

## **Regulations on the publication of information on orders and transactions, the activity of investment firms as systematic internalisers, transaction reporting and the activity of approved publication arrangements**

Short title: MiFID II Regulations

Adopted by Finanstilsynet on 9 November 2017 pursuant to the Financial Supervision Act section 4 subsection (1) no. 3, the Securities Trading Act section 10-18 subsection (4), section 10-19 subsection (4), section 10-20 subsection (4), section 11-3 subsection (3) and section 11-4 subsection (4) and the Stock Exchange Act section 28 subsection (4) and section 29 subsection (4), cf. Ministry of Finance's delegation decision of 1 September 2017.

### **Chapter 1 Introductory provisions**

#### **Section 1-1 *Definitions***

- (1) 'Systematic internaliser' means an investment firm as referred to in the Securities Trading Act section 2-4 subsection (4) that operates on an substantial basis. The frequent and systematic basis shall be measured by the number of OTC trades in the financial instrument carried out by the investment firm on own account when executing client orders. The substantial basis shall be measured either by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument or by the size of the OTC trading carried out by the investment firm in relation to the total trading in the EEA area in a specific financial instrument. The definition of a systematic internaliser shall apply only where the pre-set limits for a frequent and systematic basis and for a substantial basis are both crossed or where an investment firm chooses to opt-in under the systematic internaliser regime;
- (2) 'Trading venue' means a regulated market as referred to in the Stock Exchange Act section 4 or a multilateral trading facility (MTF) as referred to in the Securities Trading Act section 2-3 subsection (4).

### **Chapter 2 Transparency for equity instruments**

#### **Section 2-1 *Pre-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments***

- (1) Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue. That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall make that information available to the public on a continuous basis during normal trading hours.
- (2) The transparency requirements referred to in subsection (1) shall be calibrated for different types of trading systems including order-book, quote-driven, hybrid and periodic auction trading systems.
- (3) Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in subsection (1) to investment firms

which are obliged to publish their quotes in shares, depositary receipts, ETFs, certificates and other similar financial instruments pursuant to section 6-1.

## **Section 2-2 *Waivers for equity instruments***

- (1) Finanstilsynet may waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in section 2-1 subsection (1) for:
  - (a) systems matching orders based on a trading methodology by which the price of the financial instrument referred to in section 2-1 subsection (1) is derived from the trading venue where that financial instrument was first admitted to trading, or the most relevant market in terms of liquidity where that reference price is widely published and is regarded by market participants as a reliable reference price.
  - (b) systems that formalise negotiated transactions which are:
    - (i) made within the current volume weighted spread reflected on the order book or the quotes of the market makers of the trading venue operating that system, subject to the conditions set out in section 2-3;
    - (ii) in an illiquid share, depositary receipt, ETF, certificate or other similar financial instrument that does not fall within the meaning of a liquid market, and are dealt within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator; or
    - (iii) subject to conditions other than the current market price of that financial instrument;
  - (c) orders that are large in scale compared with normal market size;
  - (d) orders held in an order management facility of the trading venue pending disclosure.
- (2) The reference price referred to in subsection 1(a) shall be established by obtaining:
  - (a) the midpoint within the current bid and offer prices of the trading venue where that financial instrument was first admitted to trading or the most relevant market in terms of liquidity; or
  - (b) when the price referred to in point (a) is not available, the opening or closing price of the relevant trading session.

Orders shall only reference the price referred to in point (b) outside the continuous trading phase of the relevant trading session.
- (3) Where trading venues operate systems which formalise negotiated transactions in accordance with subsection (1)(b)(i):
  - (a) those transactions shall be carried out in accordance with the rules of the trading venue;
  - (b) the trading venue shall ensure that arrangements, systems and procedures are in place to prevent and detect market abuse or attempted market abuse in relation to such negotiated transactions in accordance with Article 16 of Regulation (EU) No 596/2014;
  - (c) the trading venue shall establish, maintain and implement systems to detect any attempt to use the waiver to circumvent other requirements of these regulations or Directive 2014/65/EU and to report attempts to Finanstilsynet.
- (4) Finanstilsynet may withdraw a waiver granted under subsection (1) if the waiver is being used in a way that deviates from its original purpose or if the waiver is being used to circumvent the requirements established in this section.

