-emption rights under the Private Limited Companies Act or the Public Limited Companies Act. Kredittilsynet may in special cases make exceptions from the provisions of this paragraph.

An employee of an investment firm who is preparing, or is by other means aware of the content of, an analysis or report may not trade financial instruments for own account if he/she knows or should know that the investment firm intends to publish an analysis or report on the issuer of the instrument concerned which could affect the price of the instrument upon publication. The prohibition applies four weeks prior to publication and until publication has taken place.

Employees of an investment firm may not enter into agreements with the investment firm's principals.

The provision of section 9-3 third paragraph applies correspondingly to employees of investment firms.

### **Section 2a-4 Requirement as to competence**

An employee may not participate in decisions by the employer undertaking concerning the purchase, sale or subscription of financial instruments issued by a company of which the employee is in charge, or in which he/she has a senior position, or of whose board of directors or corporate assembly he/she is a member. Nor may an employee participate in the treatment of any matter which is of such significance for the employee himself/herself or his/her close associates that he/she must be regarded as having a particular personal or financial interest in the matter. Employees of the National Insurance Fund may nevertheless participate in decisions as mentioned in the first sentence, even when the said employee is a member of the corporate assembly in the issuing company. The ministry may in regulations make corresponding exemptions for employees of the Norwegian Industrial and Regional Development Fund, the State Housing Bank, Norges Bank, the Government Bank Investment Fund, and the Government Bank Insurance Fund.

### **Section 2a-5 Reporting of own-account trading**

Employees of an undertaking as mentioned in section 2a-1 first paragraph shall immediately notify the undertaking of any trading of financial instruments for own account. The same applies to trading the employee has undertaken for the account of close associates. The notification shall be given to a person designated by the undertaking.

Undertakings as mentioned in section 2a-1 first paragraph shall each month report to Kredittilsynet own-account trading as mentioned in the first paragraph. Kredittilsynet may lay down further rules on the content of the report, including a rule that the report shall contain the undertaking's assessment of whether the provisions governing employees' own-account trading have been violated.

### **Section 2a-6 Own-account trading by close associates and officers**

The provisions of section 2a-2 to section 2a-5 apply correspondingly to board members, alternates and observers at undertakings as mentioned in section 2a-1 first paragraph who normally have knowledge of or are engaged in investment services or management of financial instruments for the account of the undertaking or of customers of the undertaking. The provision of section 2a-3 first paragraph does not apply to board members, alternates and observers at management companies for securities funds who are appointed by the unit-holders.

The provisions of section 2a-2 and section 2a-3 apply correspondingly to purchase, sale or subscription undertaken by employees or officers as mentioned in the first paragraph for the account of close associates as mentioned in section 1-5 subsections 1, 2 and 4. For close associates of employees or officers at investment firms the provisions apply correspondingly to purchase, sale or subscription undertaken by the investment firm concerned for the account of the close associate. For close associates of employees or officers at undertakings other than investment firms the prohibition of section 2a-3 second paragraph applies to own-account trading through investment firms on the employer undertaking's lists as mentioned in section 2a-7 third paragraph.

### **Section 2a-7 The employer undertaking's duties**

Undertakings as mentioned in section 2a-1 first paragraph shall maintain lists of employees, board members, alternates and observers encompassed by the provisions of this chapter.

The undertakings shall have internal rules which ensure effective supervision of compliance with the rules of this chapter.

The undertakings shall keep lists of investment firms encompassed by section 2a-3 first paragraph.

## **Chapter 3 Notification requirements**

### **Section 3-1 Notification requirement for officers and employees of issuing companies**

Persons as mentioned in section 2-3, first paragraph, shall immediately notify the Norwegian stock exchange and the authorised market where the shares are quoted, of any purchase or sale of or subscription for shares issued by the company or by companies within the same group. This also applies to the company's trade in its own shares. An undertaking which owns quoted shares in another undertaking or shares in another undertaking which is

listed on an authorised market and which because of such ownership is represented on the Board of Directors of the other undertaking, must notify trading in such shares. Notification shall be sent no later than at the start of trading on the stock exchange or authorised market on the day following the purchase, sale or subscription.

The notification requirement also applies to loans as mentioned in the Private Limited Companies Act section 11-1 and the Public Limited Companies Act section 11-1, agreements on, purchase or sale of subscription rights, options and corresponding rights connected with shares as mentioned in the first paragraph.

The notification requirement also applies to trading involving the executor's close associates as mentioned in section 1-5 subsections 1, 2 and 4.

The company shall transmit an overview of persons as mentioned in the first paragraph to the stock exchange and authorised market concerned. The notification shall contain the name, the personal identity number or similar identification number, address, type of office or post in the company, and any other employment of any person subject to the notification requirement.

Any person subject to the notification requirement pursuant to the first paragraph shall transmit to the stock exchange and the authorised market concerned an overview of persons and companies as mentioned in the third paragraph if such persons and companies hold financial instruments as mentioned in the first and second paragraphs. The notification shall contain the personal identity number or organisational registration number or similar identification number.

This section applies correspondingly to primary capital certificates.

### **Section 3-2 Disclosure of acquisitions of large shareholdings and rights to shares**

Where an acquisition of shares causes the acquirer's proportion of shares and/or rights to reach or exceed 1/10, 1/5, 1/3, 1/2, 2/3 or 9/10 of the share capital, or of shares representing an equivalent proportion of the voting rights, in a company whose shares are quoted on a Norwegian stock exchange, the acquirer shall notify such acquisition to the stock exchange.

The first paragraph applies correspondingly to anyone who through disposal changes his proportion of the share capital or votes such that the proportion is reduced to or falls below the thresholds mentioned in the first paragraph.

In this section loans as mentioned in the Private Limited Companies Act section 11-1 and the Public Limited Companies Act section 11-1, subscription rights, options on the purchase of shares and equivalent rights are regarded as rights to shares.

Borrowing of shares and return of shares to the lender shall be regarded as acquisition and disposal for the purposes of this section.

Notification pursuant to this section shall be given immediately an agreement on acquisition or disposal has been entered into.

Shares held or, in the event, acquired or disposed of by close associates as mentioned in section 1-5 are considered equivalent to the acquirer's or disposer's own shares or rights to shares.

The first to sixth paragraphs shall apply correspondingly to primary capital certificates.

The ministry may by virtue of regulations make exceptions from the rules of the present section for investment firms.

### **Section 3-3 Requirements as to the content of the notification**

Notification pursuant to section 3-1 first to third paragraphs shall contain information on

1. the time of the purchase or sale,
2. the number of shares encompassed by the notification,
3. whether the acquisition or disposal refers to the notifier himself or to a close associate or associates as mentioned in section 1-5,
4. the price at which the transaction was executed,
5. the holding after the time of notification.

Notification pursuant to section 3-2 shall contain information on

1. the time of the purchase or sale,
2. the number of shares encompassed by the notification,
3. whether the acquisition or disposal refers to the notifier himself or to a close associate or associates as mentioned in section 1-5,
4. how large a percentage of the shares and votes in the company the party in question holds after the acquisition or disposal which activates the notification requirement,
5. how large a percentage of the shares and votes in the company the party in question holds in the form of rights to shares after the acquisition or disposal which activates the notification requirement, and
6. information on when rights as mentioned in section 3-2 third paragraph may be exercised.

The stock exchange and authorised market concerned shall publish notifications as mentioned in this provision. The stock exchange and authorised market concerned may prepare and publish overviews which contain the name of the person subject to the notification requirement, the type of office or post with the company and any other employment, trading by each individual subject to the notification requirement as well as the aggregate holding of individuals and companies as mentioned in section 3-1 first and third paragraphs.

## **Chapter 4 Mandatory offer obligation and voluntary offer in connection with a buy-out**

### **Section 4-1 Mandatory offer obligation in connection with share acquisition**

Any person who through acquisition becomes the owner of shares representing more than 40 per cent of the voting rights in a Norwegian company whose shares are quoted on a Norwegian stock exchange (a listed company) is obliged to make an offer for the purchase of the remaining shares in the company. The mandatory offer obligation ceases to apply if sale is undertaken in accordance with section 4-8, cf. 4-9.

The following are also regarded as acquisitions under the first paragraph:

1. shares representing more than 50 per cent of the votes in a company whose principal activity consists in owning shares in a company as mentioned in the first paragraph,
2. an owner interest in a general partnership which owns shares in a company as mentioned in the first paragraph and where the partners are exclusively close associates as mentioned in section 1-5.

Section 4-5 applies correspondingly in the case of acquisitions as mentioned in the second paragraph subsection 1.

Where a party's acquisition of the right to become owner of shares has to be regarded as effective acquisition of the shares in question, the stock exchange may impose a mandatory offer obligation if such acquisition gives the party the right to become owner of shares which, together with that party's remaining shares, represent more than 40 per cent of the votes in a listed company.

This provision also applies when the acquirer has previously made a voluntary offer, unless the voluntary offer was made in accordance with the rules on mandatory offers and this was stated in the offer document.

