



FINANSTILSYNET

THE FINANCIAL SUPERVISORY
AUTHORITY OF NORWAY

Fisher Investments Luxembourg SARL
2a, rue Albert Borschette
L-1246
LUXEMBOURG

Our reference
25/1829
Your reference

07.10.2025

Final Report - Decision regarding corrective order

1 Introduction

Reference is made to the Financial Supervisory Authority of Norway's ("NFSA") preliminary supervisory report regarding advance notification of a possible corrective order dated 28 May 2025 ("the notice"), and to the reply received from Fisher Investments Luxembourg SARL's (hereafter referred to as "Fisher" or the "firm") dated 18 June 2025.

The purpose of the supervision was to ensure that the firm has control over the activities of their Norwegian tied agents in accordance with key provisions in the Norwegian Securities Trading Act (verdipapirhandelloven, hereafter referred to as the "NSTA"). The supervision included evaluation of the firm's procedures for recording and storing client communications for tied agents, as well as its remuneration structure for tied agents.

2 Decision regarding corrective order

NFSA, pursuant to section 20-3 of the NSTA, may issue corrective orders to investment firms providing investment services in accordance with NSTA section 9-34, if such activities are carried out in infringement of law or regulations. Based on the matters addressed in the notice, cf. section 16 of the Public Administration Act, and in this report, NFSA has concluded to order the firm to implement the following measures:

1. Recording of all telephone conversations and storage of all electronic communications related to the provision of investment services and the performance of investment activities as referred to in the NSTA section 2-1, first paragraph, number 1 to 7. The documentation shall also include conversations and communications intended to lead to the provision of investment services or the performance of investment activities. Such recording and storage shall be on the same terms as those applicable to Norwegian investment firms and in accordance with the requirement of the Norwegian Securities Trading Act, cf. NSTA sections 9-16 (1) no. 8, 9-17, 20-4, 9-34 (1) no. 2 and 9-35.

NFSA has informed the CSSF in Luxembourg of this decision, in accordance with NSTA section 20-3 (3).

3 Supervisory assessments

3.1 Recording of client conversations

According to the NSTA section 20-4 NFSA shall have access to and control documentation, including telephone conversations recorded and electronic communications retained, pursuant to sections 9-16 first paragraph no. 8 and 9-17, carried out by a branch or tied agent established in Norway pursuant to 9-34 first paragraph no. 2. Furthermore, NSTA section 9-17 (1) states that such documentation shall include recordings of all telephone conversations and retention of all electronic communications relating to the provision of investment services and the performance of investment activities as mentioned in the NSTA section 2-1 (1) and shall also include conversations and communications intended to result in the provision of investment services or investment activities.

The firm does not currently record the audio conversations between their tied agents and clients or prospective clients. The firm argues in their reply that, unlike the NSTA section 9-17, the Luxembourg MiFID II Law does not require recording of conversations leading up to the provision of all investment services, only conversations relating to client orders. Furthermore, the firm argues that since their tied agents [REDACTED]

[REDACTED], they argue that they pursuant to Luxembourg law are not required to record the telephone conversations of their Norwegian tied agents. The firm acknowledges that the NSTA section 20-4 permits NFSA to have access to documentation and recordings retained by branches and tied agents established in Norway but does in the firm's view not explicitly impose the broader requirements of the NSTA section 9-17 onto non-Norwegian investment firms.

Further, Fisher underlines that MiFID II does not give NFSA the power to supervise compliance with the recording-obligation set out in MiFID II article 16 no. 7 nor to impose the broader Norwegian standards set out in the NSTA section 9-17. They write that the division of home- and host state supervisory powers is reflected in the NSTA section 9-35 (1), where it is specified which of the NSTA's provisions shall apply to EEA-based investment firms who conduct business in Norway through a branch or tied agents. Section 9-35 (1) does not refer to section 9-17 (nor any of the organizational requirements of the NSTA chapter 9), only to certain of the conduct of business rules set out in NSTA chapter 10.

Accordingly, the firm concludes that NFSA's interpretation conflicts with MiFID II's division of supervisory powers and requests that NFSA reconsider its position in light of these legal arguments.

