

Finanstilsynet

Norway

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Act on Securities Trading (Securities Trading Act)

(Act of 29 June 2007 No. 75. Last amended 1 July 2014)

Part 1 Purpose, scope and definitions

Chapter 1 Purpose and scope

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 Territorial scope of the Act

Except as otherwise provided, the Act applies to activity in Norway. The King may adopt provisions on the application of the Act in Svalbard and the continental shelf and may establish special rules taking local conditions into account.

Section 1–3 Application of the Act to investment firms with a restricted range of services

The ministry may by regulations provide that some provisions of the Act shall not apply to investment firms which

1. do not hold client assets, and
2. engage exclusively in investment advice and/or reception and transmission of orders in relation to transferable securities and units in securities funds, and
3. only transmit orders mentioned in no. 2 to investment firms or credit institutions authorised to provide such investment services in Norway, or to securities fund management companies authorised to carry on securities fund management in Norway.

Section 1–4 Application of the Act to credit institutions

The ministry may by means of regulations or administrative decision exempt credit institutions from one or more of the provisions of this Act.

Chapter 2 Definitions

Section 2–1 Investment services and ancillary services

(1) “Investment services” means

1. reception and transmission, on behalf of clients, of orders in relation to one or more financial instruments defined in section 2–2,
2. execution of orders on behalf of clients,
3. dealing in financial instruments on own account,
4. active management of investors' portfolios of financial instruments on a client-by-client basis and in accordance with investors' mandates,
5. investment advice as defined in section 2–4 subsection (1),

6. placing of public offerings as mentioned in chapter 7, placing of issues, as well as underwriting of issues or offers to acquire financial instruments,
7. operation of a multilateral trading facility (MTF) as defined in section 2–3 subsection (4).

(2) “Ancillary services” means

1. safekeeping and administration of financial instruments,
2. granting credits or loans,
3. advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings,
4. foreign exchange services when these are connected to the provision of investment services defined in subsection (1),
5. preparation and provision of investment recommendations, financial analyses or other forms of general recommendation relating to transactions in financial instruments,
6. services related to underwriting,
7. services related to the underlying of commodity derivatives and derivatives defined in section 2–2 subsection (5) no. 5 where these services are connected to the provision of investment or ancillary services mentioned in this section.

(3) The ministry may adopt regulations concerning what are to be regarded as investment services and ancillary services under subsections (1) and (2).

Section 2–2 *Financial instruments*

(1) “Financial instruments” means:

1. transferable securities,
2. units in securities funds,
3. money market instruments,
4. derivatives.

(2) “Transferable securities” means those classes of securities which are negotiable on the capital market, including

1. shares and other securities comparable to shares, including depositary receipts in respect of such securities,
2. bonds and other debt instruments, including depositary receipts in respect of such securities,
3. any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement.

(3) “Units in securities funds” means units in funds as mentioned in the Securities Funds Act section 1–2 subsection (1) no. 1 and securities comparable to such units.

(4) “Money market instruments” means those classes of instruments which are normally dealt in on the money market, such as treasury bills and certificates of deposit and excluding instruments of payment.

(5) “Derivatives” means:

1. options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash,
2. commodity derivatives,
3. credit derivatives,

4. financial contracts for differences,
5. other instruments not otherwise encompassed by this subsection but having the same characteristics as other derivative financial instruments.

(6) The ministry may adopt further regulations concerning what are to be regarded as financial instruments under this section.

Section 2–3 *Investment firm, credit institution, regulated market and multilateral trading facility*

(1) “Investment firm” means an undertaking that provides one or more investment services as defined in section 2–1 on a professional basis.

(2) “Credit institution” means an undertaking as mentioned in the Financial Institutions Act (10 June 1988 No. 40) section 1–5 subsection (3).

(3) “Regulated market” means an undertaking as mentioned in the Act on Regulated Markets section 3 subsection (1).

(4) “Multilateral trading facility” (MTF) means a multilateral system which facilitates the buying and selling of financial instruments as mentioned in section 2–2 in accordance with objective rules and the requirements of this Act and associated regulations.

Section 2–4 *Other definitions*

(1) “Investment advice” means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments.

(2) “Market maker” means a person who on a continuous basis deals on own account in the purchase and sale of financial instruments, at prices set by that person him(her)self.

(3) “Tied agent” means a natural or legal person who, on the responsibility and account of only one investment firm, markets investment services and ancillary services, obtains assignments, receives and transmits orders in respect of financial instruments, places financial instruments or provides advice in respect of those financial instruments or services; see section 10–16.

(4) “Systematic internaliser” means an investment firm which, on an organised, frequent and systematic basis, deals on own account by executing client orders outside a regulated market or MTF; see section 10–19.

(5) “Qualifying holding” means any 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 related parties of the shareholder, see section 2–5, rank on a par with shares owned by such shareholder.

Section 2–5 *Related party*

“Related party” 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 no. 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 nos. 1, 2 or 5 exercises influence as mentioned in the Private Limited Companies Act section 1–3 subsection (2), the Public Limited Companies Act section 1–3 subsection (2) or the General and Limited Partnerships Act section 1–2 subsection (2),
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, also in cases where a bid is frustrated or prevented.

Section 2–6 *Counterparty activity and central counterparties*

- (1) “Counterparty activity” means business activity which consists in entering as a party into agreements related to trading in or borrowing/lending of financial instruments as mentioned in section 2–2.
- (2) “Central counterparty” means an undertaking that carries on counterparty activity.

Part 2 General provisions

Chapter 3 General rules of conduct

Section 3–1 *Scope of application*

- (1) Chapter 3 applies to financial instruments which are quoted, or for which admission to quotation has been requested, on a Norwegian regulated market. Section 3–9 also applies to financial instruments which are not quoted, or for which admission to quotation has not been requested, on a Norwegian regulated market.
- (2) Sections 3–3, 3–4, and 3–7 apply equally to financial instruments not covered by subsection (1) provided that their value is dependent on financial instruments as mentioned in subsection (1).
- (3) Sections 3–3, 3–4, 3–7 and 3–8 apply equally to actions undertaken in Norway in connection with financial instruments which are quoted, or for which admission to quotation has been requested, on a regulated market in another EEA state. “Regulated market” in the first sentence means a market as defined in Directive 2004/39/EC Article 4(14).
- (4) Sections 3–3, 3–4, 3–7 and 3–8 apply equally to financial instruments traded on a Norwegian MTF.

Section 3–2 *Definition of inside information*

- (1) “Inside information” means any information of a precise nature relating to financial instruments, the issuers thereof or other circumstances which has not been made public and is not commonly known in the market and which is likely to have a significant effect on the price of those financial instruments or of related financial instruments.
- (2) “Information of a precise nature” means information which indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur and which is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of the financial instruments or related financial instruments.
- (3) “Information likely to have a significant effect on the price of financial instruments or of related financial instruments” means information of the kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.

(4) “Inside information on commodity derivatives” means information of a precise nature which has not been made public and which relates, directly or indirectly, to one or more such derivatives and which participants in the market on which such derivatives are traded would expect to receive in accordance with what Finanstilsynet (the Financial Supervisory Authority of Norway) deems to be accepted market practices on the market concerned. “Information which participants would expect to receive” means information which is normally made available to market participants or information the publication of which is required by statute, regulations or other regulatory regime, including private law regulation and practices on the commodity derivatives market concerned or the underlying commodity derivatives market. The ministry may issue regulations laying down further rules on inside information in relation to commodity derivatives and accepted market practices.

Section 3–3 *Misuse of inside information*

(1) Persons possessing inside information may neither directly nor indirectly, for own or third party account, subscribe, purchase, sell or exchange financial instruments or incite others to carry out such transactions.

(2) Subsection (1) applies only to misuse of inside information as mentioned in section 3–2. Subsection (1) does not prevent the normal exercise of any option or forward/futures contracts previously entered into upon the expiry of such contracts.

Section 3–4 *Duty of confidentiality and due care in handling inside information*

(1) Persons possessing inside information must not disclose such information to unauthorised persons.

(2) Persons possessing inside information shall handle such information with due care so that the inside information does not come into the possession of unauthorised persons or is misused. Issuers of financial instruments and other legal entities who are regularly in possession of inside information shall have procedures for secure handling of inside information.

Section 3–5 *List of persons who have access to inside information*

(1) Issuers of financial instruments shall ensure that a list is drawn up of persons who are given access to inside information. If a person who is given access to inside information is a legal entity, the list shall include those of the entity’s employees, elected officers, and assistants etc., who are given access to the information.

(2) The list shall be continuously updated and shall state the identity of persons with access to inside information, the date and time the persons were given access to such information, the functions of the persons, the reasons why the persons are on the list and the date of entries and changes to the list. The list shall be retained in a satisfactory manner for at least 5 years after its creation or updating, and shall be transmitted to Finanstilsynet upon request.

(3) Issuers of financial instruments shall ensure that persons given access to inside information are aware of the duties and responsibilities this involves, as well as the criminal liability associated with misuse or unwarranted distribution of such information. Issuers of financial instruments shall be able to satisfy Finanstilsynet that persons with access to inside information are aware of their duties under the first sentence.

Section 3–6 *Duty to investigate*

(1) Before any member of the board, senior employee, member of the control committee or auditor associated with the issuing undertaking may subscribe, or incite anyone to subscribe, purchase, sell or exchange financial instruments issued by the undertaking, the person concerned shall properly investigate whether there exists such information as mentioned in section 3–2 regarding the financial instruments or the issuer thereof. The first sentence applies equally to any deputy member, observer, board secretary and company secretary to the board in the issuing undertaking. The first sentence applies equally to senior employees and board members of an undertaking in the same group who can normally be expected to have access to inside information.

(2) The duty to investigate also applies to the entering into, purchase, sale or exchange of option or futures/forward contracts or corresponding rights connected to financial instruments issued by the undertaking as well as to incitement to such transactions.

(3) Any issuer of shares shall without undue delay transmit an updated specification of persons as mentioned in subsection (1) to Finanstilsynet or to whomever Finanstilsynet designates. The specification shall also include any undertaking that holds shares of the issuing undertaking and that is represented on the board of the issuing undertaking due to its ownership stake. The specification shall contain the person's or undertaking's name, personal identity number, organisation number or similar identification number, address, type of office or position held with the company and other employment position, if any.

(4) Any person or undertaking as mentioned in subsection (1) shall without undue delay transmit to Finanstilsynet or whomever Finanstilsynet designates an updated specification of their related parties as mentioned in section 2-5 subsections (1), (2) and (4) where such related parties hold shares issued by the company concerned or by any company in the same group. The specification shall also include any related party as mentioned in subsection (1) that is holding a loan pursuant to section 11-1 of the Private Limited Companies Act or section 11-1 of the Public Limited Companies Act, subscription rights, options or corresponding rights attached to shares of the company concerned or any company in the same group, regardless of whether such financial instrument gives rise to a physical or financial settlement.