#### **Section 4-2 Exceptions for certain types of acquisition**

No mandatory offer obligation is applicable pursuant to section 4-1 where the threshold activating a mandatory offer is overstepped by acquisition in the form of

1. inheritance or gift,
2. payment in connection with probate,
3. payment in connection with the merger or demerger of a private limited company or public limited company.

No mandatory offer obligation is applicable pursuant to section 4-1 in the event of acquisition from someone with whom the acquirer is consolidated pursuant to section 4-5, unless the acquirer alone or together with one or more of the close associates oversteps the mandatory offer threshold as a result of the acquisition.

The stock exchange may in special cases impose a mandatory offer obligation in connection with acquisitions as mentioned in the first paragraph.

#### **Section 4-3 Exceptions for certain institutions**

No mandatory offer obligation is applicable pursuant to section 4-1 where a financial institution acquires shares in a company in order to avoid or limit loss on a financial engagement, provided the institution immediately notifies the stock exchange thereof. The stock exchange may instruct the institution to make an offer as mentioned in section 4-1 within a specified period, or to dispose of shares so that the mandatory offer obligation ceases to apply.

Section 4-1 does not apply to the Government Bank Insurance Fund or the Government Bank Investment Fund.

#### **Section 4-4 Exceptions where the company's shares are quoted on more than one stock exchange**

The stock exchange may make exceptions from the rules of this chapter if the company's shares are quoted on more than one stock exchange.

#### **Section 4-5 Consolidation**

Under the rules on mandatory offers, shares owned or acquired by close associates as mentioned in section 1-5 are considered equal to a shareholder's own shares.

The stock exchange decides whether consolidation shall be carried out pursuant to the first paragraph. The stock exchange's decision shall be communicated to the participants in the consolidated group.

#### **Section 4-6 Subsequent acquisitions**

A shareholder or a consolidated group which owns shares representing more than 40 per cent of the votes in a listed company and which has not made an offer in accordance with the provisions concerning mandatory offers is obliged in the case of each subsequent acquisition that does not fall within an exception as mentioned in section 4-2 to make an offer to purchase the remaining shares in the company unless a sale is effected in accordance with section 4-8, cf. section 4-9.

The first paragraph does not apply to a shareholder or consolidated group which

1. upon the commencement of the act owns more than 45 per cent of the shares in a listed company, or
2. upon admission to stock exchange listing owns more than 40 per cent of the shares in the company.

#### **Section 4-7 Consent to share acquisition**

If, according to the company's articles of association, an acquisition is subject to the consent of the board of directors, the board of directors is deemed to have given its consent if the matter has not been decided within three weeks of the company's receipt of notice of the acquisition.

#### **Section 4-8 Notification to the stock exchange**

When a mandatory offer obligation is activated pursuant to sections 4-1 to 4-6, the person required to make an offer shall immediately notify the stock exchange and the company accordingly. The notification shall state whether an offer will be made to buy the remaining shares in the company or whether sale will take place in accordance with section 4-9. The stock exchange shall publish the notification.

If notification is not given according to the first paragraph, or the mandatory offer obligation is otherwise contested, the stock exchange shall make a decision on the questions thereby raised.

Notice of sale may be changed to notice of offer provided the offer is made within the time-limit set in section 4-10 first paragraph.

Until such time as an offer is made or sale is effected, no other rights in the company may be exercised in respect of the portion of the shares which exceeds the mandatory offer threshold than the right to take out dividend on the shares and to exercise pre-emption rights in the event of an increase of capital.

#### **Section 4-9 Sale of shares**

Sale of shares in accordance with a notice or decision as mentioned in section 4-8 shall take place no later than four weeks after the mandatory offer obligation was activated.

Such sale shall embrace that portion of the shares which exceeds the threshold mentioned in section 4-1. In the event of a mandatory offer obligation activated by subsequent acquisition as mentioned in section 4-6, the sale may be restricted to the shares acquired through the subsequent acquisition.

#### **Section 4-10 The offer**

Offers shall be made without undue delay and no later than four weeks after the mandatory offer obligation was activated.

The offer shall embrace all the shares in the company, including shares with restricted or no voting rights.

An offer may not be made conditional.

The offer price shall be at least as high as the highest payment the offerer has made or agreed in the period six months prior to the point at which the mandatory offer obligation was activated. If it is clear that the market price when the mandatory offer obligation is activated is higher than the price resulting from the first sentence, the offer price shall be at least as high as the market price.

If the offerer, after the mandatory offer obligation was activated and before the expiry of the period of the offer, has paid or agreed a higher payment than the offer price, a new offer shall be deemed to have been made with an offer price equivalent to the higher payment. The provisions of section 4-12 second paragraph apply correspondingly to the new offer.

Settlement under the terms of the offer must be in cash. An offer may nonetheless give the shareholders a right to accept other forms of settlement.

The settlement shall be guaranteed by a bank or insurance undertaking which has been authorised to conduct business in Norway in accordance with further rules established by the stock exchange.

Settlement shall take place as soon as possible and no later than 14 days after the expiry of the period of the offer.

The offerer may not apply differential treatment to shareholders when making an offer.

#### **Section 4-11 Period of the offer**

The offer shall state a time-limit for shareholders to accept the offer (the period of the offer). The time-limit may not be shorter than four weeks and not longer than six weeks.

#### **Section 4-12 New offer**

The offerer may make a new offer prior to expiry of the period of the offer provided the new offer is approved by the stock exchange. The company's shareholders are entitled to choose between the offers.

If a new offer is made, the period of the offer shall be extended so that at least two weeks remain to expiry.

#### **Section 4-13 Requirements as to offer document**

Anyone subject to a mandatory offer obligation shall draw up an offer document which reproduces the offer and gives correct and complete information about matters of significance for evaluating the offer.

The following shall be stated specifically in the offer document:

1. the offerer's name and address, and the type of organisation and organisation number if the offerer is an undertaking,
2. information about close associates as mentioned in section 4-5, including the basis for the consolidation and any shareholder agreements,
3. which shares and loans as mentioned in the Private Limited Companies Act section 11-1 and the Public Limited Companies Act section 11-1 are owned by the offerer or anyone mentioned in section 4-5,

4. offer price, time-limit for settlement and form of settlement, and what guarantees are furnished for fulfilment of the offerer's obligations,
5. the principles underlying the valuation of asset items offered as settlement, including information about factors to which importance must be given when deciding whether to subscribe for or acquire securities,
6. the time-limit for accepting the offer and how acceptance should be filed.
7. how the purchase of the shares is to be financed,
8. special advantages which are accorded by agreement to members of the management or governing bodies of the company or prospects of which are held out to any of the latter,
9. what contact the offerer has had with the management or governing bodies of the company before the offer was made,
10. the purpose of taking over control of the company and plans for further operation, reorganisation etc., of the company and the group of which it forms part,
11. what significance the implementation of the offer will have for the employees, including the legal, financial and work-related effects, and
12. legal and tax consequences of the offer.

The offer document shall be signed by the party required to make an offer.

#### **Section 4-14 Approval and publication of the offer**

The offer and the offer document shall be subject to approval by the stock exchange before the offer is made or published.

After the offer has been approved, the party required to make an offer shall dispatch it to all shareholders with known whereabouts and make it known to the employees of the company. The company is obliged to facilitate such dispatch.

#### **Section 4-15 Fees**

The stock exchange may charge the offerer a fee to cover expenses in connection with approval as mentioned in section 4-14.

#### **Section 4-16 The company's statement regarding the offer**

When an offer is made in accordance with the rules on mandatory offers, the company's board of directors shall issue a statement on the offer including information on the employees' views and other factors of significance for assessing whether the offer should be accepted by the shareholders. Information shall also be given about the views, if any, of the board members and the manager effectively in charge in their capacity as shareholders in the company.

The statement shall be available no later than one week prior to the expiry of the period of the offer.

The statement shall be sent to the stock exchange, and be made known to the shareholders and the employees.

If an offer has been made by someone who is a member of the board of directors of the company, or if the offer has been made in concert with the company's board of directors, the stock exchange shall decide who shall issue a statement as mentioned in the first paragraph on behalf of the company.

### **Section 4-17 Restriction of the company's freedom of action**

After the company has been informed that an offer will be made pursuant to section 4-1, section 4-2 third paragraph or section 4-6 and until the period of the offer has expired and the result is clear, the board of directors or manager in charge may not make decisions in regard to

1. issue of shares or other financial instruments by the company or by a subsidiary,
2. merger of the company or subsidiary,
3. sale or purchase of substantial areas of operation of the company or its subsidiaries, or other dispositions of material significance for the nature or scope of its operations, or
4. purchase or sale of the company's shares.

This section does not apply to dispositions which are part of the company's normal ongoing business operations, or cases where the general meeting has empowered the board of directors or manager effectively in charge to make the decisions in question with buy-out situations specifically in mind.

### **Section 4-18 Voluntary offers**

The provisions of section 4-10 final paragraph and sections 4-13 to 4-16 apply correspondingly in the event of voluntary offers which entail that a mandatory offer obligation pursuant to section 4-1 comes into play if the offer is accepted by those able to make use of it.