Firstly, NFSA does not agree that the communication between the firm's tied agents and clients/prospective clients does not fall within the scope of the recording obligation. The tied agents are contacting potential clients with the intention of making them actual clients receiving investment services from the firm. Also, from what we've seen in the received documentation, and as described in the notice, the tied agents are [REDACTED]. Consequently, the tied agent's conversations with clients and prospective clients are *intended* to result in the provision of investment services, as incorporated in the last sentence of NSTA section 9-17 (1).

Furthermore, NFSA disagrees with the firms' legal interpretation. The scope of the recording obligation for an investment firm is set out in the first two subparagraphs of article 16 (7) MiFID II, which reads as follows:

"Records shall include the recording of telephone conversations or electronic communications relating to, at least, transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders.

Such telephone conversations and electronic communications shall also include those that are intended to result in transactions concluded when dealing on own account or in the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not result in the conclusion of such transactions or in the provision of client order services" (our underlining).

The term "*at least*" illustrates that this is only a minimum requirement, implying that member states may also decide to extend the requirements further to other MiFID services, or non-MiFID services and products¹. Norway has availed itself of that option. Further, article 16 (11) in MiFID II requires the competent authority of the host Member State to enforce the record keeping requirements in article 16 (7) regarding transactions performed by a branch established in that Member State:

"In the case of branches of investment firms, the competent authority of the Member State in which the branch is located shall, without prejudice to the possibility of the competent authority of the home Member State of the investment firm to have direct access to those records, enforce the obligation laid down in paragraphs 6 and 7 with regard to transactions undertaken by the branch".

Therefore, the competent authority of the host Member State also supervises home Member State rules on record keeping, including those necessary for the monitoring of compliance adopted by the host Member State pursuant to MiFID II article 24 (12) as set out in article 85 (2) of MiFID II. The record keeping requirements serve to enable competent authorities to ensure that (branches/tied agents) of investment firms under their supervision comply with MiFID II, MiFIR and MAR, cf. section 16 (6) of MiFID II. In other words, MiFID II gives NFSA the power to supervise compliance with the recording obligation set out in MiFID II article 16 no. 7 in relation to the firm's Norwegian tied agents.

Similarly, article 85 (2) of MiFID II, states that the (host) national competent authorities may require branches of investment firms to provide the information necessary for the monitoring of the compliance with the standards set out by the host Member State following article 35 (8) of MiFID II. These requirements may not be more stringent than requirements imposed on established firms for the monitoring of their compliance with the same standards.

On this basis, NFSA finds it clear that the stricter obligation to record and keep telephone conversations and other electronic communication according to NSTA section 9-17 applies to branches and tied agents established in Norway, cf. NSTA section 20-4, provided that these record keeping requirements are necessary to monitor compliance with provisions set out by the host Member State – Norway – in accordance with article 35 (8) of MiFID II, and that these requirements apply equally to branches and firms established in Norway. These conditions are met in this case. Please note that NFSA - on a general basis – previously has submitted this matter to the European Commission, which has reached the same conclusion as NFSA. Following this clarification, the Norwegian Securities Markets Association (NSMA), a trade organization for Norwegian investment firms, implemented this in their Recommendation for recording of investment services over the telephone and documentation of communication through other electronic communication channels.² It should also be noted that this has been NFSA's practice since the implementation of MiFID II into Norwegian law, and that we have not yet come across a case where this has not been in place.

Consequently, it is NFSA's conclusion that the firm is subject to the recording obligations in the NSTA, and that it has failed to ensure compliance with these obligations on recording and keeping

¹ See also ESMA, Questions and Answers on MiFID II and MiFIR investor protection and intermediaries topics, Question 1 of Chapter 3.

² See Recommendation 11, section 2 "Scope": "This recommendation applies to Norwegian investment firms, their branches, and tied agents in Norway and abroad. It also applies to branches and tied agents established in Norway by investment firms headquartered in other EEA states and to branches in Norway of investment firms headquartered outside the EEA".

telephone communication carried out by its Norwegian tied agents, cf. sections 9-16 (1) no. 8, 9-17 and 20-4.

3.2 Reumeration

According to section 10-13 of the NSTA, investment firms shall not remunerate employees or assess employees in such a way as to impair its ability to ensure that the client's interests are attended to in the best possible manner. In particular, the firm shall not employ remuneration arrangements, sales targets or other inducements that may provide an incentive to employees to recommend a particular financial instrument to a retail client over another financial instrument which is better suited for the client.