(5) Finanstilsynet or whomever Finanstilsynet designates may prepare and publish specifications containing names of persons and undertakings as mentioned in subsection (1) as well as the type of office or position held with the company and other employment position, if any.

(6) This section applies equally to equity certificates.

Section 3–7 *Prohibition of advice*

Persons possessing inside information shall not give advice about trading in financial instruments to which the information relates.

Section 3–8 *Market manipulation*

(1) No-one may engage in market manipulation in relation to financial instruments.

(2) “Market manipulation” means:

1. transactions or orders to trade which give, or are likely to give, false, incorrect or misleading signals as to the supply of, demand for or price of financial instruments, or which secure the price of one or several financial instruments at an abnormal or artificial level, unless the person or persons who entered into the transactions or issued the orders to trade establish that their reasons for doing

so are legitimate and that these transactions or orders to trade conform to conduct accepted by Finanstilsynet as market practice on the market concerned, or

2. transactions entered into or orders to trade given in relation to any form of misleading conduct, or

3. dissemination of information through the media, including the internet, or by any other means, which gives, or is likely to give, false, incorrect or misleading signals as to financial instruments, including the dissemination of rumours and news, where the person who made the dissemination knew, or should have known, that the information was false, incorrect or misleading. In respect of journalists acting in their professional capacity, such dissemination of information is to be assessed taking into account the rules governing their profession, unless those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information concerned.

(3) The ministry may by regulations lay down further rules on market manipulation and accepted market practices.

Section 3–9 *Prohibition of unreasonable business methods*

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

(2) Conduct of business rules shall be observed in approaches addressed to the general public or to individuals which contain an offer or encouragement to make an offer to purchase, sell or subscribe to financial instruments or which are otherwise intended to promote trade in financial instruments.

Section 3–10 *Investment recommendations etc*

(1) Persons who produce or disseminate information recommending or suggesting an investment or investment strategy relating to financial instruments or the issuers thereof, and such recommendations are intended for distribution channels or for the public, shall exercise due care to ensure that the information which is presented is correct and shall explicitly disclose any own interests and conflicts of interest relating to the instruments or the issuers.

(2) The ministry may by regulations make further provision regarding the production and dissemination of information as mentioned in subsection (1). The ministry may without regard to subsection (1) establish special rules on non-written investment recommendations.

(3) The rules contained in or issued pursuant to this section shall not apply to the press where the press is subject to satisfactory self-regulation.

Section 3–11 *Reporting obligation*

(1) Any person conducting or arranging transactions in financial instruments on a professional basis shall report to Finanstilsynet without delay if there is reason to suspect that a transaction might constitute insider trading or market manipulation. The ministry may adopt regulations providing that the first sentence shall only apply to investment firms and credit institutions.

(2) Persons reporting to Finanstilsynet under subsection (1) shall not disclose to any other party that notification has been or will be given.

(3) Information disclosed in good faith to Finanstilsynet under subsection (1) shall not constitute a breach of any form of confidentiality requirement and shall not constitute a basis for compensation or criminal proceedings.

(4) The ministry may by regulations lay down further rules on the transmission of information to Finanstilsynet and regarding reporting under this section.

Section 3–12 *Buy-back programmes and price stabilisation*

(1) The prohibition of market manipulation in section 3–8 does not apply to buy-back programmes or to price stabilisation carried out in accordance with rules pursuant to subsection (2).

(2) The EEA Agreement Annex IX No 29 (Commission Regulation (EC) No 2273/2003) on buy-back programmes and stabilisation of financial instruments applies as law with such modifications as follow from Annex IX, protocol I to the Agreement and the Agreement in general.

(3) The ministry may by regulations make further provision regarding on oversight of buy-back programmes and price stabilisation.

Section 3–13 *Exemptions in respect of dispositions by an EEA state, central bank etc.*

The provisions of this chapter do not apply to dispositions made by or on behalf of an EEA state, the European Central Bank, a central bank in an EEA state or other government body in such states when the disposition is a part of an EEA state's monetary or foreign exchange policy or management of public debt.

Section 3-14 *Sale of financial instruments not owned by the seller*

Where the seller of financial instruments as mentioned in section 2-2 subsection (1) nos. 1 to 3 is not the owner thereof, the seller must have access to the financial instruments to ensure timely delivery on the agreement date.

Chapter 4 Notification requirements

Section 4-1 *Scope*

The provisions of this chapter apply to shares admitted to trading on a regulated market of an issuer having Norway as its home state. Norway shall be regarded as the home state for issuers as mentioned in section 5–4 subsections (2) to (4). Where Norway is the host state for an issuer, the legislation of the home state shall apply in respect of matters regulated in this chapter.

Section 4–2 *Notification requirement for primary insiders*

(1) Persons as mentioned in section 3–6 subsection (1) shall immediately give notification of any purchase, sale, exchange or subscription of shares issued by the company or by companies in the same group. This also applies to the company's trading in its own shares. An undertaking which owns quoted shares in another undertaking or shares in another undertaking that is listed on a regulated market, and which because of such ownership is represented on the board of the other undertaking, must notify trading in such shares. Notification shall be sent no later than the start of trading on the regulated market on the day following the purchase, sale, exchange or subscription. Notification shall be sent to Finanstilsynet or whomever Finanstilsynet designates.

(2) The notification requirement also applies to loans as mentioned in section 11–1 of the Private Limited Companies Act and section 11–1 of the Public Limited Companies Act, and to agreements on, exchange, purchase or sale of subscription rights, options and corresponding rights connected to shares as mentioned in subsection (1). The notification requirement applies regardless of whether such financial instrument gives rise to a physical or financial settlement.

(3) The notification requirement also applies to trading involving a shareholder's related parties as mentioned in section 2 – 5 nos. 1, 2 and 4, as well as trading involving any relative with whom the person concerned has at the time of the notifiable trade shared a household for at least one year.

(4) This section applies equally to equity certificates.

(5) The ministry may by regulations make exceptions from the provisions of this section.

Section 4–3 *Disclosure of acquisitions of large shareholdings, rights to shares and voting rights*

(1) Where a shareholder's or other person's proportion of shares and/or rights to shares reaches, exceeds or falls below 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 1/3, 50 per cent, 2/3 or 90 per cent of the share capital or corresponding proportion of the votes as a result of acquisition, disposal or other circumstance, the party concerned shall immediately notify the issuer and Finanstilsynet or whomever Finanstilsynet designates for the purpose.

(2) Equivalent to shares and/or rights to shares are voting rights attached to shares that can be exercised with a basis in:

1. an agreement under the Act on Provision of Financial Collateral sections 3 and 4, provided that the holder of the collateral declares to the provider of the collateral his intention to vote for the shares,
2. a proxy not containing instructions from the shareholder, or
3. an agreement under the Public Limited Companies Act section 4–2.

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

(4) 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 attached to shares.

(5) The following are regarded as equivalent to the acquirer's or disposer's own shares, rights to shares or voting rights as mentioned in subsection (2):

1. shares or rights to shares held or acquired or disposed of by related parties as mentioned in section 2–5, and
2. voting rights attached to shares as mentioned in subsection (2) that are held by or transferred to related parties as mentioned in section 2–5 or by cessation of such rights.

(6) Notification pursuant to this section shall be given immediately an agreement on acquisition or disposal has been entered into, or the party concerned becomes aware, or should have become aware, of any other circumstance causing the party concerned to reach or fall below a threshold in subsection (1).

(7) This section and regulations made pursuant to this section apply equally to equity certificates. The provisions of this section do not apply to trades undertaken by an EEA central bank or the European Central Bank during a brief period provided that the voting right attached to the shares is not utilised.

(8) The ministry may by regulations lay down further rules on disclosure, including provisions on:

- (a) other circumstance as mentioned in subsection (2),

- (b) the application of this section to voting rights attached to shares not covered by subsection (2) nos. 1 to 3, and
- (c) consolidation of holdings.

(9) The ministry may by regulations make exceptions from the rules of this section.

Section 4–4 *Requirements on notification*

(1) Notification pursuant to section 4–2 shall contain the following information:

1. name of the person subject to the notification requirement,
2. background for the notification,
3. name of the issuer,
4. description of the financial instrument,
5. type of transaction,
6. timing of and market for the transaction,
7. price and volume of the transaction, and
8. holding after the transaction.

(2) Notification pursuant to section 4–3 shall contain information stipulated by the ministry in regulations.

(3) Finanstilsynet or whomever Finanstilsynet so designates shall make public notifications as mentioned in this section in a manner specified in section 5–12.

(4) Notification pursuant to this chapter may be given in Norwegian or English.

Chapter 5 Ongoing and periodic information requirement, publication etc.

I Ongoing information

Section 5–1 *Scope*

Sections 5–2 and 5–3 apply to issuers whose financial instruments are quoted, or for which admission to quotation has been requested, on a Norwegian regulated market. Section 3-13 applies.

Section 5–2 *Content of the information requirement*

(1) An issuer shall without delay and on his own initiative publicly disclose inside information which concerns the issuer directly; see section 3–2 subsections (1) to (3).

(2) Information as mentioned in subsection (1) shall be publicly disclosed in accordance with section 5–12. The information shall in addition be made available on the issuer's internet site after publication has taken place.

(3) An issuer must not combine the public disclosure of information as mentioned in subsection (1) with his marketing in a way that is liable to mislead.

(4) Information to be communicated or publicly disclosed as a result of admission to trading on other regulated markets shall be forwarded to the regulated market concerned in writing for public disclosure in accordance with section 5 – 12 at the latest when notification is sent to another regulated market or the information is publicly disclosed by other means.

Section 5–3 *Delayed publication etc*

(1) An issuer may delay the public disclosure of information as mentioned in section 5–2 subsection (1) such as not to prejudice his legitimate interests, provided that such omission does not mislead the public and provided that the issuer ensures the confidentiality of that information; see section 3–4.

(2) Legitimate interests as mentioned in subsection (1) may typically relate to:

1. Negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer.
2. Decisions taken or contracts made which need the approval of another body of the issuer in order to become effective due to the organisation of the issuer, provided that public disclosure of the pending decision or contract together with the simultaneous announcement that final approval is still pending would jeopardise the correct assessment of the information by the public.

(3) If the regulated market so requests, the issuer shall without delay send a copy of the list as mentioned in section 3–5 to the regulated market concerned.

(4) Should the issuer have reason to believe that information as mentioned in subsection (1) is known to, or about to become known to, unauthorised parties, the issuer shall without delay and on his own initiative publicly disclose the information in accordance with section 5 – 12.

(5) The ministry may by regulations make further rules regarding delayed publication.

II Periodic information etc.

Section 5–4 *Scope*

(1) Sections 5–5 to 5–11 apply to issuers having Norway as their home state whose transferable securities have been admitted to trading on a regulated market.

(2) Norway is the home state for an issuer from a country within the EEA whose registered office is in Norway, provided the issuer

1. has issued shares, or
2. has issued debt instruments the denomination per unit of which is less than EUR 1 000, or the equivalent value in another currency.