### **Section 2-3 *Volume cap mechanism***

- (1) In order to ensure that the use of the waivers provided for in section 2-2 subsection (1)(a) or (b)(i) does not unduly harm price formation, trading under those waivers is restricted as follows:
- (a) the percentage of trading in a financial instrument carried out on a trading venue under those waivers shall be limited to 4% of the total volume of trading in that financial instrument on all trading venues across the EEA area over the previous 12 months.
  - (b) overall trading in a financial instrument across the EEA area carried out under those waivers shall be limited to 8% of the total volume of trading in that financial instrument on all trading venues across the EEA area over the previous 12 months.

That volume cap mechanism shall not apply to negotiated transactions which are in a share, depositary receipt, ETF, certificate or other similar financial instrument for which there is not a liquid market and are dealt within a percentage of a suitable reference price as referred to in section 2-2 subsection (1)(b)(ii), or to negotiated transactions that are subject to conditions other than the current market price of that financial instrument as referred to in section 2-2 subsection (1)(b)(iii).

- (2) When the percentage of trading in a financial instrument carried out on a trading venue under the waivers has exceeded the limit referred to in subsection 1(a), Finanstilsynet shall within two working days suspend their use on that venue in that financial instrument for a period of six months.
- (3) When the percentage of trading in a financial instrument carried out on all trading venues across the EEA area under those waivers has exceeded the limit referred to in subsection 1(b), Finanstilsynet shall within two working days suspend the use of those waivers for a period of six months.
- (4) In order to ensure a reliable basis for monitoring the trading taking place under those waivers and for determining whether the limits referred to in subsection 1 have been exceeded, operators of trading venues shall have in place systems and procedures to:
- (a) enable the identification of all trades which have taken place on its venue under those waivers; and
  - (b) ensure it does not exceed the permitted percentage of trading allowed under those waivers as referred to in subsection 1(a) under any circumstances.

### **Section 2-4 *Post-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments***

(1) Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on that trading venue. Market operators and investment firms operating a trading venue shall make details of all such transactions public as close to real-time as is technically possible.

(2) Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in subsection 1 to investment firms which are obliged to publish the details of their transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments pursuant to section 6-5.

### **Section 2-5 *Authorisation of deferred publication***

(1) Finanstilsynet may authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on their type or size.

(2) Market operators and investment firms operating a trading venue shall obtain Finanstilsynet's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose those arrangements to market participants and the public.

## **Chapter 3 Transparency for non-equity instruments**

### **Section 3-1 *Pre-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives***

(1) Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for bonds, and structured finance products, emission allowances, derivatives traded on a trading venue and package orders. That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall make that information available to the public on a continuous basis during normal trading hours. That publication obligation does not apply to those derivative transactions of non-financial counterparties which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.

(2) The transparency requirements referred to in subsection (1) shall be calibrated for different types of trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading systems.

(3) Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in subsection (1) to investment firms which are obliged to publish their quotes in bonds, structured finance products, emission allowances and derivatives pursuant to section 6-4.

(4) Market operators and investment firms operating a trading venue shall, where a waiver is granted in accordance with section 3-2 subsection (1)(b), make public at least indicative pre-trade bid and offer prices which are close to the price of the trading interests advertised through their systems in bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make that information available to the public through appropriate electronic means on a continuous basis during normal trading hours. Those arrangements shall ensure that information is provided on reasonable commercial terms and on a non-discriminatory basis.

### **Section 3-2 *Waivers for non-equity instruments***

(1) Finanstilsynet may waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in section 3-1 subsection (1) for:

- (a) orders that are large in scale compared with normal market size and orders held in an order management facility of the trading venue pending disclosure;
- (b) actionable indications of interest in request-for-quote and voice trading systems that are above a size specific to the financial instrument, which would expose liquidity providers to

undue risk and takes into account whether the relevant market participants are retail or wholesale investors;

(c) derivatives which are not subject to a trading obligation and other financial instruments for which there is not a liquid market.

(d) orders for the purpose of executing an exchange for physical;

(e) package orders that meet one of the following conditions:

(i) at least one of its components is a financial instrument for which there is not a liquid market, unless there is a liquid market for the package order as a whole;

(ii) at least one of its components is large in scale compared with the normal market size, unless there is a liquid market for the package order as a whole;

(iii) all of its components are executed on a request-for-quote or voice system and are above the size specific to the instrument.