This does not apply in the case of offers directed specifically at certain shareholders unless the offer is made simultaneously or in conjunction and has the same content.

### **Section 4-19 Exercise of shareholder rights in case of failure to make a mandatory offer**

A shareholder who fails to make an offer in accordance with section 4-1, section 4-2 third paragraph, or section 4-6 may, for the duration of the mandatory offer obligation, not exercise other rights in the company than the right to dividend and pre-emption rights in the event of an increase of capital, without the consent of a majority of the remaining shareholders.

### **Section 4-20 Forced sale of shares**

If no offer is made in accordance with section 4-1, section 4-2 third paragraph, or section 4-6 and the time-limit for sale under section 4-9 is exceeded, the stock exchange may sell the shares under the rules governing forced sale insofar as they are applicable. The Enforcement Act, section 10-6, cf. section 8-16, does not apply.

The stock exchange shall give the party subject to a mandatory offer obligation at least two weeks' notice of a forced sale.

## **Chapter 5 Prospectus requirements in connection with public offerings**

### **Section 5-1 Obligation to prepare a prospectus**

Where an invitation to subscribe for transferable securities is directed at more than 50 persons in the Norwegian securities market and involves an amount greater than EUR 40,000, a prospectus shall be prepared in accordance with the rules of this chapter. The same applies

in connection with a first-time offering of transferable securities which are not quoted on a stock exchange and where a prospectus has not previously been prepared in accordance with this chapter. The stock exchange concerned, or the Register of Business Enterprises in the event of an offer as stated under section 5-8, shall determine, in case of doubt, whether two or more separate offerings shall be regarded as a single offer.

The first paragraph also applies to offers of purchase rights to transferable securities unless the offer in question gives rise to a cash settlement.

Where offers for purchase of securities are concerned, the provisions of the first paragraph also apply to quoted securities when the offer is made before three months have elapsed since the securities were issued.

### **Section 5-2 Exceptions from the obligation to prepare a prospectus in connection with offers made to professional investors**

The rules of section 5-1 do not apply to offers directed exclusively at persons who invest in securities as part of their professional activity and who are registered with the stock exchange as professional investors. The stock exchange concerned, or the Register of Business Enterprises in the event of an offer as stated under section 5-8, may make registration conditional on a certain scope of investment activity, which may include capital conditions.

The rules of section 5-1 do not apply to offers for purchase of or subscription for securities issued in minimum lots of EUR 40,000 in terms of nominal value or subscription price.

### **Section 5-3 Exceptions from the obligation to prepare a prospectus in connection with offers of certain securities**

Section 5-1 does not apply to offers referring to:

1. bonds issued by an EEA state or EEA central banks,
2. securities issued through the exercise of rights as mentioned in section 1-2 third paragraph subparagraph 3,
3. securities offered in connection with a merger, or
4. Euro securities pursuant to further provisions contained in regulations.

The stock exchange concerned, or the Register of Business Enterprises in the event of offers as mentioned in section 5-8, may make exceptions from the rules of this chapter in regard to offers whose aim is to procure funds for non-profit purposes.

The stock exchange concerned, or the Register of Business Enterprises in the event of offerings as mentioned in section 5-8, may by individual decision grant entire or partial exemption from the obligation to publish a prospectus in connection with offers referring to bonds or equivalent transferable securities which are issued

1. continuously or repeatedly by financial institutions
2. by companies or other legal persons who conduct their business on the basis of a state monopoly, provided the borrowings of the legal person concerned are backed by an unconditional and irrevocable government guarantee, or
3. by legal persons founded by special legislation and whose bonds upon admission to official stock exchange quotation rank equal in the national legislation with bonds issued or guaranteed by the state.

Exemptions as stated in the third paragraph may also be stipulated by the ministry by virtue of regulations.

#### **Section 5-4 Exceptions in connection with offers to employees**

Section 5-1 does not apply to offers by a company to its employees for purchase or subscription on particularly favourable terms of securities issued by the company. Information as mentioned in section 5-5 with associated regulations shall nonetheless be available to the employees at their place of work.

#### **Section 5-5 Information in the prospectus**

The prospectus shall contain such information as, depending on special circumstances of the offerer and the nature of the securities offered, is necessary to enable the investors to make a well-informed assessment of the issuer's financial position and prospects and of rights attached to the securities mentioned. The prospectus shall also contain information on the criteria which are to provide the basis for allocation of securities to those who accept the offer.

Any new circumstance or material inaccuracy which may be of significance for evaluating the securities, and which comes to light between the date of publication of the prospectus and the date of final expiry of the period of subscription, shall be made clear in a supplement to the prospectus. The supplement shall be sent to the stock exchange concerned, or the Register of Business Enterprises, respectively, in accordance with sections 5-7 and 5-8, and be published without undue delay in accordance with section 5-11.

The stock exchange concerned, or the Register of Business Enterprises in the event of offers as mentioned in section 5-8, may require a prospectus to be prepared in Norwegian.

Requirements as to information in this section yield to confidentiality requirements in or pursuant to law. The ministry shall establish further requirements as to information given in prospectuses.

#### **Section 5-6 The stock exchange's right to grant dispensation**

The stock exchange concerned, or the Register of Business Enterprises in the event of offers as mentioned in section 5-8, may authorise the omission of certain information from the prospectus.

1. if the information is of minor significance and can not affect the evaluation of the issuer's assets and liabilities, financial position, results and prospects,
2. if the presentation of this information results in serious loss to the issuer, provided that non-publication can not have the effect of misleading the public in regard to realities and circumstances of material significance for evaluating the securities,
3. provided the offerer is not the issuer of securities as mentioned in section 1-2 third paragraph subparagraphs 1 and 2, and the person in question would not normally be in possession of the information in question, or
4. provided the offer refers to bonds issued by county municipalities or municipalities.

### **Section 5-7 Inspection by the stock exchange**

In the case of offers referring to securities which are quoted on a stock exchange, or for which quotation has been applied for, the prospectus shall be sent to the stock exchange for inspection no later than one week before the offer is made.

The stock exchange shall ensure that the prospectus contains the information required by law or regulations.

Notices, announcements etc., that are to be disseminated or made available to the public by the offerer shall be sent to the stock exchange beforehand. The stock exchange shall decide whether the documents shall be inspected before being published.

If the stock exchange finds that the prospectus or documents as mentioned in third paragraph contain misleading or incomplete information, or that the rules of this chapter have not been complied with, the stock exchange may prohibit the offer from being made. Such prohibition may also be imposed if the stock exchange considers it unlawful to carry through the offer under other law or regulations. The decision may take account of circumstances arising after the offer is made. The stock exchange shall perform the inspection as soon as possible and inform the offerer of the result thereof. The Register of Business Enterprises shall be informed immediately if the share issue can not be registered.

The stock exchange may advise the offerer that it has no objections to the documents submitted. Such advice does not imply approval of the documents, and does not prevent the stock exchange from subsequently prohibiting the offer pursuant to the fourth paragraph.

Even though there is no obligation under section 5-1 to prepare a prospectus, the stock exchange may at the request of the offerer inspect the prospectus pursuant to this provision.

The stock exchange is obliged to keep submitted documents for 10 years.

### **Section 5-8 Registration of a prospectus**

In the case of offers referring to securities which are not quoted on a stock exchange or for which quotation has not been applied for, the prospectus shall be sent to the Register of Business Enterprises for registration before being published.

### **Section 5-9 Fees**

The stock exchange concerned and the Register of Business Enterprises may charge the offerer a fee to cover expenses incurred in connection with inspection as mentioned in section 5-7 and registration as mentioned in section 5-8.

### **Section 5-10 Responsibility of the board of directors**

In the case of an offer made by a company the company's board of directors is responsible for ensuring that the prospectus meets the requirements set.

The company's board of directors shall issue a statement to the effect that to their knowledge the information in the prospectus is both in conformity with the facts and that it does not contain misleading or incomplete information about circumstances to which importance must be attached when deciding whether to accept the offer.

The prospectus shall be signed by all board members.

### **Section 5-11 Publication of prospectus**

The prospectus shall be published no later than the day before the offer can be accepted.

The prospectus shall be published by making it available to the public free of charge at the offerer's place of business and at all places where the acceptance form is displayed. The stock exchange concerned, or the Register of Business Enterprises in the event of offers as mentioned in section 5-8, may require the prospectus to be made available by other means. Furthermore, the prospectus or notice of where the prospectus can be obtained shall be inserted in at least one national newspaper.

If information about an offer is provided by means other than those mentioned in the second paragraph, it shall concurrently be stated that the notice is incomplete, that further information is given in the prospectus and the places where the prospectus can be obtained shall be stated. Acceptance forms may only be made available together with the complete prospectus.

#### **Section 5-12 Coordination rules applying in cases where offers are made or admission of securities to quotation is sought in two or more EEA states**

The ministry may lay down further rules on the preparation and inspection of prospectuses in cases where the same securities are offered in two or more EEA states at the same time or at short intervals.