(3) Norway is the home state for an issuer from a country outside the EEA that has issued instruments as mentioned in subsection (2) no. 1 or 2 provided Norway is the country in the EEA where

1. the securities are offered to the public for the first time, or
2. admission to quotation on a regulated market is requested for the first time.

An issuer as mentioned in the first sentence may choose Norway as its home state provided one of the events in the first sentence nos. 1 and 2 has taken place in Norway and the other in another EEA state.

(4) Norway is the home state for an issuer not covered by subsections (2) and (3) if the issuer has chosen Norway as his home state. Such issuer must either have its registered office in Norway or have its transferable securities admitted to trading on a Norwegian regulated market. The choice of Norway as a home state under this provision shall apply for at least three years, unless the transferable securities are no longer admitted to trading on a regulated market.

(5) Norway is the host state for an issuer having another EEA country as its home state whose transferable securities have been admitted to trading on a Norwegian regulated market. Issuers with Norway as their host state shall comply with the home state's legislation insofar as matters regulated in sections 5–5 to 5–11 are concerned.

(6) Sections 5–5 to 5–11 do not apply to a state, the regional or local authorities of a state, a public international body or organisation of which at least one EEA state is a member, an EEA central bank or the European Central Bank. Nor do sections 5–5 to 5–11 apply to an issuer who only issues debt instruments of which the denomination per unit is at least EUR 100,000 or the equivalent amount in another currency, or to issuers of units in securities funds. The ministry may by regulations make further exceptions from sections 5–5 to 5–11, and may lay down rules on the application of the Act to securities funds.

(7) Except as provided by the individual provision, sections 5–5 to 5–14 and rules established pursuant thereto apply equally to equity certificates insofar as appropriate.

(8) The ministry may lay down further provisions on scope in regulations, including rules on public disclosure of choice of home state under subsection (4).

Section 5–5 *Annual financial reports*

(1) The issuer shall prepare an annual financial report in accordance with provisions laid down in and pursuant to this Act. The annual financial report shall be made public at the latest four months after the end of each financial year and the issuer shall ensure that it remains publicly available for at least five years.

(2) The annual financial report shall comprise:

1. the audited financial statements,
2. the management report, and
3. statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that
 - (a) to the best of their knowledge, the financial statements have been prepared in accordance with applicable accounting standards and give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the group taken as a whole and that
 - (b) the management report includes a fair review of the development and performance of the business and the position of the issuer and the group taken as a whole, together with a description of the principal risks and uncertainties that they face.

(3) Where the issuer is required to prepare consolidated accounts in accordance with the Accounting Act section 3–2 subsection (3), under national rules implementing the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts or corresponding rules in non-EEA countries, the audited financial statements shall comprise such consolidated accounts drawn up in

accordance with Regulation (EC) No 1606/2002; see Accounting Act section 3–9 subsections (1) and (2). The annual accounts of the parent company shall be drawn up in accordance with the national law of the EEA State in which the parent company has its registered office. Where the issuer is not required to prepare consolidated accounts, the audited financial statements shall comprise the accounts prepared in accordance with the national law of the Member State in which the company has its registered office.

(4) The financial statements shall be audited in accordance with the Act on Auditing and Auditors, under national rules implementing Articles 51 and 51a of the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies or corresponding rules in non-EEA countries and, if the issuer is required to prepare consolidated accounts, in accordance with national rules implementing Article 37 of Directive 83/349/EEC, or corresponding rules in non-EEA countries. The audit report, signed by the persons responsible for auditing the financial statements, shall be disclosed in full to the public together with the annual financial report.

(5) Where the auditor finds that the financial statements should not be approved as they stand, or the auditor has made comments, clarifications or audit reservations in the audit report, Finanstilsynet and the regulated market concerned shall be notified accordingly as soon as the audit report has been received by the issuer.

(6) The management report shall be drawn up in accordance with the Accounting Act section 3–3a, with national legislation implementing Article 46 and 46a of Directive 78/660/EEC or corresponding rules in non-EEA countries and, if the issuer is required to prepare consolidated accounts, in accordance with national legislation implementing Article 36 of Directive 83/349/EEC or corresponding rules in non-EEA countries.

(7) If the corporate assembly or supervisory board has significant objections to the management board's proposal for the annual financial statements and management report, or the general meeting does not approve the annual financial statements and the management report, notification thereof shall be made public in accordance with section 5 – 12 immediately after the proceedings have closed.

(8) The ministry may by regulations adopt rules on the content, preparation and public disclosure of annual reports and on responsible persons as mentioned in subsection (2) no. 3.

Section 5-5a *Reporting on payments to authorities etc.*

Issuers operating in the extractive industries shall prepare and make public an annual report containing information about their payments to authorities on a country and project level. This also applies to issuers engaged in forestry within non-planted forest. The management report shall state where the report has been made public.

The issuer's annual financial report shall contain statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that the report mentioned in the first subsection, to the best of their knowledge, has been prepared in accordance with the requirements of this section and associated regulations.

The obligation to prepare an annual report under the first subsection, first and second sentence, does not apply to issuers that prepare an annual report in accordance with corresponding foreign

legislation. The same exception also applies if information under the first subsection, first sentence, is included in the parent company's annual report on the group's payments to authorities prepared as group financial statements under the rules of this section and associated regulations or corresponding foreign rules.

The ministry may by regulations provide that the reporting obligation under the first subsection shall only apply to issuers above a given size and payments above certain threshold values, and adopt other exceptions to the first subsection. The ministry may by regulations also provide that the report shall contain information other than payments to authorities, what is considered to be corresponding foreign legislation, and make further rules concerning definitions, disclosure and group financial statements.

Section 5–6 *Half-yearly financial reports*

(1) The issuer shall make public a half-yearly financial report covering the first six months of the financial year in accordance with provisions laid down in and pursuant to this Act. The half-yearly financial report shall be made public as soon as possible after the end of the relevant period, but at the latest two months thereafter. The issuer shall ensure that the half-yearly financial report remains available to the public for at least five years.

(2) The half-yearly financial report shall contain:

1. the condensed set of financial statements (half-yearly financial statements)
2. an interim management report; and
3. statements made by the persons responsible within the issuer, clearly stating their names and job titles, to the effect that
 - (a) to the best of their knowledge, the condensed set of financial statements has been prepared in accordance with applicable accounting standards and gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the group taken as a whole and that
 - (b) to the best of their knowledge, the interim management report includes a fair review of the information mentioned in subsection (4).

(3) Where the issuer is required to prepare consolidated accounts in accordance with the Accounting Act section 3–9 subsections (1) and (2), under national legislation implementing Regulation (EC) No 1606/2002 or corresponding rules in non-EEA countries, the half-yearly financial statements shall be prepared in accordance with the international accounting standard applicable to interim financial reporting. Where the issuer is not required to prepare consolidated accounts, the half-yearly financial statements shall at least contain a condensed balance sheet, a condensed profit and loss account and explanatory notes on these accounts. In preparing the condensed balance sheet and the condensed profit and loss account, the issuer shall follow the same principles for recognising and measuring as when preparing annual financial reports.

(4) The interim management report shall include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the half-yearly financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year. For issuers of shares, the interim management report shall also include major related parties transactions.

(5) If the half-yearly financial report has been audited or reviewed by auditors, the audit or review shall be made public in accordance with section 5–12 together with the half-yearly financial report.

If the half-yearly financial report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report.

(6) The ministry may by regulations adopt further rules on the content, preparation and public disclosure of half-yearly reports and on responsible persons as mentioned in subsection (2) no. 3. The ministry may by regulations make requirements as to further interim reporting, including half-yearly financial statements and interim management statements as mentioned in Article 6 of Directive 2004/109/EC.

Section 5–7 *Issuers from non-EEA countries*

The ministry will adopt regulations implementing Article 23 of Directive 2004/109/EC. The ministry may also provide that national legislation implementing Article 10 of 2004/25/EC and Articles 1 and 2 of Directive 2006/46/EC shall apply equally to issuers from non-EEA countries.

Section 5–8 *Changes in share capital, rights, loans and articles of association*

(1) The issuer of shares shall immediately make public any change in the rights attached to the issuer's shares, including changes in related financial instruments issued by the company.

(2) The issuer of shares shall, at the latest at the end of each month in which a change in share capital or voting rights takes place, publicly disclose an overview of the share capital and number of votes in the company.

(3) Issuers other than issuers of shares shall forthwith make public any change in the rights attaching to their transferable securities, including changes in terms or conditions that may indirectly affect the holder's legal status, in particular changes in borrowing terms or interest rates.

(4) An issuer whose transferable securities are admitted to trading on a Norwegian regulated market shall without delay make public the issue of new loans, including any guarantees or collateral provided in that connection. This provision also applies to issuers as mentioned in section 5–4 subsection (6). This provision does not apply to international public bodies of which at least one EEA state is a member.

(5) Information mentioned in subsections (1) to (4) shall be publicly disclosed in accordance with section 5–12.

(6) An issuer who intends to change his articles of association shall submit the proposed changes to Finanstilsynet and the regulated market concerned. Submission shall be by electronic means and shall take place at the latest on the date of the notice convening the general meeting at which the proposal is to be considered.

Section 5-8(a) *Information about shareholder matters in the management report*

Issuers of securities quoted on a regulated market who are required pursuant to the Accounting Act to maintain accounting records shall in their management report disclose the following information relating to the company's shareholders:

1. a description of any provisions of articles of association that restrict the right to trade in the shares of the company.
2. a description of who exercises the rights attached to shares in any employee share schemes where authority is not exercised directly by the employees who are covered by the scheme,

3. any agreements between shareholders which are known to the company and which restrict the possibilities of trading in or exercising voting rights attached to shares,
4. any significant agreements to which the company is a party the terms of which take effect, alter or terminate as a result of a takeover bid, and a description of those terms. Where disclosure of such agreement would be seriously prejudicial to its business, the company may omit to disclose the agreement. This exception shall not apply where the company is obliged to disclose such information pursuant to other legislation.

Section 5–9 *Information to shareholders etc.*

- (1) The issuer shall ensure that the facilities and information necessary to enable shareholders to exercise their rights are available in Norway. The issuer shall moreover ensure that the integrity of data is preserved.
- (2) The issuer shall in the notice convening the general meeting state the number of shares and voting rights, as well as provide information on the shareholders' rights.
- (3) The issuer shall enclose with the notice a proxy voting form, unless such form is made available to the shareholders on the internet site of the company and the notice includes all the information needed by the shareholders to gain access to the documents, including the internet address.
- (4) The ministry may by regulations adopt further rules requiring a share issuer to designate as its agent an undertaking through which shareholders may exercise their rights, including rules on which undertakings may be designated as agents and on what are to be regarded as financial rights.
- (5) The issuer shall make public information concerning the allocation and payment of dividends, and on issuance of shares, including information on any arrangements for allotment, subscription, cancellation and conversion.
- (6) The issuer may use electronic means to communicate notices, warnings, information, documents, notifications and the like to shareholders, provided the shareholder concerned has given his or her explicit approval. Where a share issuer conveys information etc., to a shareholder, he or she may do so by electronic means to the shareholder's e-mail address or by such means as the shareholder has specified for the purpose.
- (7) The ministry may by regulations adopt further rules concerning information to shareholders.