(2) Finanstilsynet may withdraw a waiver granted under subsection (1) if the waiver is being used in a way that deviates from its original purpose or if the waiver is being used to circumvent the requirements established in this section.

(3) Finanstilsynet may grant a waiver from subsection (1) for each component of a package order.

(4) Finanstilsynet may, where the liquidity of that class of financial instrument falls below a specified threshold, temporarily suspend the obligations referred to in section 3-1. The specified threshold shall be defined on the basis of objective criteria specific to the market for the financial instrument concerned. The temporary suspension shall be valid for an initial period not exceeding three months. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be applicable.

### **Section 3-3 *Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives***

(1) Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make details of all such transactions public as close to real-time as is technically possible.

(2) Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under subsection (1) to investment firms which are obliged to publish the details of their transactions in bonds, structured finance products, emission allowances and derivatives pursuant to section 6-6.

### **Section 3-4 *Authorisation of deferred publication***

(1) Finanstilsynet may authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on the size or type of the transaction. In particular, the competent authorities may authorise the deferred publication in respect of transactions that:

(a) are large in scale compared with the normal market size for that bond, structured finance product, emission allowance or derivative traded on a trading venue, or for that class of bond, structured finance product, emission allowance or derivative traded on a trading venue; or

(b) are related to a bond, structured finance product, emission allowance or derivative traded on a trading venue, or a class of bond, structured finance product, emission allowance or derivative traded on a trading venue for which there is not a liquid market;

(c) are above a size specific to that bond, structured finance product, emission allowance or derivative traded on a trading venue, or that class of bond, structured finance product, emission allowance or derivative traded on a trading venue, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors.

Market operators and investment firms operating a trading venue shall obtain Finanstilsynet's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose those arrangements to market participants and the public.

(2) Finanstilsynet may, where the liquidity of that class of financial instrument falls below the threshold determined in accordance with section 3-2 subsection (4) temporarily suspend the obligations referred to in section 3-3. That threshold shall be defined based on objective criteria specific to the market for the financial instrument concerned. The temporary suspension shall be valid for an initial period not exceeding three months from the date of its publication on the website of the relevant competent authority. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be applicable.

(3) Finanstilsynet may in conjunction with an authorisation of deferred publication:

(a) request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of deferral;

(b) allow the omission of the publication of the volume of an individual transaction during an extended time period of deferral;

(c) regarding non-equity instruments that are not sovereign debt, allow the publication of several transactions in an aggregated form during an extended time period of deferral;

(d) regarding sovereign debt instruments, allow the publication of several transactions in an aggregated form for an indefinite period of time.

In relation to sovereign debt instruments, points (b) and (d) may be used either separately or consecutively whereby once the volume omission extended period lapses, the volumes may then be published in aggregated form. In relation to all other financial instruments, when the deferral time period lapses, the outstanding details of the transaction and all the details of the transactions on an individual basis shall be published.

## **Chapter 4    Obligation to offer trade data on a separate and reasonable commercial basis**

### **Section 4-1    *Obligation to make pre-trade and post-trade data available separately***

Market operators and investment firms operating a trading venue shall make the information published in accordance with sections 2-1, 2-2 and 2-4 and chapter 3 available to the public by offering pre-trade and post-trade transparency data separately.

### **Section 4-2    *Obligation to make pre-trade and post-trade data available on a reasonable commercial basis***

Market operators and investment firms operating a trading venue shall make the information published in accordance with sections 2-1, 2-2, and 2-4 and chapter 3 available to the public on a

reasonable commercial basis and ensure non-discriminatory access to the information. Such information shall be made available free of charge 15 minutes after publication.

## **Chapter 5 Special requirements for systematic internalisers**

### **Section 5-1 *Information on the quality of execution of transactions***

For financial instruments subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 each systematic internaliser shall make available to the public, without any charges, data relating to the quality of execution of transactions on at least an annual basis. Periodic reports shall include details about price, costs, speed and likelihood of execution for each financial instrument.