#### **Section 5-13 Invalidity**

Acceptance of an offer as mentioned in section 5-1 is not binding if the prospectus, announcements etc., as mentioned in section 5-7 contain misleading or incomplete information about circumstances to which importance must be attached when judging whether to accept the offer. Either party may submit the matter to the stock exchange for decision.

An objection to the effect that a share subscription is not binding may not be presented after the expiry of the time-limit set in the Private Limited Companies Act section 2-10 first paragraph, cf. second paragraph, or the Public Limited Companies Act section 2-10 first paragraph, cf. second paragraph. An objection to the effect that another subscription or purchase is not binding must be presented without undue delay. If such an objection is presented the company shall inform the stock exchange immediately.

#### **Section 5-14 Appeal Instance for Decisions made by the Register of Business Enterprises**

An appeal against the decision made by the Register of Business Enterprises pursuant to the provisions of this chapter may be lodged with Kredittilsynet.

### **Chapter 6 Clearing house**

#### **Section 6-1 Conditions for conducting clearing house business**

Clearing operations may only be conducted by a clearing house with authorisation from the ministry.

The clearing house shall be organised as a public limited company. The ministry may make exceptions from this provision.

The person who effectively directs clearing operations shall have relevant experience and be of good repute.

Authorisation pursuant to the first paragraph may be refused if a shareholder with a substantial holding in the clearing house is not deemed fit to ensure sound and prudent management of the undertaking. Section 7-4 is applicable in the event of changes in shareholder structure.

Clearing houses shall have a control committee appointed by the general meeting. The control committee shall oversee the institution's operations and ensure that it complies with laws, regulations and terms and conditions, as well as articles of association and decisions made by the company's decision-making bodies. The general meeting shall lay down instructions for the control committee. The instructions shall be subject to Kredittilsynet's approval.

Notwithstanding the rules of the second and fifth paragraphs, the ministry may give a foreign clearing house that has been authorised to conduct clearing operations and is subject to satisfactory supervision in its home state authorisation to conduct clearing operations in Norway.

No-one may own more than 20 per cent of the share capital in a clearing house. The ministry may grant dispensation from the rule of the preceding sentence.

### **Section 6-2 A clearing house's capital**

A clearing house shall have own funds appropriate to the operations conducted.

A clearing house shall have own funds of at least NOK 50 million. The ministry may stipulate what is to be regarded as own funds.

An amount equivalent to at least one-half of the undertaking's own funds shall comprise deposits or unconditional drawing rights in a credit institution at all times.

The ministry may make exceptions from the rules of the first and second paragraph in respect of a clearing house whose activity is of limited scope.

A clearing house may not own underlying financial instruments or financial instruments in connection with which it conducts clearing operations unless this is required for the implementation of the settlement. This provision does not apply to bonds issued by an EEA state.

### **Section 6-3 Clearing house operations**

A clearing house shall organise settlements between parties.

A clearing house may only pursue activities which are naturally related to the performance of clearing operations. Kredittilsynet may order a clearing house to keep related activities separate from clearing operations.

### **Section 6-4 Calculation of security**

A clearing house shall ensure that it has sufficient security to guarantee fulfilment of contracts which the clearing house enters into as a party or otherwise guarantees the fulfilment of. A clearing house shall calculate and require such security on a continuous basis.

The ministry may by regulations or individual decision order a clearing house to require further security and place requirements on whom security shall be furnished by, when this is deemed to be necessary because the clearing house is not considered to have sufficient security to honour its commitments.

## **Section 6-5 Confidentiality**

Employees, officers and other persons with determinative influence in a clearing house shall treat as confidential any information about the affairs of others which may come to their knowledge in the course of their work, unless otherwise prescribed in law or regulation made pursuant to law.

The duty of confidentiality according to the first paragraph shall not prevent employees, officers and other persons with determinative influence in a clearing house from supplying a stock exchange with information which is necessary in order for the stock exchange to fulfil its obligations under section 5-11, first paragraph, of the Stock Exchange Act.

The ministry may issue further rules concerning the duty to supply information under the first paragraph, including restrictions in that duty and the purpose for which the information may be used, and also if and to what extent it shall be possible to demand payment for the expenses of supplying the information.

The ministry may determine that the provisions of the second and third paragraphs shall also apply as regards an authorised market.

## **Section 6-6 Clearing representative**

Participation in a clearing scheme on behalf of customers is confined to investment firms and credit institutions.

## **Chapter 7 Authorisation to provide investment services**

### **Section 7-1 Authorisation to provide investment services**

Investment services may only be provided by undertakings authorised to do so by the ministry.

Authorisation is not required for operations conducted by Norges Bank, management companies for securities funds, insurance companies, undertakings authorised to conduct operations as an options clearing house or a clearing house, or for operations conducted pursuant to authorisation as a stock exchange or an authorised market.

Authorisation to provide investment services is not required where:

1. investment services are provided in an incidental manner in the course of a professional activity,
2. investment services are only provided to companies within the same group,
3. the investment service only consists in mediating orders for securities and units in securities funds to investment firms with authorisation pursuant to the first paragraph or to management companies for securities funds, provided settlements are not involved,
4. persons or undertakings whose main activity is trading in commodities among themselves or with producers or professional users of such commodities, provide investment services exclusively to these counterparties and only to the extent necessary to pursue their main business,
5. investment services consist only in administering a scheme for workers' assets, or

6. parties other than investment firms participate for own account as underwriters of issues in financial instruments.

### **Section 7-2 Conditions for authorisation**

Authorisation to provide investment services may be granted to credit institutions or to public limited companies.

The person who effectively directs the activities of the undertaking to which the authorisation applies shall have relevant experience from markets for financial instruments in two of the five years before the said person takes up the position or takes over effective management. The manager and in the event other person who effectively directs the activities of the undertaking shall in addition be of good repute and during their work in dealing in financial instruments have acted in conformity with rules of good business conduct.

Where authorisation is given to a limited company the following special rules apply:

1. the company shall have its registered office and head office in Norway,
2. authorisation may be refused if a member of the board of the undertaking fails to satisfy necessary requirements as to good repute and experience, and
3. authorisation may be refused if a shareholder with a qualifying holding in the undertaking is not deemed fit to ensure sound and prudent management of the undertaking.

### **Section 7-3 Application for authorisation**

Applications for authorisation shall state which of the services mentioned in sections 1-2 and 8-1 the undertaking intends to provide, and other information of significance for assessing whether authorisation should be granted. The application shall contain information showing that the statutory requirements of chapters 7 and 8 are met. The licensing authorities may call for further information.

The undertaking's articles of association, plan of operations and internal organisational routines as mentioned in section 9-1 shall be enclosed.

Where the applicant is:

1. a subsidiary of an investment firm authorised in another EEA state,
  2. a subsidiary of a main undertaking for another investment firm authorised in another EEA state, or
  3. controlled by the same natural or legal persons as control an investment firm authorised in another member state,
- authorisation may only be given after consultation with the authorities in the EEA state concerned.

The decision regarding authorisation shall be communicated to the applicant as soon as possible and no later than six months after the application was received. If the application does not contain the information necessary to decide whether authorisation should be granted, the time-limit runs from the date on which such information was received.

The investment firm may commence business as soon as the authorisation has been granted.

### **Section 7-4 Changes in shareholder structure**

Acquisition of a qualifying holding in an investment firm that is not a credit institution may only take place after Kredittilsynet has been notified thereof in advance.

Kredittilsynet shall also have been notified prior to any increase of a qualifying holding whereby the shareholder's proportion of the share capital or voting rights reaches or exceeds 20 per cent, 33 per cent or 50 per cent.

Kredittilsynet shall, within three months of the day it receives notification as mentioned in the first and second paragraph, refuse such acquisition if the shareholder concerned is not deemed fit to ensure sound and prudent management of the investment firm.

Section 7-3, third paragraph, also applies in case of notification of acquisition of a holding if such acquisition entails that the investment firm would become the acquirer's subsidiary or be controlled by the acquirer. The time-limit pursuant to the third paragraph of this section does not apply in such cases.

Kredittilsynet may impose time-limits for carrying out acquisitions pursuant to the first and second paragraph.

In the event of disposal of a holding whereby the size of the holding falls below the thresholds mentioned in the first and second paragraph, notification shall be made to Kredittilsynet.

Kredittilsynet lays down further rules regarding investment firms' duty to notify Kredittilsynet of their shareholders as mentioned in this section.

#### **Section 7-5 Branches etc.**

Investment firms shall notify Kredittilsynet before establishing branches in Norway. The manager of such a branch shall satisfy the requirements of section 7-2, second paragraph.

Investment firms may provide investment services in another EEA state in accordance with the rules of section 7-6.

An investment firm may after authorisation from Kredittilsynet establish a branch or subsidiary outside the EEA area.

The provisions of this section do not apply to credit institutions.