Section 5–10 *Information to lenders etc.*

- (1) Borrowers shall ensure that the facilities and information necessary to enable lenders to exercise their rights are available in Norway. The lender shall moreover ensure that the integrity of data is preserved.
- (2) The borrower shall in the notice convening a lenders meeting include information on the venue, time, agenda, the lenders' right to attend the meeting, payment of interest, exercise of any conversion, exchange or cancellation rights, and on repayment of the loan.
- (3) The borrower shall append a proxy voting form to the notice of the meeting.

(4) The ministry may by regulations adopt further rules requiring a borrower to designate as its agent an undertaking through which lenders may exercise their rights, including rules on which undertakings may be designated as agents and on what are to be regarded as financial rights.

(5) The lenders meeting may be held in an EEA state other than Norway provided the denomination per bond is at least EUR 100,000, or the equivalent amount in another currency at the time of the issue, and all facilities and all information necessary to enable the lenders to exercise their rights are made available in the EEA state concerned.

(6) Section 5–9 subsection (6) applies equally to communication with lenders.

(7) The ministry may by regulations adopt further rules concerning information to lenders.

Section 5–11 *Annual overview of publicly disclosed information*

Revoked.

III Disclosure of information etc.

Section 5–12 *Disclosure, filing and storage of information*

(1) The issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, shall disclose information regulated under this Act in an efficient and non-discriminatory manner. Investors and potential investors in the transferable securities shall not be charged for the disclosure of the information and shall to a reasonable degree be assured access to the information within the EEA area. The information shall at the same time as it is made public be communicated to the regulated market concerned which shall store it in an adequate manner.

(2) Information as mentioned in sections 5–5, 5-5a and 5–6 shall be filed with Finanstilsynet by electronic means at the same time as disclosure under subsection (1) takes place. The ministry may make further provision concerning such filing.

(3) Information which is confidential or classified in the interest of national security, relations with foreign states or national defence may not be made public under subsection (1).

(4) Subsection (1) first and second sentences and subsection (2) apply to issuers having Norway as their home and host state. For issuers with Norway as their host state, the provisions mentioned only apply where securities are admitted to trading on a regulated market only in Norway. Such issuers shall in addition to publicly disclosing the information file such information with the official storage mechanism of the country concerned.

(5) The ministry may by regulations adopt further rules concerning public disclosure and storage of information, including rules requiring that the information be disclosed and stored by means other than that specified in this section.

Section 5–13 *Languages*

(1) Issuers having Norway as their home state and whose transferable securities are admitted to quotation on a Norwegian regulated market only, shall disclose information in Norwegian.

(2) Issuers having Norway as their home state and whose transferable securities are admitted to quotation both in Norway and in a host state shall disclose information in Norwegian and,

depending on the choice of the issuer, either in a language accepted by the competent authority of the host state or in English.

(3) Finanstilsynet may determine that an issuer as mentioned in subsections (1) and (2) may be excepted from the requirement to disclose information in Norwegian. The requirement to disclose information in Norwegian under subsections (1) and (2) does not apply to reports as mentioned in the Securities Trading Act section 5-5a third subsection. Finanstilsynet may delegate authority under the first sentence to a regulated market.

(4) Issuers having Norway as their host state and whose transferable securities are not admitted to quotation on a regulated market in their home state shall disclose information in Norwegian, Swedish, Danish or English.

(5) Where transferable securities are admitted to quotation on a regulated market without the issuer's consent, the obligations under subsections (1) to (4) shall be incumbent upon the person who has requested such admission without the issuer's consent.

(6) Where securities with a denomination of at least EUR 100,000 or, in the case of bonds in a currency other than the euro, with a denomination equivalent to at least EUR 100,000 on the date of issue, are admitted to quotation on a regulated market in Norway, the issuer shall disclose the information either in Norwegian or English.

IV Equal treatment

Section 5–14 *Equal treatment*

(1) Issuers of financial instruments admitted to trading on a Norwegian regulated market shall treat the holders of their financial instruments on a non-discriminatory basis. Issuers must not subject the holders of the financial instruments to discriminatory treatment that is not objectively based in the issuer's and the holders' mutual interests.

(2) When trading in or issuing financial instruments or rights to such instruments, the issuer's governing bodies, officers or senior employees must not take measures that are liable to provide them, individual holders of financial instruments or third parties with any unreasonable advantage at the expense of other holders or the issuer. The same applies to the trading in or issuance of financial instruments or rights attached to such instruments within the group of which the issuer is a part.

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

Section 6–1 *Mandatory bid obligation in connection with share acquisition*

(1) Any person who through acquisition becomes the owner of shares representing more than 1/3 of the voting rights in a Norwegian company the shares of which are quoted on a Norwegian regulated market is obliged to make a bid for the purchase of the remaining shares in the company. The mandatory bid obligation ceases to apply if sale is undertaken in accordance with section 6–8; see section 6–9.

(2) The following are also regarded as acquisitions under subsection (1):

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 subsection (1),

2. an owner interest in a general partnership or a limited partnership that owns shares in a company as mentioned in subsection (1) and where the partners are exclusively related parties as mentioned in section 2–5.
3. a corresponding owner interest in a foreign company with a form of business organisation equivalent to that mentioned in no. 1 or no. 2, as well as other foreign undertakings if the takeover supervisory authority so determines.

(3) Section 6–5 applies equally in the case of acquisitions as mentioned in subsection (2) no. 1 and no. 3.

(4) The ministry may by regulations make provision for a mandatory bid obligation upon the acquisition of rights or other interests related to shares, including rules on what rights or interests should trigger a mandatory bid obligation and further rules on such mandatory bid obligation.

(5) Subsections (1) to (4) also apply where the acquirer has previously made a voluntary bid.

Subsections (1) to (4) do not however apply where the following conditions are met:

1. the voluntary bid was made in accordance with the rules on mandatory bids,
2. the mandatory bid threshold mentioned in subsection (1) is crossed as a result of the bid, and
3. it was stated in the offer document that the voluntary bid is made in accordance with rules on mandatory bids and, in consequence of this, the mandatory bid obligation will not come into play even if the mandatory bid threshold as mentioned in subsection (1) is crossed as a result of the bid.

(6) Subsection (1) applies equally in the event of acquisition by someone with whom the acquirer is consolidated pursuant to section 6–5, when the acquirer alone or together with one or more of the related parties crosses the mandatory offer threshold as a result of the acquisition.

Section 6–2 *Exceptions for certain types of acquisition*

(1) No mandatory bid obligation is applicable under section 6–1 or section 6–6 in cases of acquisition in the form of

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

(2) The takeover supervisory authority may in special cases impose a mandatory bid obligation in connection with acquisitions as mentioned in subsection (1).

(3) The takeover supervisory authority may make exceptions from the mandatory bid obligation in the case of acquisition by someone with whom the acquirer is consolidated pursuant to section 6–5; see section 6–1 subsection (6).

Section 6–3 *Exceptions for certain institutions*

(1) No mandatory bid obligation is applicable pursuant to section 6–1 or section 6–6 in cases where a financial institution acquires shares in a company in order to avert or limit loss on an exposure. The institution shall without delay notify such acquisition to the takeover supervisory authority. The takeover supervisory authority may instruct the institution to make a bid as mentioned in section 6–1 within a specified period or to dispose of shares so that the mandatory bid obligation no longer applies.

(2) The mandatory offer pursuant to section 6–1 and section 6–6 does not apply to the Norwegian State Finance Fund.

Section 6–4 *Takeover supervisory authority*

(1) In this chapter “takeover supervisory authority” means the regulated market on which the shares of the company that is the object of the takeover bid are quoted. The ministry may by regulations provide that all or some of the powers of the takeover supervisory authority shall be exercised by Finanstilsynet.

(2) The takeover supervisory authority shall cooperate and exchange information with its foreign counterparts in matters covered by this chapter.

Section 6–5 *Consolidation*

(1) Under the mandatory bid rules, shares owned or acquired by a shareholder’s related parties as mentioned in section 2–5 are considered equal to the shareholder’s own shares. The mandatory bid obligation comes into play independently of whether the acquisition is undertaken by the shareholder himself or by the shareholder’s related parties as mentioned in section 2–5. In the assessment of whether repeat application of the mandatory bid obligation is triggered, bids previously made by related parties as mentioned in section 2–5 are considered equal to an acquirer’s previous bids.

(2) The takeover supervisory authority shall decide whether consolidation shall be carried out pursuant to subsection (1). The takeover supervisory authority shall communicate its decision to the participants in the group so consolidated.

Section 6–6 *Repeat application of mandatory bid obligation and subsequent acquisitions*

(1) A shareholder who owns shares representing more than 1/3 of the votes of a listed company is obliged to make an offer to purchase the remaining shares of the company (repeat bid obligation) where the shareholder through acquisition owns shares representing 40 per cent of the votes in the company. The first sentence applies equally where the shareholder through acquisition owns 50 per cent or more of the votes in the company. The first and second sentences do not apply in the case of acquisitions in connection with the launch of a bid as mentioned in section 6–1.

(2) A shareholder who has crossed a mandatory bid threshold as mentioned in 6–1 or section 6–6 subsection (1) in such a way as not to trigger the mandatory bid obligation, and has therefore not made a mandatory bid, is obliged in the case of each subsequent acquisition that increases his proportion of the voting rights to make an offer to buy the remaining shares of the company.

(3) The mandatory bid obligation under subsections (1) and (2) does not however apply where shares are disposed of in accordance with section 6–8; see section 6–9.

Section 6–7 *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 will be deemed to have given its consent if the matter has not been decided within three weeks of the offeree company’s receipt of notice of the acquisition.

Section 6–8 *Notification to the takeover supervisory authority*

(1) Where an agreement on acquisition triggering a mandatory bid obligation under sections 6–1 to 6–6 is entered into, the person who is or will be subject to such obligation shall without delay notify the takeover supervisory authority and the offeree company accordingly. The notification shall state whether a bid will be made to buy the remaining shares in the offeree company or whether sale will take place in accordance with section 6–9. The takeover supervisory authority shall make the notification available to the public.

(2) The person subject to the mandatory bid obligation and offeree company shall inform their employees immediately after the notification has been made public.

(3) If notification is not given in accordance with subsection (1), or the mandatory bid obligation is otherwise contested, the takeover supervisory authority shall make a decision on the issues thereby raised.

(4) Notification of sale may be changed to notification of bid provided the bid is made within the time limit set in section 6–10 subsection (1).

(5) Until such time as a bid is made or sale effected, no other rights in the offeree company may be exercised in respect of the portion of the shares which exceeds the mandatory bid 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 6–9 *Sale of shares*

(1) Sale of shares in accordance with notification or decision as mentioned in section 6–8 shall take place within four weeks of the date on which the mandatory bid obligation was triggered.