### **Section 5-2 *Suspension or removal of financial instruments***

Systematic internalisers shall suspend or remove from trading financial instruments that have been suspended or removed from trading on trading venues.

## **Chapter 6 Transparency for systematic internalisers and investment firms trading OTC**

### **Section 6-1 *Obligation for systematic internalisers to make public firm quotes in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments***

- (1) Investment firms shall make public firm quotes in respect of those shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue for which they are systematic internalisers and for which there is a liquid market. Where there is not a liquid market for the financial instruments referred to in the first sentence, systematic internalisers shall disclose quotes to their clients upon request.
- (2) Systematic internalisers may decide the size or sizes at which they will quote. The minimum quote size shall be at least the equivalent of 10% of the standard market size of a share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue. For a particular share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue each quote shall include a firm bid and offer price or prices for a size or sizes which could be up to standard market size for the class of shares, depositary receipts, ETFs, certificates or other similar financial instruments to which the financial instrument belongs. The price or prices shall reflect the prevailing market conditions for that share, depositary receipt, ETF, certificate or other similar financial instrument.
- (3) Shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that financial instrument. The standard market size for each class of shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be a size representative of the arithmetic average value of the orders executed in the market for the financial instruments included in each class.
- (4) The market for each share, depositary receipt, ETF, certificate or other similar financial instrument shall comprise all orders executed in the EEA area in respect of that financial instrument excluding those that are large in scale compared to normal market size.

- (5) If the most liquid market for a share, depositary receipt, ETF, certificate or other similar financial instrument is in Norway, Finanstilsynet shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of that financial instrument, the class to which it belongs.

### **Section 6-2** *Execution of client orders*

- (1) Systematic internalisers shall make public their quotes on a regular and continuous basis during normal trading hours. They may update their quotes at any time. The quotes shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis. They may, under exceptional market conditions, withdraw their quotes.
- (2) Systematic internalisers shall execute the orders they receive from their clients in relation to the shares, depositary receipts, ETFs, certificates and other similar financial instruments for which they are systematic internalisers at the quoted prices at the time of reception of the order. In justified cases they may execute those orders at a better price provided that the price falls within a public range close to market conditions.
- (3) Systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the requirements established in subsection (2), in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than the current market price.
- (4) Where a systematic internaliser quoting only one quote or whose highest quote is lower than the standard market size receives an order from a client of a size bigger than its quotation size, but lower than the standard market size, it may decide to execute that part of the order which exceeds its quotation size, provided that it is executed at the quoted price, except where otherwise permitted under the conditions laid down in subsections (2) and (3). Where the systematic internaliser is quoting in different sizes and receives an order between those sizes, which it chooses to execute, it shall execute the order at one of the quoted prices in compliance with Article 28 of Directive 2014/65/EU, except where otherwise permitted under the conditions of subsections (2) and (3).

### **Section 6-3** *Access to quotes*

- (1) Systematic internalisers shall be able to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end there shall be clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction.
- (2) In order to limit the risk of exposure to multiple transactions from the same client, systematic internalisers shall be entitled to limit in a non-discriminatory way the number of transactions from the same client which they undertake to enter at the published conditions. They may, in a non-discriminatory way limit the total number of transactions from different clients at the same time provided that this is allowable only where the number and/or volume of orders sought by clients considerably exceeds the norm.