Additional requirements for remuneration policies and practices are outlined in article 27 of delegated commission regulation (EU 2017/565) (hereinafter the "Commission Regulation"), cf. Norwegian Securities Regulation (NSR) section 2-2 (1). The said article requires that investment firms maintain a balanced remuneration structure at all times for all relevant persons, including tied agents, to avoid conflicts of interest. This includes ensuring that remuneration is not solely or predominantly based on quantitative criteria, and that qualitative factors such as regulatory compliance and fair treatment of clients are also considered.

According to the Commission Regulation article 2 (1) tied agents and employees of tied agents are considered "relevant persons". Recital no. 41 in the preamble to the Commission Regulation states that "Relevant persons should also include tied agents. When determining the remuneration for tied agents, firms should take the tied agents' special status and the respective national specificities into consideration. However, in such cases, firms' remuneration policies and practices should define appropriate criteria to be used to assess the performance of relevant persons, including qualitative criteria encouraging the relevant persons to act in the best interests of the client".

Further, the Commission Regulation article 2 no. 5 define remuneration as "all forms of payments or financial or non-financial benefits provided directly or indirectly by firms to relevant persons in the provision of investment or ancillary services to clients".

The firm's Norwegian tied agents receive [REDACTED]. As the tied agents are [REDACTED] There is consequently [REDACTED] as required by the Commission Regulation.

On this background, and as described in the notice, it was NFSA's preliminary assessment that the firm has not ensured compliance with the requirements on remuneration of its Norwegian tied agents, in breach of article 27 of the Commission Regulation and section 10-13 of the NSTA.

The firm disagrees with NFSA's preliminary assessment. The firm acknowledges that article 27 requires a balance between fixed and variable remuneration for "relevant persons," which includes tied agents. However, it argues that this requirement does not apply to its Norwegian tied agents for several legal and structural reasons.

First, the firm emphasizes that it is a Luxembourg-based investment firm subject to MiFID II and the Investment Firms Directive/Regulation (IFD/IFR), which have been implemented in Luxembourg but not yet in Norway. It asserts that remuneration requirements under these frameworks are organizational matters and therefore fall under the supervision of the home state authority, not the host state - NFSA.

Second, the firm points to recital 41 of the Commission Regulation, which acknowledges the "special status" of tied agents as independent contractors and not employees. Based on this, the

firm argues that [REDACTED] as doing so would be inconsistent with their legal and operational status.

Third, the firm contends that only article 24 of MiFID II—relating to fair treatment of clients—is subject to host state supervision under Article 35(8). Since Article 27 is based on articles 16, 23, and 24, and only article 24 falls within the host state's supervisory scope, the firm maintains that NFSA cannot enforce article 27's detailed remuneration provisions.

Additionally, the firm highlights that [REDACTED] In this regard, the firm highlights, inter alia, that [REDACTED]

In addition, [REDACTED]

Tied agents and client files are also subject to supervision by first line management, and in-house staff and management, and to monitoring by compliance, risk and internal audit staff. In the firm's opinion, these mechanisms ensures that "payments made are not providing any incentive for excessive risk taking or the mis-selling of products".

NFSA has considered the Company's arguments and reasoning. We don't agree that the remuneration requirements are only of an organizational nature. The said requirements are essential to ensure investor protection and the best interests of the clients. However, after careful consideration, and taking into account the factual circumstances in this case and the mechanisms implemented to act in the best interests of its clients, NFSA has concluded that there is no basis for issuing a corrective order with regard to the remuneration of the firm's Norwegian tied agents. Nevertheless, NFSA expects that the firm will ensure compliance with the requirements on remuneration of its Norwegian tied agents in accordance with the Commission Regulation article 27 and the NSTA section 10-13.

4 Decision regarding corrective order

On the basis of the above, NFSA has decided to order Fisher Investments Luxembourg SARL to implement the measures described under section 2.

The legal basis is the NSTA sections 9-16 (1) no. 8, 9-17, 20-4, 9-34 and 9-35.

Please be informed that the decision will be published on NFSA's website.

This administrative decision can be appealed within three (3) weeks after receipt. The appellate instance is the Financial Supervision Appeals Board. Sections 18 and 19 of the Public Administration Act, on the parties' right to become acquainted with the case documents, apply.

If you have any questions regarding this matter, please contact the undersigned.

On behalf of NFSA

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Capital Market Supervision

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This document is electronically approved