(2) Such sale shall encompass that portion of the shares which exceeds the threshold mentioned in section 6–1. In the event of a mandatory bid under section 6–6, the sale may be restricted to the shares acquired through the subsequent acquisition.

Section 6–10 *The bid*

(1) The bid shall be made without undue delay and at the latest four weeks after the mandatory bid obligation was triggered.

(2) The bid shall encompass all shares of the offeree company, including shares with restricted or no voting rights.

(3) An offer may not be made conditional.

(4) The bid price shall be at least as high as the highest payment the offeror has made or agreed in the period six months prior to the point at which the mandatory bid obligation was triggered. If it is clear that the market price at the point the mandatory bid obligation is triggered is higher than the price following from the first sentence, the bid price shall be at least as high as the market price.

(5) If the offeror, after the mandatory bid obligation was triggered and before the expiry of the period of the offer, has paid or agreed a higher price than the bid price, a new bid shall be deemed to have been made with a bid price equivalent to the higher payment or price. The provisions of section 6–12 subsection (2) apply equally to the new bid.

(6) Settlement under the terms of the bid must be in cash. A bid may nonetheless give the shareholders the right to accept an alternative to cash.

(7) The settlement shall be guaranteed by a financial institution authorised to provide such guarantees in Norway. The takeover supervisory authority may adopt further regulations concerning guarantees as mentioned in the first sentence.

(8) Settlement shall take place as soon as possible and at the latest 14 days after expiry of the period of the bid.

(9) The offeror shall afford all shareholders equivalent treatment when making a bid.

Section 6–11 *Period of the bid*

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

(2) The ministry may adopt further regulations on the right to dispense with the Act's general requirement as to the longest permitted bid period.

Section 6–12 *New bid*

(1) The offeror may make a new bid prior to the expiry of the period of the bid, provided the new bid is approved by the takeover supervisory authority. The offeree company's shareholders shall be entitled to choose between the bids.

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

Section 6–13 *Requirements on the offer document*

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

(2) The offer document shall specifically state:

1. the offeror's name and address, and the type of organisation and organisation number if the offeror is an undertaking,
2. information about the shares and share classes involved,
3. information about related parties as mentioned in section 6–5, including the basis for the consolidation and any shareholder agreements,
4. what shares and loans as mentioned in the Private Limited Companies Act section 11–1 and the Public Limited Companies Act section 11–1 in the listed company are owned by the offeror or anyone mentioned in section 6–5,
5. the bid price and the method used to establish the bid price, the time limit for settlement and form of settlement, and what guarantees are furnished for performance of the offeror's obligations,
6. the principles underlying the valuation of asset items offered as settlement, including information on factors to which importance must be given when deciding whether to subscribe or acquire securities,
7. the time limit for accepting the bid and how acceptance should be filed,
8. how the purchase of the shares is to be financed,

9. special advantages which are accorded by agreement to members of the management or governing bodies of the company or which are held in prospect for any of the latter,
10. what contact the offeror has had with the management or governing bodies of the offeree company before the bid was made,
11. the purpose of taking over control of the offeree company and plans for further operation,
12. reorganisation etc., of the offeree company and the group of which it forms part,
13. what significance implementation of the bid will have for the employees, including the legal, financial and employment consequences of the bid, and the legal and tax consequences of the bid,
14. the largest and smallest proportion of the share capital that the offeror undertakes to acquire,
15. information on payment of compensation offered for rights that may be set aside as a result of a decision as mentioned in section 6–17 subsection (4),
16. information on choice of law and venue for any dispute that may arise in connection with agreements entered into between the offeror and the shareholders.

(3) The offer document shall be signed by the offeror.

Section 6–14 *Approval and public disclosure of the bid*

(1) The bid and the offer document require approval by the takeover supervisory authority before the bid is made or made public.

(2) After the bid has been approved, the party subject to the mandatory bid obligation shall dispatch the bid to all shareholders with known whereabouts. The company is obliged to facilitate such dispatch.

(3) After the bid has been approved, the party subject to the mandatory bid obligation and the offeree company shall make the bid known to their employees.

(4) An offer document approved by the competent authority of another EEA state shall be deemed to be approved as from the date on which notification is received from that EEA state to the effect that the offer document has been prepared in conformity with national rules implementing Directive 2004/25/EC, and approved by the competent authority of the EEA state concerned. The Norwegian takeover supervisory authority may however stipulate that the offer document shall be translated.

Section 6–15 *Fees*

The takeover supervisory authority may charge the offeror a fee to cover expenses in connection with approval as mentioned in section 6–14.

Section 6–16 *The offeree company's statement regarding the bid*

(1) Where a bid is made under the rules on mandatory bids, the board of the offeree company shall make public a statement setting out its opinion of the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on the company's interests, and on the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the company's places of business. Should the board consider itself unable to make a recommendation to the shareholders on whether they should or should not accept the bid, it shall explain why this is so. 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 of the company. If

the board receives in good time a separate opinion from the employees on the effects of the bid on employment, that opinion shall be appended to the statement.

(2) The statement shall be available at the latest one week before the period of the bid expires.

(3) The statement shall be sent to the takeover supervisory authority, and be made known to the shareholders and the employees.

(4) Where a bid has been made by someone who is a member of the board of the offeree company, or the bid has been made in concert with the board of the company, the takeover supervisory authority shall decide who shall issue a statement as mentioned in subsection (1) on behalf of the company.

Section 6–17 *Restriction of the offeree company's freedom of action*

(1) After the company is informed that a bid will be made pursuant to section 6–1, section 6–2 subsection (2) or section 6–6 and until the period of the bid has expired and the result is clear, the board or manager effectively in charge may not make decisions in regard to

1. issuance 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 significant areas of operation of the company or its subsidiaries, or other dispositions of material significance to the nature or scope of its operations, or
4. purchase or sale of the company's shares.

(2) This section does not apply to dispositions that are part of the normal course of the offeree company's business, or where the general meeting has empowered the board or manager effectively in charge to make such decisions with takeover situations in mind.

(3) The company's general meeting may by way of the articles of association stipulate that EEA rules corresponding to Directive 2004/25/EC Article 9(2) and (3), see Article 12(2), shall apply to the company.

(4) The offeree company's general meeting may by way of the articles of association also stipulate that EEA rules corresponding to Directive 2004/25/EC Article 11, see Article 12(2), shall apply. The company's general meeting shall in a resolution, if any, under the first sentence establish further conditions for the calculation and payment of compensation in accordance with Article 11 (5) of the same Directive.

(5) Companies having adopted a resolution in accordance with subsections (3) and (4) shall report the resolution to the takeover supervisory authority and to the competent authorities of other member states where the company has been admitted to listing on a regulated market, or where such listing has been requested.

(6) Notice for general meeting for the resolution of measures which are dealt with in the articles of association in accordance with subsection (3) and (4) shall, without prejudice to the time limit for convening of general meeting pursuant to the Public Limited Liability Companies Act section 5–11(b) no.1, be sent to shareholders no later than two weeks prior to the meeting. In the articles of association, the company may set for a longer time limit for convening a general meeting for the adoption of resolutions as mentioned in subsection (4).

Section 6–18 *Public disclosure of the result of the bid*

The offeror shall without delay make public the result of any bid made.

Section 6–19 *Voluntary bids*

(1) The provisions of section 6–10 last subsection and sections 6–12 to 6–18 apply equally in the event of voluntary bids entailing that a mandatory bid obligation under section 6–1 comes into play if the bid is accepted by those able to make use of it.

(2) Subsection (1) does not apply where a bid is addressed specifically to certain shareholders unless the bid is made simultaneously or in conjunction and has the same content.

(3) Whoever has made a decision to make a voluntary bid as dealt with in subsection (1) shall forthwith notify the takeover supervisory authority and the offeree company accordingly. The takeover supervisory authority shall make the notification available to the public. The offeror and the company shall inform their employees immediately the notification has been made public.

(4) The bid shall be launched within a reasonable period after the decision to launch a voluntary bid is taken.

(5) A voluntary bid as dealt with in subsection (1) shall indicate a period allowed for shareholders to accept the bid. The period may not be shorter than two weeks or longer than 10 weeks. The ministry may adopt further regulations on the right to dispense with the Act's general requirement as to the longest permitted bid period.

Section 6–20 *Exercise of shareholder rights in case of failure to make a mandatory bid*

Shareholders who neglect their obligation to make a bid under section 6–1, section 6–2 subsection (2) or section 6–6 may not, for the duration of the mandatory bid obligation, exercise rights in the company other 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 6–21 *Forced sale of shares*

(1) If no bid is made under section 6–1, section 6–2 subsection (2) or section 6–6 and the period allowed for sale pursuant to section 6–9 is exceeded, the takeover supervisory authority may sell the shares under the rules governing forced sale insofar as they are applicable. The Enforcement Act section 10–6, see section 8–16, does not apply.

(2) The takeover supervisory authority shall give the party subject to the mandatory bid obligation at least two weeks' notice of a forced sale.

Section 6–22 *Forced transfer of shares in connection with the mandatory bid obligation and voluntary bid*

(1) Where the offeror, after making a mandatory or voluntary bid pursuant to section 6–19, has acquired more than nine tenths of the voting shares of the offeree company and a corresponding proportion of the votes that can be cast at the general meeting, the offeror may decide to force the transfer of the remaining shares in accordance with the Public Limited Companies Act section 4–25. The remaining shareholders are entitled to demand that the offeror take over the shares.

(2) If forced transfer takes place within three months after the expiry of the period of the bid in accordance with section 6–11, the redemption price shall be fixed on the basis of the bid price unless another price is called for on special grounds.

(3) Where the offeror, after making a voluntary bid, has acquired a holding as stated in subsection (1), shares may be forcibly transferred without a prior mandatory bid having been made provided the following conditions are met:

1. forced transfer is initiated at the latest four weeks after the acquisition of shares by voluntary bid,
2. the redemption price corresponds at least to the lowest bid price that would have resulted from a mandatory bid, and
3. the same guarantee is provided as in the case of a mandatory bid under section 6–10 subsection (7). The Public Limited Companies Act section 4–25 subsection (5) does not apply to the extent that such guarantee is made available.

Section 6–23 *Takeover bids with links to more than one state*

(1) The provisions of this chapter apply equally in relation to

1. companies with their registered office in another state whose shares or other securities comparable to shares are not quoted on a regulated market in the state in which the company has its registered office but on a Norwegian regulated market, and
2. companies with their registered office in Norway whose shares are quoted on a regulated market in another EEA state.

(2) The ministry may in cases as mentioned in subsection (1) lay down further regulations on the application of the provisions of this chapter as well as on the takeover supervisory authority and choice of law.

(3) The takeover supervisory authority may by individual decision make exception from some or all of the provisions of this chapter in the case of companies with their registered office in Norway whose shares are quoted on a regulated market both in Norway and a state outside the EEA. The same applies in relation to companies with their registered office in a state outside the EEA whose shares are quoted on a regulated market in Norway.