#### **Section 7-6 Notification of activity in another EEA state**

An investment firm that is not a credit institution and that wishes to carry on activity in another EEA state shall notify Kredittilsynet accordingly.

The notification shall contain the following information:

1. where the firm intends to carry on business, and
2. a programme of operations specifying which investment services are to be provided.

Notification of establishment of a branch shall in addition provide the following information:

1. the organisational structure of the branch,
2. the address in the host state from which documents may be obtained, and
3. the names of those who constitute the management of the branch.

When notified of activity carried out directly from a place of business in Norway, Kredittilsynet shall within one month of receiving such notification forward it to the competent authorities in the host state and inform the investment firm accordingly. The investment firm may as from such date provide the investment services in question in the host state.

When notified of the establishment of a branch in another EEA state, Kredittilsynet shall within three months of receiving such notification forward it to the competent authorities in the host state and inform the investment firm accordingly. Kredittilsynet shall

also forward details of any compensation arrangements whose purpose is to protect clients of the branch. As soon as the authorities of the host state have provided information about the conditions that are to apply to the firm, including the rules of good business conduct, the branch may be established and start operations. The same applies if no information has been received from the authorities of the home state within two months of their receipt of notification from Kredittilsynet.

Forwarding to the host state authorities pursuant to the fifth paragraph shall not take place if Kredittilsynet has reason to doubt the adequacy of the administrative structure or the financial situation of the investment firm, taking into account the activities that are planned. Kredittilsynet shall in such case inform the investment firm of the grounds for its decision within three months of Kredittilsynet's receipt of all information in the matter.

In case of any change in particulars provided pursuant to the first to third paragraph, the investment firm shall notify Kredittilsynet and the competent authorities in the host state of such change in writing before the change is effected. In cases where a branch has been established in another EEA state, notification shall be given at least a month before the change is effected.

Kredittilsynet shall inform the host state authorities if changes are made in particulars provided concerning any compensation schemes whose purpose is to protect clients of the branch.

#### **Section 7-7 Investment firm with head office in another EEA state**

Sections 7-1 and 7-2 do not prevent an investment firm with its head office in another EEA state from providing investment services in Norway directly from a place of business in another EEA state or through a branch. Such firms must have received authorisation to provide investment services and be subject to supervision in their home state. If the firm establishes further places of business in Norway, they shall be regarded as one branch.

Within two months of Kredittilsynet's receipt of notification from the authorities in another EEA state concerning establishment of a branch pursuant to the first paragraph, Kredittilsynet shall prepare for the supervision of the branch and inform the investment firm of the conditions, including the rules of good business conduct, that apply to the pursuit of activity in Norway. The branch may be established as soon as Kredittilsynet has provided the information mentioned, or no later than two months after Kredittilsynet has received notification.

As soon as Kredittilsynet has received notification from the authorities in another EEA state of cross-border activity pursuant to the first paragraph, Kredittilsynet shall inform the investment firm of the conditions, including the rules of good business conduct, that apply to the pursuit of activity in Norway. The investment firm may provide the investment services in question as from the date of Kredittilsynet's receipt of notification from the home state.

In case of changes in notifications received by Kredittilsynet pursuant to this section, section 7-6, seventh paragraph, applies correspondingly to the investment firm's obligation to notify Kredittilsynet in writing.

#### **Section 7-8 Investment firm with head office outside the EEA**

An investment firm with its head office outside the EEA may be authorised by the King to provide investment services in Norway through a branch. Such firm may in special

cases also be authorised to provide services in Norway directly from a place of business outside the EEA.

The firm may be authorised to provide related services pursuant to section 8-1 provided it can carry on corresponding activity in its home state.

Authorisation pursuant to the first and second paragraph may only be given to undertakings that are authorised to provide investment services and are subject to satisfactory supervision in their home state.

Section 7-3, first and second paragraph, applies correspondingly to applications for authorisation pursuant to the first paragraph.

### **Section 7-9 Application of the Securities Trading Act to foreign investment firms**

For undertakings that provide investment services in Norway pursuant to section 7-7 application of this Act is confined to the following provisions:

1. chapters 1 and 2,
2. sections 2a-1 to 2a-6 insofar as concerns employees of a Norwegian branch of an investment firm whose head office is in another EEA state,
3. chapters 3 to 7,
4. section 8-4, 8-5 fourth paragraph, 8-6, 8-7 and 8-8 insofar as concerns financial instruments quoted on a Norwegian stock exchange or issued by a Norwegian undertaking, and section 8-13,
5. chapter 9 with the exception of section 9-1 first and fifth paragraph,
6. chapter 10 and 11,
7. chapter 13 and
8. chapter 14.

For firms authorised pursuant to section 7-8 the provisions of this Act apply with the exception of:

1. section 7-4 provided this is stipulated by Kredittilsynet and corresponding rules are prescribed by the law of the home country,
2. sections 7-5 second and third paragraph, 7-6 and 7-7 as well as chapter 12, and
3. chapter 12 provided this is stipulated by Kredittilsynet against the background of a supervision agreement with the authorities in the home state.

The King may make exceptions from this section in cases where the activity is limited or where the firms' activity is regulated by corresponding provisions laid down by the authorities in the firm's home state.

### **Section 7-10 Application of the Securities Trading Act to foreign branches of Norwegian investment firms**

The ministry may make exceptions from section 8-7 in respect of the business conducted by foreign branches of Norwegian investment firms. Exceptions may only be made in cases where the branch is subject to corresponding rules, if any, in the host state and on condition that the undertaking has satisfactory security for the settlement. Section 2a-1 fourth paragraph applies to officers' and employees' own-account trading in financial instruments.

### **Section 7-11 The Norwegian title "fondsmegler" (stockbroker) and the designation "fondsmeglerforetak" (stockbroking firm)**

The designation "fondsmeglerforetak" may only be used by investment firms that are authorised to provide investment services as mentioned in section 1-2 first paragraph subparagraph 1.

The designation "fondsmegler" may only be used by persons who have completed training approved by a trade organisation nominated by the ministry.

## **Chapter 8 Rules on activities**

### **Section 8-1 Related services**

The following are regarded as related services:

1. safekeeping and administration of financial instruments,
2. advice to undertakings on capital structure, industrial strategy and related questions
3. services relating to mergers and the purchase of undertakings.
4. services related to underwriting,
5. investment advice related to financial instruments,
6. services related to foreign currency activity when linked to the provision of investment services, or
7. safe custody services.

Investment firms shall notify Kredittilsynet before offering related services beyond those listed in authorisations pursuant to section 7-1 first paragraph.

### **Section 8-2 Granting of credit**

Investment firms that are not credit institutions may only provide credit after being authorised to do so by the ministry. Credit may only be provided for the purchase of financial instruments that are traded through the firm.

Firms authorised to provide credit shall ensure that satisfactory security is furnished for the credit. The credit shall be repaid in the course of one month after it was granted.

The firm may not provide credit to clients if special circumstances obtain entailing a risk that the client will be unable to honour his commitments.

The firm may not provide credit on terms more favourable than those generally employed by the firm when extending credit to:

1. a member of the board,
2. a person who alone or together with others decides the firm's credit matters,
3. a shareholder with at least three per cent of the share capital,
4. someone who is a close associate of a person as mentioned in 1 to 3 in accordance with section 1-5, subsections 1 to 4.

### **Section 8-3 Investment firm's right to carry on other commercial activities**

An investment firm may not carry on commercial activities beyond those set out in section 8-1, section 8-2, or in an authorisation to carry on financing activity, unless such activities are naturally related to investment services.

Kredittilsynet may in special cases make exceptions from the first paragraph.

An investment firm may not:

1. carry unlimited liability in another undertaking,
2. have assets in and participate in the operation of other commercial activity, or

3. have such influence as mentioned in the Private Limited Companies Act section 1-3 second paragraph or the Public Limited Companies Act section 1-3 second paragraph in another undertaking if this impairs the independent position of the investment firm.

#### **Section 8-4 Employees' right to carry on commercial activity etc.**

Employees of an investment firm who normally have insight into or whose work involves the firm's investment services must not be members of the board, corporate assembly or committee of representatives of an undertaking with financial instruments that are the object of organised trading or of the management company of a securities fund. Nor may said employees have such influence as mentioned in the Private Limited Companies Act section 1-3 second paragraph or the Public Limited Companies Act section 1-3 second paragraph in such undertaking.

Kredittilsynet may in special cases make exceptions from the provision of the first paragraph, first sentence.

#### **Section 8-5 Investment firms' trading in financial instruments for own account**

Subject to the constraints following from sections 9-2 and 9-3, an investment firm may only purchase, sell or subscribe for financial instruments for own account when:

1. the transaction is undertaken as part of the firm's investment services activity, or
2. the transaction is part of the firm's ordinary asset management.

In the case of an investment firm that is not a credit institution, trading as mentioned in the first paragraph subparagraph 2, may only be undertaken in financial instruments quoted on a regulated market. The firm shall notify Kredittilsynet of such own-account trading in accordance with further rules laid down by Kredittilsynet.