**Section 6-4 *Obligation to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives***

- (1) Investment firms shall make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which they are systematic internalisers and for which there is a liquid market when the following conditions are fulfilled:
  - (a) they are prompted for a quote by a client of the systematic internaliser;
  - (b) they agree to provide a quote.
- (2) In relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request if they agree to provide a quote. That obligation may be waived where the conditions specified in section 3-2 subsection (1).
- (3) Systematic internalisers may update their quotes at any time. They may withdraw their quotes under exceptional market conditions.
- (4) Systematic internalisers shall make the firm quotes published in accordance with subsection (1) available to their other clients. Notwithstanding, they shall be allowed to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end, systematic internalisers shall have in place clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction.
- (5) Systematic internalisers shall undertake to enter into transactions under the published conditions with any other client to whom the quote is made available in accordance with subsection (4) when the quoted size is at or below the size specific to the financial instrument determined in accordance with section 3-2 subsection (1)(b). Systematic internalisers shall not be subject to the obligation to publish a firm quote pursuant to subsection (1) for financial instruments that fall below the threshold of liquidity determined in accordance with section 3-2 subsection (4).
- (6) Systematic internalisers shall be able to establish limits on the number of transactions they undertake to enter into with clients pursuant to any given quote. The limits shall be transparent and non-discriminatory.
- (7) The quotes published pursuant to subsections (1) and (4) and those at or below the size referred to in subsection (5) shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.
- (8) The quoted price or prices shall be such as to ensure that the systematic internaliser complies with its obligations under Article 27 of Directive 2014/65/EU, where applicable, and shall reflect prevailing market conditions in relation to prices at which transactions are concluded for the same or similar financial instruments on a trading venue. However, in justified cases, they may execute orders at a better price provided that the price falls within a public range close to market conditions.
- (9) With the exception of subsection (2) the obligations of this section shall be fulfilled for a package order as a whole and not apply separately to any of its components.

**Section 6-5 *Post-trade disclosure by investment firms, including systematic internalisers, in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments***

- (1) Investment firms which, either on own account or on behalf of clients, conclude transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, shall make public the volume and price of those transactions and the time at

which they were concluded. That information shall be made public through an approved publication arrangement.

- (2) The information which is made public in accordance with subsection (1) and the time-limits within which it is published shall comply with the requirements adopted pursuant to section 2-4. Where the measures adopted pursuant to section 2-5 provide for deferred publication for certain categories of transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.

**Section 6-6 *Post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives***

- (1) Investment firms which, either on own account or on behalf of clients, conclude transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue shall make public the volume and price of those transactions and the time at which they were concluded. That information shall be made public through an approved publication arrangement.
- (2) Each individual transaction shall be made public once through a single approved publication arrangement.
- (3) The information which is made public in accordance with subsection (1) and the time-limits within which it is published shall comply with the requirements adopted pursuant to section 3-3.
- (4) Finanstilsynet may authorise investment firms to provide for deferred publication or for publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of the deferral or may allow the omission of the publication of the volume for individual transactions during an extended time period of deferral, or in the case of non-equity financial instruments that are not sovereign debt, may allow the publication of several transactions in an aggregated form during an extended time period of deferral, or in the case of sovereign debt instruments may allow the publication of several transactions in an aggregated form for an indefinite period of time, and may temporarily suspend the obligations referred to in subsection (1). Where the measures adopted pursuant to section 3-4 provide for deferred publication and publication of limited details or details in an aggregated form, or a combination thereof, or for omission of the publication of the volume for certain categories of transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.

**Section 6-7 *Providing information for the purposes of transparency and other calculations***

- (1) In order to carry out calculations for determining the requirements for the pre-trade and post-trade transparency and the trading obligation regimes established in chapters 2 to 4 and 6, Finanstilsynet may require information from:
  - (a) trading venues;
  - (b) approved publication arrangements ; and
  - (c) consolidated tape providers.
- (2) Trading venues, approved publication arrangements and consolidated tape providers shall store the necessary data for a sufficient period of time.

## **Chapter 7 Transaction reporting**

### **Section 7-1 *Obligation to maintain records***

- (1) Investment firms shall keep at the disposal of Finanstilsynet, for five years, the relevant data relating to all orders and all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under the Act on Money Laundering and Terrorist Financing etc.
- (2) The operator of a trading venue shall keep at the disposal of Finanstilsynet, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems. The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transaction(s) that stems from that order and the details of which shall be reported in accordance with section 7-2 subsections (1) and (3).

### **Section 7-2 *Obligation to report transactions***

- (1) Investment firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to Finanstilsynet as quickly as possible, and no later than the close of the following working day.
- (2) The obligation laid down in subsection (1) shall apply to:
  - (a) financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made;
  - (b) financial instruments where the underlying is a financial instrument traded on a trading venue; and
  - (c) financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue.

The obligation shall apply to transactions in financial instruments referred to in points (a) to (c) irrespective of whether or not such transactions are carried out on the trading venue.