Chapter 7 Prospectus requirements in connection with public offerings and admission to trading

I Definitions

Section 7–1 *Definitions*

In this chapter “non-equity securities” means transferable securities other than:

1. shares and other securities comparable to shares as mentioned in section 2–2 subsection (2) no. 1, and
2. transferable securities giving the right to purchase securities as mentioned in no. 1 where the rights are issued by issuers of the underlying security or by a company in the same group.

II Obligation to prepare a prospectus

Section 7–2 *Obligation to prepare a prospectus in connection with offers of subscription or purchase*

Where an offer to subscribe for or purchase transferable securities is addressed to 150 or more persons in the Norwegian securities market, and involves an amount of at least EUR 1,000,000 calculated over a 12 month period, a prospectus shall be prepared in accordance with the rules of this chapter. The same applies where an offeror residing in Norway makes an offer in another EEA state and the prospectus requires approval pursuant to the provisions of section 7-7.

Section 7-3 *Obligation to prepare a prospectus upon admission to trading*

Upon admission to trading of transferable securities on a Norwegian regulated market place, including increases of capital in companies with quoted shares, a prospectus shall be prepared pursuant to the rules of this chapter. The same applies where an issuer residing in Norway seeks admission to trading on a regulated market in another EEA state and the prospectus requires approval pursuant to the provisions of section 7-7.

Section 7-4 *Exceptions from the obligation to prepare a prospectus in connection with offers*

(1) The provision of section 7-2 does not apply where:

1. the offer relates to non-equity securities issued by an EEA state, an EEA central bank or the European Central Bank,
2. the offer relates to securities guaranteed by an EEA state,
3. the offer relates to non-equity securities issued continuously or repeatedly by credit institutions, if the securities are covered by a deposit guarantee scheme and satisfy further conditions specified by the ministry in regulations,
4. the offer is made in connection with a merger, demerger or other division of the company between the shareholders provided a document is available which is considered by the competent prospectus authority to contain the information required by section 7-13,
5. the offer relates to exchange of shares in the same company, provided the exchange does not entail an increase in the company's share capital,
6. the offer relates to securities offered as consideration in connection with an acquisition, provided a document is available which is considered by the competent prospectus authority to contain the same information as required by section 7-13,
7. the offer relates to dividend to existing shareholders disbursed in the form of shares in the same share class as the shares for which dividend is disbursed, provided a document is available containing information on share class, the number of shares, as well as the background and conditions for the offer,
8. the offer is addressed to professional investors pursuant to further rules laid down by the ministry in regulations,
9. the offer is addressed to current or former employees or board members by the employer or by another company in the same group, provided that the company concerned has its head office or registered office in an EEA state or third country approved by the competent prospectus authority and that a document is available containing information on the category and number of securities as well as the background and conditions for the offer,
10. the offer relates to securities issued in minimum lots of EUR 100,000 in terms of nominal value or subscription price.
11. the offer relates to sale through an investment firm where the investment firm has an agreement with the issuer regarding use of a valid prospectus; see section 7-12.

(2) An investment firm shall at the request of an issuer state whether named clients are categorised as professional or non-professional where this is necessary to determine whether an obligation exists to prepare a prospectus.

Section 7–5 *Exceptions from the obligation to prepare a prospectus upon admission to quotation*

The provision of section 7–3 does not apply upon admission to quotation relating to:

1. increases of capital where the number of shares issued in connection with the capital increase amount to less than 10 per cent of the number of shares already listed in the same class, calculated over a 12 month period,
2. non-equity securities issued by an EEA state, an EEA central bank or the European Central Bank,
3. securities guaranteed by an EEA state,
4. non-equity securities issued continuously or repeatedly by credit institutions, if the securities are covered by a deposit guarantee scheme and satisfy further conditions specified by the ministry in regulations,
5. securities quoted in connection with a merger, demerger or other division of the company between the shareholders provided a document is available considered by the competent prospectus authority to contain the same information as required by section 7–13,
6. exchange of already listed shares in the same company, provided the exchange does not entail an increase of the company's share capital,
7. securities offered as consideration in connection with an acquisition, provided a document is available considered by the competent prospectus authority to contain the same information as required by section 7–13,
8. shares offered free of charge to existing shareholders, and dividend disbursed in the form of shares in the same class as the shares for which such dividend is disbursed, provided that the said shares are in the same class as already quoted shares and that a document is available containing information on share class, the number of shares, as well as the background and conditions for the offer,
9. securities offered to current or former employees or board members by the employer or by another company in the same group, provided that securities of the same class are listed on a regulated market and that a document is available containing information on the category and number of securities, as well as the background and conditions for the offer,
10. shares issued by exercise of rights mentioned in section 2–2 subsection (2) no. 3, where shares of the same class are listed on a regulated market,
11. securities listed on another regulated market, if the securities satisfy further conditions specified by the ministry in regulations.

Section 7–6 *Dispensation*

(1) The competent prospectus authority may by regulations or by individual decision make exceptions from the rules of this chapter in the case of offers of and admission to trading of

1. securities issued by non-profit-making organisations with a view to obtaining resources for non-profit-making objectives,
2. bonds issued by a county municipality or municipality or equivalent authority in another EEA state,
3. securities guaranteed by a county municipality or municipality or equivalent authority in another EEA state,
4. non-equity securities issued by public international bodies of which one or more EEA states are members,
5. bonds and money market instruments with a maturity of less than 12 months.

(2) The competent prospectus authority may by regulations or by individual decision make exceptions from the rules of this chapter in the case of offers of non-equity securities issued

continuously or repeatedly by credit institutions, if these securities involve a total amount of less than EUR 75,000,000 calculated over a 12 month period.

III Approval, scrutiny, registration and mutual recognition

Section 7–7 Approval of EEA prospectuses

(1) In this chapter “EEA prospectus” means a prospectus relating to:

1. admission to trading on a regulated market,
2. offers involving an amount of at least EUR 5,000,000 calculated over a 12 month period,
3. offers or admissions to trading as mentioned in section 7–4 nos. 1 and 2 and section 7–5 nos. 2 and 3, provided a prospectus has been prepared pursuant to the provisions of section 7–13 subsection (2) and sections 7–14 to 7–21,
4. offers or admissions to trading of “bostadsobligasjoner” (residence bonds) pursuant to further provisions established in regulations, provided a prospectus has been prepared pursuant to the provisions of section 7–13 subsection (2) and sections 7–14 to 7–21, and
5. offers involving amounts below EUR 5,000,000 provided a prospectus has been prepared pursuant to the provisions of section 7–13 subsection (2) and sections 7–14 to 7–21.

(2) An EEA prospectus must be approved before publication.

(3) An EEA prospectus relating to an offer addressed to the Norwegian market or relating to admission to trading on a Norwegian regulated market requires approval by the competent prospectus authority, except as otherwise stated in this section or in section 7–9 concerning mutual recognition of prospectuses.

(4) An EEA prospectus prepared by an issuer with its registered office in Norway requires approval by the competent prospectus authority even if the offer is only addressed to markets in another EEA state or only concerns admission to trading on a regulated market in another EEA state. An offeror or issuer may nonetheless decide that the competent authority in the EEA state where the offer is made or admission to trading is sought shall approve the prospectus if the prospectus relates to non-equity securities which:

1. have a minimum denomination of EUR 1,000 or more, or
2. give the right to purchase underlying securities or to settlement in cash.

(5) The competent prospectus authority may approve a prospectus prepared by an issuer with its registered head office in a country outside the EEA pursuant to the rules applying in that country, provided the prospectus is prepared under international standards and the information in the prospectus corresponds to information which according to the provisions of this chapter shall be contained in an EEA prospectus.

Section 7–8 Scrutiny of prospectuses etc.

(1) When approving an EEA prospectus, the competent prospectus authority shall ensure that the prospectus contains the information required by law or regulations.

(2) The ministry may by regulations provide that prospectuses in cases of offers not covered by section 7–7 shall be sent to the competent prospectus authority for scrutiny before publication.

(3) The scrutiny of prospectuses relating to securities of the same class as securities traded on a regulated market shall be concluded at the latest five working days after the competent prospectus

authority has received a complete prospectus. The same applies to the scrutiny of prospectuses relating to securities where a prospectus has previously been prepared pursuant to the rules concerning offers. In other cases the scrutiny shall be concluded no later than ten working days after the competent prospectus authority has received a complete prospectus.

(4) If the competent prospectus authority deems it unlawful to implement the offer under other law or regulations, it may prohibit the offer from being implemented.

(5) The ministry may by regulations make further provision regarding implementation of prospectus scrutiny.

(6) Finanstilsynet is the competent prospectus authority.

Section 7–9 *Mutual recognition of EEA prospectuses*

(1) EEA prospectuses that are approved by the competent authority in another EEA state shall be deemed to be approved as from the date on which notification is received from that EEA state to the effect that the prospectus has been prepared in conformity with the Directive and approved by the competent authority of the EEA state concerned.

(2) Offerors with an EEA prospectus approved by the competent prospectus authority who intend to address an offer to markets in another EEA state may ask the competent prospectus authority to send notification as mentioned in subsection (1) to the state concerned. The same applies to admission to trading in another EEA state. Such notification shall be given within three days of receipt of the request.

(3) The provisions of this section do not apply to bonds or money market instruments with a maturity of less than 12 months.

Section 7–10 *Registration of prospectuses*

Prospectuses not requiring approval pursuant to section 7–7 shall be sent to the Register of Business Enterprises for registration before being published.

Section 7–11 *Fees*

(1) The competent prospectus authority may charge the party preparing the prospectus a fee to cover expenses incurred in connection with scrutiny as mentioned in section 7–7 and section 7–8.

(2) The Register of Business Enterprises may charge the offeror a fee to cover expenses incurred in connection with registration as mentioned in section 7–10.

(3) The ministry may by regulations make further provision concerning the calculation and collection of fees.

Section 7–12 *Validity*

(1) An approved prospectus shall be valid for 12 months after its approval, provided that it is completed by a supplement in accordance with section 7–15.

(2) An approved base prospectus shall be valid for up until 12 months, or until the period for issuing of the shares expires, pursuant to further rules laid down by the ministry in regulations.

(3) An approved registration document shall be valid for 12 months after its approval, provided that it is completed by a supplement in accordance with section 7-15 or that the same information is contained in a securities document.

IV Drawing up of prospectuses

Section 7–13 *Information in the prospectus*

(1) A prospectus shall contain such information as, depending on special circumstances of the offeror and the nature of the securities offered, is necessary to enable the investors to make a properly informed assessment of the issuer's and any guarantor's financial position and prospects and of rights attached to the securities mentioned. The information in the prospectus shall be presented in an easily comprehensible and analysable form. The ministry may lay down further regulations regarding information in prospectuses.

(2) The ministry may by regulations make provision regarding the contents of EEA prospectuses, including which issuers or offers may follow simplified requirements.

Section 7–14 *Drawing up of the prospectus*

(1) A prospectus may be drawn up as one or more documents. Where the prospectus is drawn up as several separate documents, the documents shall be termed registration document, securities document and summary. Pursuant to further rules laid down in regulations made by the ministry, a prospectus may in the case of a loan programme be drawn up as a base prospectus.