Kredittilsynet may in special cases make exceptions from the second paragraph, first sentence, if it is wished to acquire financial instruments for the firm's permanent ownership or use.

In the case of disposal of financial instruments not owned by the investment firm, the firm must have access to the financial instruments so that punctual delivery is assured on the agreed date.

#### **Section 8-6 (Revoked)**

#### **Section 8-7 Mediation of sale of financial instruments not owned by the client**

An investment firm may only mediate the sale of financial instruments not owned by the client provided the client has access to the financial instruments and the firm is assured of punctual delivery on the agreed date.

#### **Section 8-8 Loan of financial instruments**

In the case of mediation of agreements concerning loan of financial instruments the investment firm shall see to it that satisfactory security is furnished for the loan. The security shall at least correspond to the instruments' market value at the time in question, with the addition of marginal security in accordance with further rules laid down by the ministry.

The requirement as to furnishing of security pursuant to the first paragraph applies correspondingly if the investment firm lends financial instruments from its own portfolio.

Loan agreements pursuant to the first and second paragraph and agreements regarding the investment firm's loans of financial instruments shall be standardised. The agreements shall be subject to Kredittilsynet's approval if they are not concluded in collaboration with a clearing house which either acts as guarantor or is a counterparty to the agreement. Kredittilsynet may withdraw its approval if considerations of safe delivery so indicate.

### **Section 8-9 Minimum requirement as to initial capital**

An investment firm that is not a credit institution shall have initial capital amounting to at least the equivalent of EUR 730,000 in Norwegian currency. In the case of firms which according to their authorisation shall only provide certain investment services, Kredittilsynet may authorise lower starting capital, but not lower than the equivalent of EUR 125,000 in Norwegian currency.

The ministry may prescribe by regulations what shall be regarded as initial capital.

### **Section 8-10 Capital adequacy requirement**

An investment firm shall at all times maintain own funds appropriate to the risk inherent in and the volume of the activities carried on by the firm, including market risk and credit risk assumed by the firm. In the case of investment firms that are not credit institutions, own funds may in no case be smaller than the amounts stated in section 8-9, first paragraph.

The ministry prescribes by regulations what is to be regarded as own funds, rules for the basis for measurement and what is to be regarded as an appropriate level of cover for the various types of risk associated with the activities carried on by the firm pursuant to this Act.

An investment firm may only provide investment services on condition that the requirements as to own funds are satisfied. The ministry may in special cases and for a limited period consent to an investment firm having lower capital adequacy than stipulated. A firm that fails to satisfy the requirements of the first paragraph, second sentence, shall discontinue operations, unless the circumstance is rectified within a date stipulated by Kredittilsynet.

### **Section 8-11 Maximum credit to any one customer**

An investment firm's overall credit to any one customer may at no time exceed a prudent level.

The ministry may issue regulations on the maximum overall credit to be granted to any one customer, including the method of calculation of on- and off-balance-sheet items.

The ministry may lay down rules regarding the application of a limit on maximum credit to any one customer, also in the case of credit to two or more customers when the balance of influence or financial relations between them may have a substantial bearing on the firm's assessment of their creditworthiness.

### **Section 8-12 Consolidation rules**

Where the investment firm:

1. has a subsidiary which is an investment firm, or a financial institution,
  2. directly or indirectly holds 20 per cent or more of the voting rights or capital of an undertaking as mentioned in subsection 1, or
  3. has a parent company whose activity is confined to managing its holdings in the group
- the requirements of sections 8-10 and 8-11 shall be applied on a consolidated basis.

The ministry may lay down further rules on consolidation, including what shall be regarded as a subsidiary or parent company pursuant to the first paragraph.

### **Section 8-13 Furnishing of security**

An investment firm shall have insurance or other security covering liability that the firm may incur in connection with its activity.

An injured party may claim compensation directly from the provider of security without first having brought a claim against the firm. The provider of security may not bring to bear other objections against the injured party than the objections the investment firm itself has in relation to the injured party.

The ministry may lay down further rules concerning insurance or other security pursuant to this provision, including rules concerning the size of the security and the scope of the cover provided by it, who shall be regarded as an injured party and how the investment firm and the provider of the security shall deal with claims for payment under the security.

The ministry may decide the extent to which the rules on security shall apply to credit institutions or foreign undertakings providing investment services in Norway. The ministry may decide that certain groups of investors or certain types of claim do not need to be covered by the security.

## **Chapter 9 Organisation of activities etc.**

### **Section 9-1 Organisation of activities**

An investment firm shall organise its activities in such a way that the firm:

1. has sound administrative and accounting procedures, control and security arrangements, including job instructions which specifically regulate the distribution of responsibility between the manager and other senior personnel in the firm,
2. has satisfactory internal control mechanisms, including inter alia rules for personal transactions by employees of the firm,
3. keeps financial instruments and funds belonging to the investors separate from the firm's own funds and otherwise takes adequate measures to protect the investors' rights and prevent the investment firm's using investors' funds for its own accounts,
4. arrange for records to be kept of executed transactions which shall at least be sufficient to enable Kredittilsynet to monitor compliance with the prudential rules which Kredittilsynet is responsible for applying; such records shall be retained for the period laid down by Kredittilsynet, and
5. is structured and organised in such a way as to minimise the risk of clients' interests being prejudiced by conflicts of interest between the firm and its clients or between the firm's clients. Where a branch is set up, the organisation arrangements may not conflict with the rules of good business conduct laid down by the host state to cover conflicts of interest.

The firm shall have internal instructions for the employees' right to be members of the board, corporate assembly or committee of representatives or to have such influence in companies as mentioned in the Private Limited Companies Act section 1-3 second paragraph or the Public Limited Companies Act section 1-3 second paragraph. Such instructions shall also encompass board members having such influence in the investment firm as mentioned in the Private Limited Companies Act section 1-3 second paragraph or the Public Limited

Companies Act section 1-3 second paragraph. Corresponding instructions shall be drawn up for cases where dispensation is granted pursuant to section 8-4 second paragraph.

The firm shall have internal routines in respect of requirements as to, and calculation of, security in connection with the mediation and entering into of agreements pursuant to section 8-8 first and second paragraph, and with furnishing of credit pursuant to section 8-2.

The firm shall have internal instructions for the duty of confidentiality pursuant to section 9-8, and for exchange of information between different parts of the firm.

The board and manager shall draw up internal guidelines and instructions in accordance with the first to fourth paragraphs.

The ministry may in special cases lay down supplementary rules concerning requirements as to the firms' internal guidelines and instructions.

### **Section 9-2 Rules of good business conduct**

An investment firm shall carry on its activities in accordance with the conditions set for the authorisation, other provisions applying to the performance of its activities as well as rules of good business conduct. To promote the best interests of clients and the integrity of the market the firm shall:

1. act in an orderly and correct manner in the performance of its activity and execute received assignments with due care and dispatch,
2. in its conduct display the necessary competence, care and interest,
3. have and effectively utilise such resources and such procedures as are necessary for the proper performance of its activities,
4. ensure that it obtains necessary information on the clients' identity, financial situation and investment experience,
5. make adequate disclosure of relevant information in dealing with its clients, and
6. endeavour to avoid conflicts of interest inter alia by ensuring that the customer's interests rank above the firm's interests and that the interests of certain customers are not unfairly favoured at the expense of other customers.

When executing orders the investment firm shall, in applying the first paragraph subparagraphs 1-6, adapt to the investor's level of professionalism. The originator of the order is regarded as the investor.

When a specific price is not stated in an assignment the assignment shall be executed at a price that is reasonable in relation to the market situation.

The client shall be given the best price that the firm considers it can obtain in the light of available price information, unless the client demands that the firm quote a particular price or accepts a particular price when making the assignment.

Before the firm takes on an assignment or provides investment services in a case where the firm's own interests or other particular reasons are likely to give rise to doubt as to the firm's independence, the principal or other interested parties shall be furnished with the necessary information on the matter.

Before an investment firm transacts business with investors it shall inform them of the cover provided by the insurance or security mentioned in section 8-13.

Investment services may only be provided from a permanent place of business.

This section applies correspondingly to the firm's employees and officers and to persons and undertakings having such influence in the investment firm as mentioned in the Private Limited Companies Act section 1-3 second paragraph or the Public Limited Companies Act section 1-3 second paragraph.

### **Section 9-3 Requirements as to good business practices in own-account trading**

An investment firm may not engage in own-account trading as mentioned in section 8-5 first paragraph subparagraph 2 in financial instruments for which a client order has been placed and where no specific price is stated in the order. The first sentence does not apply if the person who performs the transaction on the firm's behalf was not aware, and was not in a position to be aware, that a client order had been placed.

The investment firm may not enter into the agreement with the principal if the firm can obtain better terms for the client by buying or disposing in the market at the time the assignment is taken in hand. If the investment firm has in full or in part entered into the agreement as a counter-party, the client shall be informed thereof in the contract note.

If the demand for securities exceeds the number offered in a public offering that is regulated by chapter 5, the investment firm assisting the offerer in connection with the offer may not be allocated securities if such allocation entails a reduction in the allocation to the firm's customers.