- (3) The reports shall at least include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale as defined in Article 2(1)(b) of Regulation (EU) No 236/2012 on short selling as transposed in the Securities Trading Act section 3-14 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation. For transactions not carried out on a trading venue, the reports shall include a designation identifying the various types of transactions in an objectively measurable way. For commodity derivatives, the reports shall also indicate whether the transaction reduces risk in an objectively measurable way.
- (4) Investment firms which transmit orders shall include in the transmission of that order all the details as specified in subsections (1) and (3). Instead of including all the mentioned details when transmitting orders, an investment firm may choose to report the transmitted order, if it is executed, as a transaction in accordance with the requirements under subsection (1). In that

case, the transaction report by the investment firm shall state that it pertains to a transmitted order.

- (5) The operators of trading venues shall report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with subsections (1) and (3).
- (6) In reporting the designation to identify the clients as required under subsections (3) and (4), investment firms shall use a legal entity identifier established to identify clients that are legal persons.
- (7) The reports shall be made to Finanstilsynet either by the investment firm itself, an approved reporting mechanism acting on its behalf or by the trading venue through whose system the transaction was completed, in accordance with subsections (1) and (3) and regulations adopted pursuant to this section. Investment firms shall have responsibility for the completeness, accuracy and timely submission of the reports. By way of derogation from that responsibility, where an investment firm reports details of those transactions through an approved reporting mechanism which is acting on its behalf or a trading venue, the investment firm shall not be responsible for failures in the completeness, accuracy or timely submission of the reports which are attributable to the approved reporting mechanism or trading venue. In those cases and subject to Article 66(4) of Directive 2014/65/EU the approved reporting mechanism or trading venue shall be responsible for those failures. Investment firms must nevertheless take reasonable steps to verify the completeness, accuracy and timeliness of the transaction reports which were submitted on their behalf.
- (8) A trading venue shall, when making reports on behalf of an investment firm, have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, to minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times. The trading venue shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.
- (9) Where transactions have been reported to a trade repository in accordance with Article 9 of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) as transposed in the Securities Trading Act section 13-1 which is approved as an approved reporting mechanism and where those reports contain the details required under this section and are transmitted by the trade repository within the time limit set in subsection (1), the obligation on the investment firm laid down in subsection (1) shall be considered to have been complied with. Where there are errors or omissions in the transaction reports, the approved reporting mechanism, investment firm or trading venue reporting the transaction shall correct the information and submit a corrected report to Finanstilsynet.

### **Section 7-3 *Obligation to supply financial instrument reference data***

- (1) With regard to financial instruments admitted to trading on regulated markets or traded on MTFs or OTFs, trading venues shall provide Finanstilsynet with identifying reference data for the purposes of transaction reporting under section 7-2.
- (2) With regard to other financial instruments covered by section 7-2 subsection (2) traded on its system, each systematic internaliser shall provide Finanstilsynet with reference data relating to those financial instruments.
- (3) Identifying reference data shall be made ready for submission to Finanstilsynet in an electronic and standardised format before trading commences in the financial instrument that it refers to.

The financial instrument reference data shall be updated whenever there are changes to the data with respect to a financial instrument.

## **Chapter 8    *Approved publication arrangements***

### **Section 8-1    *Authorisation to provide data reporting services***

(1) Services for reporting data covered by chapters 2 to 4 may only be provided by institutions authorised to do so by Finanstilsynet. Such authorisation shall specify the services for which the institution is authorised.

(2) By way of derogation from subsection (1), an investment firm or a market operator operating a trading venue may provide services referred to in subsection (1) subject to verification of their compliance with the requirements of this chapter. Such services shall be included in their authorisation.

### **Section 8-2    *Application for authorisation***

(1) An applicant for authorisation shall provide all information, including a programme of operations setting out, inter alia, the types of services envisaged and the organisational structure, necessary to enable Finanstilsynet to satisfy itself that the institution meets the requirements of this chapter.

(2) The applicant shall be informed as quickly as possible, and no later than six months after submission of a complete application, whether or not authorisation has been granted.