(2) Information that is published and submitted pursuant to section 5-12 subsection (1), vetted pursuant to section 7–7 or registered pursuant to section 7–10, may be incorporated in the prospectus by reference. In this case a reference list must be available showing where the relevant information can be found. The summary of the prospectus shall not incorporate information by reference.

(3) The ministry may lay down further regulations regarding the drawing up of prospectuses.

Section 7–15 *Supplements to the prospectus*

(1) Any new circumstance, material error or inaccuracy which is capable of affecting the assessment of the securities, and which is brought to light between publication of the prospectus and expiry of the acceptance period or admission to quotation, whichever occurs later, shall be mentioned in a supplement to the prospectus.

Section 7–16 *Omission of certain information*

(1) The competent prospectus authority may allow certain information to be omitted in a prospectus

1. where disclosure of such information would be contrary to the public interest,
2. where disclosure of such information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances which are essential to the assessment of the issuer, the offeror, any guarantor or the securities,
3. where the information is of minor importance and is not such as will affect the assessment of the issuer's, the offeror's and any guarantor's financial position and prospects,
4. where the information is not relevant to the issuer's business or legal form or to the securities concerned, and there is no equivalent information which can be considered relevant to the said business etc.

(2) Where the securities are guaranteed by an EEA state, information about the guarantor may be omitted.

(3) The ministry may by regulations make further rules regarding omission of information in prospectuses.

Section 7–17 Languages

Prospectuses shall be prepared in Norwegian, English, Swedish or Danish. The competent prospectus authority may require that a summary of the prospectus be translated into Norwegian.

V Responsibility and publication etc.

Section 7–18 Responsibility

(1) In the case of an offer for subscription or purchase of shares made by the company that has issued the shares, the board of the company shall be responsible for ensuring that the prospectus meets the prescribed requirements. The same applies to admission to trading on a regulated market.

(2) The prospectus shall identify who is responsible.

(3) Those who are responsible for the prospectus shall make a statement to the effect that, to the best of their knowledge, the information in the prospectus is in accordance with the facts, and that the prospectus does not contain misleading or incomplete information regarding circumstances which are of significance when assessing the question of whether or not to accept the offer, and that there are no omissions in the prospectus which are of such a character that they could change the lexical content of the prospectus.

Section 7–19 Publication of prospectuses etc.

(1) The prospectus shall be published at the latest at the start of the period of the offer or upon admission to quotation. In the case of an initial public offer of a class of shares that is to be admitted to quotation for the first time, the prospectus shall be available at least six working days before the end of the offer.

(2) The prospectus may be published by

1. insertion in at least one national newspaper
2. making it available to the public free of charge at the offeror's office or at the office of the market and at the investment firm which places the offer,
3. making it available electronically on the website of the offeror, the market place or any investment firm that places the offer, or
4. making it available on the website of the competent prospectus authority.

(3) In the case of publication under subsection (2) nos. 1, 2 or 4, the prospectus shall also be published electronically pursuant to subsection (2) no. 3.

(4) In the case of publication under subsection (2) nos. 2 to 4, details of where the prospectus is available shall be given in a national newspaper.

(5) A copy of the prospectus in paper format must be available free of charge.

(6) Acceptance forms may only be issued together with a complete prospectus.

(7) The ministry may by regulations make further provision regarding the publication of prospectuses.

Section 7–20 *Advertisements etc.*

If information on offers is made available in advertisements or by other means, it shall concurrently be stated that further information is given in the prospectus as well as where the prospectus can be obtained. The information shall be consistent with the information in the prospectus.

Section 7–21 *Withdrawal of acceptance*

(1) If the prospectus does not contain information on price or on the procedure for determining the price, acceptance of the offer may be withdrawn within two days of the date on which the final price and number of securities are registered with the competent prospectus authority or with the Register of Business Enterprises. The ministry may by regulations make provision concerning such registration.

(2) Where a supplement as mentioned in section 7–15 is published, an acceptance of the offer given before the supplement was published may be withdrawn within two days of such publication if the new circumstance, material error or inaccuracy as mentioned in section 7-15 came to light before the expiry of the acceptance period and before the delivery of the securities. The final date for withdrawal of acceptance shall be stated in the supplement.

Chapter 8 Own account trading

Section 8–1 *Scope of application*

(1) The provisions of this chapter apply to employees of:

1. investment firms and their tied agents,
2. management companies for securities funds,
3. financial institutions,
4. undertakings forming part of a financial conglomerate, but not estate agency firms or debt collection agencies,
5. pension funds, and
6. Innovation Norway, the Norwegian Industrial and Regional Development Fund, the Norwegian State Housing Bank, the National Insurance Scheme Fund and the Central Bank of Norway, who normally have insight into or whose work involves investment services or management of financial instruments for the account of the undertaking or the undertaking's clients.

(2) The ministry may by regulations provide that this chapter shall apply to employees engaged in the administration of public resources and employees of public institutions engaged in financing activity, other than employees mentioned in subsection (1) no. 6.

(3) The ministry may make exceptions from sections 8–2 and 8–3 in the case of employees of branches of Norwegian undertakings. Exceptions may not be made in respect of trading in financial instruments that are quoted on a Norwegian regulated market or issued by a Norwegian undertaking.

Section 8–2 *General rules on employees' own account trading*

(1) Employees may not issue or trade on own account in financial instruments as mentioned in section 2–2 subsection (1) no. 4 and section 2–2 subsection (2) no. 3. This does not however apply to the acquisition of options on shares or equity certificates in the employer undertaking where such

options are issued by the undertaking. Other financial instruments, with the exception of units in securities funds, may be disposed of at the earliest 12 months after the acquisition.

(2) Employees may not finance acquisitions of financial instruments by means of loans secured on their own financial instruments. Employees may not sell financial instruments they do not own, nor may they own or borrow financial instruments.

(3) The ministry may by regulations or by individual decision make exceptions from the requirements of subsections (1) and (2), including in regard to what types of financial instruments employees may acquire and how long an acquired financial instruments must be owned before it can be disposed of. The ministry may also lay down conditions permitting the minimum period of ownership to be dispensed with.

(4) Employees may not purchase financial instruments from the employer undertaking or sell financial instruments to the employer undertaking. The same applies in relation to securities funds for which the employer undertaking is the management company. This prohibition does not apply to acquisitions of shares or equity certificates issued by the undertaking or to rights to such shares or equity certificates that are issued by the undertaking or to acquisitions of units in securities funds managed by the employer undertaking.

(5) Where an employee intends to carry out a trade on own account, he shall inform the counterparty thereof in advance.

(6) Finanstilsynet may make exceptions from the provisions of subsections (4) and (5).

Section 8–3 *Special rules concerning own account trading by employees in certain types of undertaking*

(1) When trading on own account, employees of an undertaking as mentioned in section 8–1 subsection (1) nos. 2 to 6 may not make use of investment firms that regularly provide investment services on a significant scale to the employer undertaking. This does not apply to subscription of shares under the pre-emption right accorded by the Private Limited Companies Act or the Public Limited Companies Act. Finanstilsynet may make exceptions from the provisions of this subsection in special cases.

(2) Employees of an investment firm who are involved with, or who by other means have knowledge of, the content of an analysis or report may not trade on own account in financial instruments if such employees know or ought to know that the investment firm intends to publish an analysis or report about the issuer of the instruments concerned which could influence the price of the instrument when so published. The prohibition starts four weeks prior to publication and lasts until publication has taken place.

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

Section 8–4 *Competence to act*

An employee may not participate in decisions made in the employer undertaking in regard to the purchase, sale or subscription of financial instruments issued by a company that is headed by the employee in question or in which he holds a senior position or in which he is a member of the board or corporate assembly. Nor may an employee participate in the consideration of any matter of such

significance to the employee himself or to his related parties that he must be deemed to have a particular personal or financial interest in the matter. Employees of the Norwegian National Insurance Scheme Fund may nonetheless participate in decisions as mentioned in the first sentence, also where the employee concerned is a member of the corporate assembly of the issuer undertaking. The ministry may by regulations make corresponding exceptions in the case of employees of the Norwegian Industrial and Regional Development Fund, the Norwegian State Housing Bank and the Central Bank of Norway.

Section 8–5 *Reporting of own account trading*

(1) Employees of an undertaking as mentioned in section 8–1 subsection (1) shall without delay notify the undertaking of any trading on own account in financial instruments. The same applies to trades executed by an employee for the account of a related party. Notification shall be given to one single person designated by the undertaking.

(2) An undertaking as mentioned in section 8–1 subsection (1) shall see to it that reporting of own account trading as mentioned in subsection (1) is at all times available to Finanstilsynet. Reports must be retained for at least three years.

(3) The undertaking shall on a regular basis assess whether the provisions of this chapter have been violated. Where there are grounds for suspicion of any violation, the undertaking shall without delay report its suspicion to Finanstilsynet.

Section 8–6 *Own account trading by related parties and officers*

(1) The provisions of sections 8–2 to 8–5 apply equally to board members, deputy members and observers in undertakings as mentioned in section 8–1 subsection (1) who normally have insight into or who are involved with investment services or with the management of financial instruments for the account of the undertaking or the undertaking's clients.

(2) The provisions of sections 8–2 and 8–3 apply equally to purchase, sale or subscription undertaken by employees or officers mentioned in subsection (1) for the account of related parties as mentioned in section 2–5 nos. 1, 2 and 4. In the case of related parties of employees or officers at investment firms, the provisions apply equally to purchase, sale or subscription undertaken by the investment firm concerned for the account of such related parties. In the case of related parties of employees or officers at undertakings other than investment firms, the prohibition in section 8–3 subsection (1) applies to own account trading through an investment firm entered on the employer undertaking's lists as mentioned in section 8–7 subsection (3).

Section 8–7 *Employer undertaking's obligations*

(1) Undertakings as mentioned in section 8–1 subsection (1) shall maintain lists of employees, board members, deputy members and observers encompassed by the provisions of this chapter.

(2) The undertakings shall have internal rules ensuring that they maintain effective oversight of compliance with the rules of this chapter.

(3) The undertakings shall maintain lists of investment firms encompassed by section 8–3 subsection (1).

Part 3 Investment firms

Chapter 9 Authorisation, conditions and cross-border activity

I Authorisation, application and withdrawal

Section 9–1 *Authorisation to provide investment services and ancillary services*

(1) Investment services provided on a professional basis may only be provided by undertakings authorised to do so by the ministry. The authorisation shall indicate which investment services and ancillary services the investment firm may provide. An investment firm shall apply to Finanstilsynet for approval before it offers ancillary services beyond those indicated by the authorisation.

(2) Authorisation under subsection (1) shall only be granted where the licensing authority deems that the conditions for providing investment services in sections 9–8 to 9–21 are met, and where the organisation of the investment firm and its relationship to close connections is such that it can be supervised in an efficient and satisfactory manner. "Close connections" means a situation as defined in section 3a second subsection of the Financial Supervision Act and associated provisions of regulations to that Act.