### **Section 9-4 Trading in quoted financial instruments**

Investment firms shall notify the stock exchange immediately of transactions related to financial instruments quoted in Norway. The ministry may lay down further rules for such notification. The ministry may moreover lay down rules requiring investment firms to notify the stock exchange of trading in unquoted options and futures/forwards referring to purchases or sales of financial instruments quoted on a stock exchange in Norway.

An investment firm may not perform investment services as mentioned in section 1-2 first paragraph subparagraph 1-3 in a financial instrument that is suspended from quoting on a stock exchange. Contracts entered into prior to the date of suspension where the price is fixed may nonetheless be carried through.

An investment firm's trade in financial instruments as mentioned in section 1-2 second paragraph subparagraphs 4 to 7 that are quoted on a stock exchange shall be carried out through a clearing house as mentioned in section 6-1. This provision does not apply to subscription rights or purchase rights which are issued on identical conditions, simultaneously and in a specified quantity provided the issuer owns the underlying securities, or where the issue of purchase rights or selling rights meets the specific conditions as determined by the ministry by virtue of regulations.

All trade in financial instruments as mentioned in section 1-2 second paragraph subparagraph 8 that are quoted on a stock exchange shall be carried out through a clearing house as mentioned in section 6-1.

### **Section 9-5 Investment firms' trading in options etc.**

When mediating trade in financial instruments as mentioned in section 1-2 second paragraph subparagraphs 4 to 8, the investment firm shall ensure that the firm has satisfactory security for the fulfilment of its obligations. The ministry may lay down further rules on the furnishing of security.

In the case of trade carried out through a Norwegian or foreign clearing house conducting business as mentioned in section 1-6, the investment firm shall ensure that the customer furnishes security at least equal to that required by the clearing house.

The first paragraph applies correspondingly to investment firms' trading for own account.

### **Section 9-6 Trading in financial instruments that are registered in the Norwegian Registry of Securities (VPS)**

Investment firms shall register transactions in VPS-registered financial instruments with the Norwegian Registry of Securities on the same day as the contract is entered into.

### **Section 9-7 Obligation to keep records**

Investment firms are obliged to keep records of accepted and executed assignments giving a complete overview of its conduct of business. Kredittilsynet may lay down regulations on investment firms' obligation to keep records.

### **Section 9-8 Duty of confidentiality for investment firms and their employees**

Employees, officers and persons with determinative influence in an investment firm shall treat as confidential any information about the affairs of others which may come to their knowledge in the course of their work, unless otherwise prescribed in law or regulation made pursuant to law.

The first paragraph applies correspondingly to anyone who performs work for the investment firm, even if the person concerned is not employed by the firm.

## **Chapter 10 Set-off of certain financial instruments**

### **Section 10-1 Scope**

This chapter applies to commodity derivatives, forward interest rate agreements (FRAs), interest rate and currency options, interest rate and currency futures, interest rate and currency swaps, and agreements on currency trading. The ministry may decide that this chapter shall also apply to agreements concerning other financial instruments.

### **Section 10-2 Set-off**

Agreements in writing between two parties, whereby the parties' obligations pursuant to agreements as mentioned in section 10-1 are to be set off at market price either on a current basis or upon default, may be brought to bear notwithstanding sections 7-3 and 8-1 of the Creditors Security Act.

### **Section 10-3 Security furnished vis-à-vis a clearing house**

Security for agreements as mentioned in section 10-1 that is furnished vis-à-vis a clearing house in accordance with the rules applying to the clearing house may not be set aside under section 5-7 of the Creditors Security Act.

## **Chapter 11 Trading in financial instruments through an investment firm**

### **Section 11-1 Execution of assignments**

Investment services as mentioned in section 1-2 first paragraph subparagraph 1 shall be executed in the investment firm's name. The investment firm is responsible to the principal and to the party with whom it enters into agreement for the performance of orders it has executed. The investment firm is not liable vis-à-vis the principal if the principal has approved the other party in advance.

### **Section 11-2 Investment firms' commercial terms**

Investment firms shall draw up commercial terms which at least regulate the following matters:

1. in what form the individual assignment shall be given,
2. duration of the assignment,
3. time and place for delivery and settlement, including what statements shall be regarded as sufficient confirmation of delivery and settlement,
4. the investment firm's remuneration, including whether remuneration may be taken in the form of brokerage or from the difference between the buying and selling price, what the firm may demand if the transaction is not brought about, the right to demand reimbursement of outlays, as well as whether and with whom the firm in the event shares remuneration,
5. the principal's right to contend that the agreement or any of its terms is contrary to the assignment, including possible time-limits for notifying the firm,
6. claims in cases where it is asserted that an agreement is not binding, including the effects of a claim for the relationship between the party invoking the rules of invalidity and the investment firm, and
7. the right to conclude a cover agreement if delivery of financial instruments does not take place in due time, including provisions on calculation of compensation if a cover agreement is concluded.

When a business relationship is established the firm's commercial terms shall be submitted to the client. The same applies in the event of subsequent changes in the terms.

### **Section 11-3 Orders for purchase and disposal of the same financial instrument**

Where an investment firm has accepted assignments both to purchase and dispose of the same financial instrument, the firm may itself carry out both assignments by concluding agreements on behalf of the principals. The firm shall safeguard both principals' interests with the same care, and set the price of the financial instruments on the basis of the stock exchange price or a price that is reasonable in relation to the market situation.

### **Section 11-4 Notification of executed assignments**

The investment firm shall by contract note or by other means inform the principal immediately of any agreement concluded for the principal's account.

Executed assignments shall be confirmed by contract note. Kredittilsynet may lay down rules on the form and content of contract notes.

### **Section 11-5 Investment firm's right of security**

An investment firm has possessory lien on such financial instruments as it has purchased for a principal insofar as concerns claims deriving from the assignment.

If the principal fails to pay within three days of the settlement deadline, the firm may itself sell the financial instruments for the principal's account to cover its claims, unless other agreement has been made.

A covering sale as mentioned in the second paragraph shall be undertaken at the stock exchange price or at a price that is reasonable in relation to the market situation.

### **Section 11-6 General rules of invalidity**

In case of purchase or disposal of financial instruments through an investment firm the ordinary rules of invalidity apply correspondingly in the relationship between the purchaser and the seller.

### **Section 11-7 Objection in the event of delay**

Where a party has failed to fulfil his obligations at the time stipulated in the agreement, the other party must give notification immediately if he/she wishes to cite the delay as a basis for cancelling the agreement, unless other agreement has been made.

## **Chapter 12 Supervision of securities trading**

### **Section 12-1 Supervision of trading in financial instruments**

Supervision of trading in financial instruments and of compliance with the legislation governing securities trading rests with the ministry.

Supervision of the activity of investment firms, options houses and clearing houses and of compliance with the provisions of this Act rests with Kredittilsynet.

Where a stock exchange or an authorised market has grounds for supposing that a party trading in financial instruments has employed unreasonable business methods, acted contrary to rules of good business conduct or otherwise violated the provisions of this Act, it shall inform Kredittilsynet accordingly. This also applies where a stock exchange or an authorised market has grounds for believing that there are serious or repeated instances of non-compliance with the issuer's duty under section 5-7 of the Stock Exchange Act to disclose information.

### **Section 12-2 Information requirement**

Investment firms and institution offering clearing and settlement services are obliged to furnish Kredittilsynet with such information as may be required about matters related to their business and activities. Investment firms are obliged to produce and in the event hand over for inspection records in accordance with section 9-7 and other documents concerning their activities.

Where circumstances arise entailing a risk that an undertaking as mentioned in the first paragraph will be unable to meet the stipulated capital requirements, or other circumstances arise which may entail substantial risk for the operation of the firm, the firm shall immediately inform Kredittilsynet accordingly. Investment firms shall moreover inform Kredittilsynet if managers as mentioned in section 7-2 second paragraph are replaced. In the case of investment firms that are not credit institutions the information requirement also applies in the event of changes in the composition of the board of directors of the firm.

Kredittilsynet may notwithstanding the duty of confidentiality require the Norwegian Registry of Securities to furnish it with such information as it deems necessary for the exercise of supervision by such means as Kredittilsynet deems appropriate.

A firm is obliged to furnish Kredittilsynet with such information as Kredittilsynet deems necessary to decide whether provisions laid down in or pursuant to this Act have been violated in relation to financial instruments issued by the firm.

If Kredittilsynet suspects a contravention of section 2-1 first paragraph; section 2-2 first paragraph; or section 2-6, any party may be ordered to provide the information requested by Kredittilsynet, unless the information is subject to a statutory duty of confidentiality. Information obtained pursuant to the previous sentence may only be used in the case for which it was obtained. Any person requested to appear for questioning is entitled to the assistance of a lawyer. Any person requested to appear for questioning may refuse to answer questions when the answer could expose to the person in question, or anyone with whom the person in question has a relationship as mentioned in section 122 first and second paragraph of the Criminal Procedure Act, to punishment or loss of public esteem.