### **Section 8-3    *Modification and withdrawal of authorisations***

Finanstilsynet may modify in whole or in part, including the setting of new conditions, or withdraw authorisation to provide services as referred to in section 8-1 subsection (1) where:

1. the institution does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no data reporting services for the preceding six months,
2. the institution has obtained the authorisation by making false statements or by any other irregular means,
3. the institution no longer meets the conditions under which authorisation was granted;
4. the institution has seriously and systematically infringed the provisions of the Securities Trading Act, the Stock Exchange Act or these regulations or regulations issued pursuant to these regulations,
5. irregularities on the part of the market operator give cause to fear that a continuation of the business may harm the public interest, the institution's clients, confidence in the securities market or in the institutions that participate in the market,
6. the market operator fails to comply with an order issued pursuant to the Financial Supervision Act section 4 subsection (1) no. 7.

### **Section 8-4    *Requirements for the board of directors and management***

(1) Members of the board of directors, the general manager and others participating in the actual management of an institution that is authorised in accordance with section 8-1 shall have sufficient qualifications and experience, be of sufficiently good repute and otherwise not have

displayed untoward conduct giving cause to presume that the position or office will not be discharged in a proper manner. The board shall possess broad collective experience. Persons covered by this subsection shall submit an ordinary police certificate pursuant to the Police Records Act section 40.

- (2) Persons referred to in subsection (1) shall commit sufficient time to discharge their functions in the approved publication arrangement.
- (3) The institution's board of directors shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the institution.
- (4) Each member of the board of directors shall act with honesty, integrity and independence of mind to effectively assess, challenge and oversee and monitor management decision-making.
- (5) Persons who effectively direct the business of an already authorised regulated market in accordance with this Act, shall be considered to fulfil the requirements of subsection (1).
- (6) Authorisation shall be refused if there are objective and demonstrable grounds for believing that the data services provider's board of directors or management pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.
- (7) The institution shall notify Finanstilsynet of any change to the composition of the board of directors and of any replacement of the general manager or others who participate directly in the management of the institution. The institution shall provide all information necessary to assess its compliance with the requirements of subsections (1) to (4).

#### **Section 8-5 *Board of directors' responsibilities and obligations***

- (1) The board of directors has overall responsibility for the management of the publication arrangement and shall oversee the institution's activities. The board of directors shall inter alia ensure that the institution is organised and directed in an effective and prudent manner, including the segregation of the various parts of the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of clients.
- (2) The board of directors shall monitor and regularly assess the effectiveness of the market operator's organisation and management and take appropriate action to remedy any deficiencies.
- (3) The members of the board of directors shall have sufficient access to information and documents they need to oversee the decisions taken by the market operator's day-to-day management.

#### **Section 8-6 *Organisational requirements***

- (1) An approved publication arrangement shall have adequate policies and arrangements in place to make public the information required under sections 6-5 and 6-6 as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the approved publication arrangement has published it. The information shall be disseminated efficiently and consistently in a way that ensures fast access to the information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.
- (2) The information made public in accordance with subsection (1) shall include, at least, the following details:
  1. the identifier of the financial instrument;
  2. the price at which the transaction was concluded;

3. the volume of the transaction;
  4. the time of the transaction;
  5. the time the transaction was reported;
  6. the price notation of the transaction;
  7. the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser, the code 'SINT' or otherwise the code 'XOFF';
  8. If applicable, an indicator that the transaction was subject to specific conditions.
- (3) An approved publication arrangement shall have in place effective administrative arrangements designed to prevent conflicts of interest with its clients. An approved publication arrangement who is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall have in place appropriate arrangements to separate different business functions.
- (4) An approved publication arrangement shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, to minimise the risk of data corruption and unauthorised access and to prevent information leakage before publication. The approved publication arrangement shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.
- (5) An approved publication arrangement shall have systems in place that can effectively check trade reports for completeness, identify omissions and obvious errors and request re-transmission of any such erroneous reports.

## **Chapter 9 Concluding provisions**

### **Section 9-1 *Entry into force***

These regulations enter into force on 3 January 2018.

### **Section 9-2 *Amendments to the Securities Trading Regulations***

- (1) Chapter 10 point IX and X of the Securities Trading Regulations are revoked.
- (2) Section 15-1 of the Securities Trading Regulations shall read: "EEA Agreement Annex IX No. 31bac (Commission Regulation (EC) No. 1287/2006) implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive applies as regulations with such adjustments as follow from Annex IX, Protocol 1 to the Agreement and the Agreement in general, *except for Chapter III and IV.*"