Credit institutions and finance undertakings are obliged, notwithstanding the duty of confidentiality, to furnish Kredittilsynet information about and inspection of customer relationships where this is requested in cases as mentioned in the sixth paragraph.

Kredittilsynet shall make persons required to provide information aware of the extent of and limits on the information requirement.

### **Section 12-3 Kredittilsynet's duty of confidentiality**

Kredittilsynet is subject to a duty of confidentiality pursuant to the Financial Supervision Act (No. 1 of 7 December 1956) section 7 first paragraph.

Where supervision gives grounds for suspecting that someone has suffered or will suffer loss as a result of non-compliance with provisions in or pursuant to law, Kredittilsynet may inform that person of the circumstance in question.

### **Section 12-4 Orders, etc.**

Kredittilsynet may issue a firm as mentioned in section 12-1 second paragraph with a corrective order if the firm acts in contravention of law or regulations laid down pursuant to law. Corrective orders may also be issued if an investment firm acts contrary to internal guidelines and instructions as mentioned in section 9-1. The same applies if the management or board of directors of the firm fail to meet the requirements as to good repute and experience as prescribed in section 7-2 second and third paragraphs.

The first paragraph applies correspondingly if Kredittilsynet is informed by the supervisory authorities in another EEA state that a Norwegian investment firm has violated rules governing the firm's activities in the country in question. Kredittilsynet shall in such case inform the competent authority of which corrective orders are issued.

Kredittilsynet may prohibit investment firms from carrying on activities that are not considered to be satisfactorily regulated by law, regulations laid down pursuant to law or internal guidelines and instructions as mentioned in section 9-1, when such activities may expose the firm or its clients to unwarrantably large risk. Kredittilsynet may also order that such activities shall only take place on certain conditions.

If a shareholder with a qualifying holding is deemed unfit to ensure sound and prudent management of an investment firm, or a shareholder has omitted to notify Kredittilsynet as required by section 7-4 first or second paragraph, or acquires shares in contravention of an

injunction issued by Kredittilsynet pursuant to section 7-4 third paragraph, Kredittilsynet may prohibit the exercise of voting rights attached to such shares.

### **Section 12-5 Withdrawal of authorisation**

Kredittilsynet may withdraw entirely or in part an authorisation to provide investment services if the investment firm:

1. fails to use the authorisation within twelve months of issue, expressly renounces the authorisation or has ceased to provide investment services more than six months previously,
2. has obtained the authorisation by providing incorrect information or by other irregular means,
3. no longer fulfils the conditions under which the authorisation was granted, including the requirements as to own funds,
4. has seriously or systematically infringed provisions laid down in or pursuant to law,
5. is guilty of misconduct which gives reason to fear that continuation of the activity may harm the general good, or
6. fails to comply with an order made in pursuance of section 12-4.

Where authorisation for a firm which carries on activity in another EEA state is withdrawn, the competent authorities in the host state shall be informed.

### **Section 12-6 Information required by the stock exchange**

The stock exchange may request such information from a investment firm, company and persons as may be of significance for the mandatory offer obligation. Section 14-1 shall apply in case of non-compliance with the information requirement.

## **Chapter 13 Supervision of investment firms with their head office in another EEA state**

### **Section 13-1 Information requirement**

Kredittilsynet may for statistical purposes require an investment firm that provides investment services in accordance with section 7-7 to submit reports on its activities.

Kredittilsynet may require investment firms to furnish such information as Kredittilsynet deems necessary in order to monitor their compliance with the rules governing their activities in Norway.

### **Section 13-2 On-site inspection**

After notifying Kredittilsynet beforehand the competent authorities in the investment firm's home state may, in cooperation with Kredittilsynet, undertake on-site inspection of a branch established in accordance with section 7-7. When requested by the competent authorities in the home state, Kredittilsynet may undertake such inspection as mentioned.

The first paragraph does not prevent Kredittilsynet from carrying out such on-site inspection as is deemed necessary to monitor compliance with the rules governing the activities of the branch in Norway.

### **Section 13-3 Orders regarding corrective measures etc.**

Kredittilsynet shall issue an investment firm which provides investment services pursuant to section 7-7 with a corrective order, in the event an order to cease its activities in Norway, if such activities are carried on in breach of law or regulations.

Kredittilsynet may take measures to prevent further contraventions if an order pursuant to the first paragraph is not complied with.

Before Kredittilsynet makes an order pursuant to the first paragraph, the supervisory authorities in the investment firm's home state shall be notified and given an opportunity to take measures to put an end to the unlawful circumstance.

If it is necessary in order to protect the interests of investors and others to whom services are provided by the investment firm, Kredittilsynet may adopt necessary measures without such notification as mentioned in the third paragraph.

If a firm with its head office in another EEA state has had its authorisation withdrawn, Kredittilsynet shall take measures to prevent the firm from continuing to provide investment services in Norway.

## **Chapter 14 Sanctions**

### **Section 14-1 Daily fine**

The stock exchange may impose on an undertaking or person who neglects his duties under chapter 4 a daily fine which shall run until the circumstance has been rectified.

The stock exchange shall fix the size of the fine. The fine shall accrue to the Treasury.

A fine incurred falls due for payment upon demand and gives grounds for enforcement of distraint.

### **Section 14-2 Surrender of gain**

If gain has resulted from negligent or wilful violation of sections 2-1 first paragraph; 2-2 first and second paragraphs; 2-3; 2-5; 2-6; 2a-2 to 2a-6, 8-2 to 8-6; 9-2; 9-3 or 9-4 second paragraph, the party to whom such gain has accrued may be ordered to surrender all or part of it. This also applies where the person to whom the gain accrues is a person other than the violator. If the size of the gain can not be established, the amount shall be fixed on a discretionary basis.

If the gain has accrued to a company which is part of a group, the company's parent company and the parent company in the group of which the company is part, shall alternatively be liable for the amount.

Kredittilsynet may issue a decision ordering the surrender of gain under this section. A decision ordering the surrender of gain is not regarded as an individual decision under the provisions of the Public Administration Act. The surrender of gain shall have a period of up to two months in which to decide whether or not to accept it. Acceptance of surrender of gain gives grounds for enforcement of distraint. If the surrender of gain is not accepted, Kredittilsynet may within three months of the expiry of the time-limit for acceptance bring legal action against the party in question in the judicial district where legal action may be brought against that party. The case shall be conducted in accordance with the Civil Procedure Act. Mediation by the Conciliation Board is not necessary.

A deduction shall be made in the claim for surrender of gain in respect of amounts which the party responsible has by judgment been ordered to repay to the injured party. The same applies if the party in question has effected such repayment beforehand and proves that

repayment has taken place. If a judgment as mentioned in the first sentence is handed down after the gain has been surrendered, and the party responsible lacks the means to meet the claim, the surrendered gain shall be returned to the injured party to the extent necessary to pay the amount stipulated in the judgment.

A claim for surrender of gain becomes time-barred after ten years. The provisions of the Statutory Limitation of Claims Act (No. 18 of 18 May 1979) otherwise apply insofar as appropriate.

If the violation is dealt with by the prosecuting authority or by a court in accordance with the Criminal Procedure Act (No. 25 of 22 May 1981), any claim for surrender of gain shall be included as a claim for confiscation under the Criminal Code section 34.

### **Section 14-3 Penalties**

Anyone who wilfully or negligently violates section 2-1 first paragraph or section 2-6 first or second paragraph is punishable by fines or imprisonment up to six years.

Fines or imprisonment of up to 1 year shall be handed down to anyone who wilfully or negligently:

1. violates section 2-12, sections 2a-1 to 2a-7, section 2-6 third paragraph, section 3-1, section 5-1, section 5-7, section 5-8, section 6-1 first paragraph, section 6-5, section 7-11, sections 8-2 to 8-8, sections 9-3 to 9-8, section 11-3 or section 12-2,
2. violates section 2-3 if there is specific and confidential information in the undertaking,
3. gives misleading or incorrect information in a prospectus, announcements etc., as mentioned in section 5-5,
4. violates the duty under section 9-1 first paragraph subparagraph 3 to keep financial instruments and funds belonging to the investor separate from firms' own funds,
5. violates orders issued pursuant to section 12-4 or
6. grossly or repeatedly violates section 2-5 or section 9-2,

A fine shall be handed down to anyone who wilfully or negligently violates section 3-2 or section 3-3.

Complicity is subject to the same penalties. Violation of the second and third paragraphs is a misdemeanour regardless of the size of the punishment.

Prosecution shall take place only when required in the public interest.

## **Chapter 15 Commencement and transitional provisions. Amendments to other Acts**

### **Section 15-1 Commencement and transitional provisions**

This Act comes into force as and when the King decides. The Securities Trading Act (No. 61 of 14 June 1985) will simultaneously be repealed. Individual provisions may be given effect at different times. The King may lay down transitional provisions.

### **Section 15-2 Amendments to other acts**

Amendments to the following Acts will take effect as from the commencement of this Act: - - -