(3) Services as mentioned in section 2-1 subsection (1) nos. 1-6 which are provided on a professional basis in connection with units in partnerships as defined in the Partnerships Act section 1-2 subsection (1)(a), (b), (c) and (e) and units in corresponding foreign partnerships may only be provided by undertakings that are authorised to provide corresponding investment services pursuant to subsection (1).

(Into force on 1 January 2013)

(4) The provisions of chapters 9 and 10 and regulations made in pursuance thereof, with the exception of sections 9-23, 10-7, 10-18, 10-19 and 10-20, apply to the provision of services as mentioned in subsection (3).

(Into force on 1 January 2013)

Section 9–2 *Exceptions from the authorisation requirement etc*

(1) Activity conducted by the following entities is excepted from the authorisation requirement of section 9–1 and the other provisions of chapters 9 and 10 of this Act:

1. Central Bank of Norway,
2. National Insurance Scheme Fund,
3. public authorities that manage public debt,
4. management companies for securities funds,
5. insurance companies,
6. pension funds,
7. depositories of securities funds, pension funds and alternative investment funds,
8. undertakings authorised to operate as an options clearing house, clearing house or regulated market,
9. managers of alternative investment funds.

(2) Subsection (1) applies equally to anyone who:

1. provides investment services in an incidental manner in the course of other professional activity regulated by law or by the profession itself,
2. provides investment services only to companies within the same group,
3. provides investment services which only involve administration of employee-participation schemes,

4. provides investment services only as mentioned in nos. 2 and 3,
5. provides investment advice only in the course of providing another professional activity, provided that the provision of such advice is not specifically remunerated,
6. trades on own account in financial instruments, or provides investment services connected to commodity derivatives or derivative contracts as mentioned in section 2–2 subsection (5) no. 5 to clients of his main business, provided that this is an ancillary activity to his main business, when considered on a group basis, and that the main business is not the provision of investment services or banking services,
7. has trading on own account in commodities or commodity derivatives as his main business, provided that the undertaking is not part of a group the main business of which is the provision of other investment services or banking services,
8. provides investment services consisting exclusively in trading on own account on the derivatives market and the spot market, provided that his sole purpose is to hedge his own positions on the derivatives market and provided that clearing members or clearing houses on the same markets enter as parties to or otherwise guarantee the performance of contracts.
9. trades for the accounts of other members on the derivatives market, or quotes prices for such members, provided that clearing members or clearing houses on the same markets enter as parties to or otherwise guarantee the performance of contracts entered into or prices quoted.
10. solely provides services as mentioned in section 9-1 subsection (3) to clients who assume a total investment commitment of at least the equivalent of NOK 5,000,000, or to clients pursuant to the Securities Trading Regulations section 10-1, cf section 10-2. (Into force on 1 January 2013)

(3) The ministry may lay down supplementary regulations concerning exceptions from these provisions.

Section 9–3 *Application for authorisation*

(1) Applications for authorisation shall state which of the services mentioned in sections 2–1 the firm 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 9 and 10 are met. The licensing authorities may request further information.

(2) The firm's articles of association, plan of operations and internal organisational procedures as mentioned in section 9–11 shall be enclosed.

(3) Where the applicant is:

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

(4) The decision regarding authorisation shall be communicated to the applicant as soon as possible and at the latest 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.

(5) The investment firm may commence business as soon as authorisation has been granted.

Section 9-4 *Modification or withdrawal of authorisation*

(1) Finanstilsynet may entirely or in part modify, set new conditions or withdraw 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 public good, or
 6. fails to comply with an order under section 15-7.
7. (2) Subsection (1) applies equally to authorisation granted under section 9-5 and section 9-6.

(3) Where authorisation for a firm carrying on activity in another EEA state is withdrawn, the competent authorities of the host state shall be informed.

Section 9-5 *Right of regulated markets to operate an MTF*

The ministry will grant firms authorised under the Act on Regulated Markets authorisation to operate an MTF, see chapter 11, provided they meet the requirements of sections 9-1, 9-9, 9-10, 9-11, 9-13 and 11-1.

Section 9-6 *Authorisation to provide credit*

(1) Investment firms that are authorised to provide an ancillary service as mentioned in section 2-1 subsection (2) no. 2 may only grant credit for the purchase of financial instruments that are traded through the firm.

(2) Firms authorised to provide credit shall ensure that satisfactory security is furnished for the credit.

(3) A firm may not grant credit to clients if special circumstances obtain entailing a risk that the client will be unable to honour his commitments.

(4) A 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 cases,
3. a shareholder owning at least 3 per cent of the share capital,
4. anyone who pursuant to section 2-5 nos. 1 to 4 is a related party of a person as mentioned in nos. 1 to 3 of this subsection.

Section 9-7 *Public register of firms entitled to provide investment services*

Finanstilsynet shall ensure that a public register is maintained of firms entitled to provide investment services in Norway, including firms mentioned in sections 9-24 and 9-25. The register

shall contain information on what investment services and ancillary services may be provided by such firms.

II Conditions for authorisation

Section 9–8 *Form of organisation*

(1) Authorisation to provide investment services may be granted to credit institutions, private limited companies or public limited companies.

(2) Where authorisation is given to a private limited company or public 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 company fails to satisfy the requirements of section 9-9 subsection (1), and
3. authorisation may be refused if a shareholder with a qualifying holding in the company is not deemed fit to ensure sound and prudent management of the undertaking.

(3) The ministry may by regulations make exceptions from the requirement as to form of organisation in subsection (1), and may in the event make further provision concerning organisation of the business etc.

Section 9–9 *Management of investment firms*

(1) Board members, the general manager and others participating in the actual management of an investment firm shall have relevant qualifications and professional experience, be of good repute, and otherwise not have displayed improper conduct giving reason to presume that the position or office will not be discharged in a satisfactory manner. Persons as mentioned in the first sentence shall present an ordinary police certificate pursuant to the Police Records Act section 40.

(2) The actual management of an investment firm shall be in the hands of at least two persons. Finanstilsynet may by regulations or by individual decision make exceptions from the requirement of the first sentence.

(3) An investment firm shall notify Finanstilsynet of any replacement of a manager as mentioned in subsection (1) and shall provide information relevant to assessing whether the individual fulfils the conditions of subsection (1). For investment firms which are not credit institutions, the information requirement also applies in the event of changes in the composition of the firm's board.

(4) The ministry may by regulations make further provision concerning requirements on managers of investment firms.

Section 9–10 *Shareholder structure*

(1) The owner of a qualifying holding in an investment firm shall be fit to ensure sound and prudent management of the firm.

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

(3) Finanstilsynet 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.

(4) Finanstilsynet shall, within three months of the date it receives notification as mentioned in subsections (2) and (3), refuse such acquisition if the shareholder concerned is not deemed fit to ensure sound and prudent management of the investment firm. Whoever acquires a qualifying holding under the provisions of subsections (1) and (2) shall present an ordinary police certificate pursuant to the Police Records Act section 40 if Finanstilsynet so requests.

(5) Where the acquirer of a qualifying holding in an investment firm that is not a credit institution is an investment firm, credit institution, insurance company or management company for securities funds from another EEA country, and the investment firm will as a result of the acquisition become the acquirer's subsidiary, authorisation may only be granted after consultation with the supervisory authorities of the EEA country concerned. The first sentence applies equally to acquisitions carried out by persons who control the type of undertaking mentioned. The time limit stated in subsection (4) of this section does not apply in such cases.

(6) Finanstilsynet may impose time limits for carrying out acquisitions under subsections (2) and (3).

(7) In the event of a disposal causing the size of the holding to fall below the thresholds mentioned in subsections (2) and (3), the divestor shall notify Finanstilsynet.

(8) Finanstilsynet will make further provision regarding investment firms' duty to notify Finanstilsynet of their shareholders as mentioned in this section.

Section 9–11 *Organisation of the business*

(1) An investment firm shall organise its business such that the firm:

1. has in place adequate and satisfactory policies and procedures designed to ensure compliance with the firm's obligations under the law and regulations,
2. is structured and organised in such a way as to minimise the risk of conflicts of interest between the firm and its clients or between the firm's clients, see section 10–10,
3. takes reasonable measures designed to ensure continuity and regularity in the investment services business, including having necessary systems, resources and procedures,
4. takes satisfactory measures to minimise operational risk when the firm utilises a third party to perform operational functions, see subsection (2),
5. has efficient information handling systems, has sound administrative and accounting procedures, control and safeguard arrangements, as well as job instructions which specifically regulate the distribution of responsibility between the manager and other senior personnel in the firm,
6. has satisfactory internal control mechanisms that include rules for personal transactions executed by the firm's managers, employees and tied agents,
7. arranges for lists to be maintained of all the investment services, including all executed transactions, which shall at minimum be sufficiently comprehensive to enable Finanstilsynet to verify compliance with the rules for which it has responsibility. Such lists shall be retained for at least five years. Finanstilsynet shall have access to and maintain oversight of lists kept by Norwegian branches of foreign investment firms, see sections 9–24 and 9–25,

8. has internal instructions for the employees' right to be a member of the board of directors, corporate assembly or supervisory board or to have such influence in companies as mentioned in the Private Limited Companies Act section 1–3 subsection (2) or the Public Limited Companies Act section 1–3 subsection (2). Such instructions shall also encompass members of the board of directors who exercise such influence in the investment firm as mentioned in the Private Limited Companies Act section 1–3 subsection (2) or the Public Limited Companies Act section 1–3 subsection (2). Corresponding instructions shall be drawn up for cases where dispensation is granted pursuant to section 10–3 subsection (2), and
9. has internal procedures in respect of requirements as to, and calculation of, collateral when mediating and entering agreements pursuant to section 10–5 subsections (1) and (2) and section 10–6, and when granting credit pursuant to section 9–6.

(2) Investment firms which outsource functions may not leave important operational functions to a third party if as a result

1. the firm's internal control and its ability to ensure compliance with its obligations is appreciably impaired, or
2. Finanstilsynet's opportunity to supervise the business is appreciably impaired or impeded.

(3) Investment firms shall take satisfactory steps to keep clients' financial instruments separate from the firm's financial assets. An investment firm may only utilise a client's financial instruments for own account where the client has explicitly consented to this.

(4) Investment firms shall take satisfactory steps to keep client assets separate from the firm's assets. An investment firm that is not a financial institution may not utilise client assets for own account.

(5) The board and the general manager shall draw up internal guidelines and instructions in accordance with subsection (1).

(6) The ministry may by regulations make further provision concerning the organisation of investment firms, also concerning the firms' internal guidelines, instructions and filing requirement. The ministry may also make special provision concerning outsourcing.

(7) Investment firms shall have in place guidelines and procedures for the calculation and disbursement of performance related remuneration. The ministry may by regulations make further provision concerning remuneration arrangements at investment firms which are not financial institutions. The provisions of the Financial Institutions Act sections 2-18 to 2-22 apply.

Section 9–12 Norwegian Investor Compensation Scheme

(1) An investment firm shall be a member of the Norwegian Investor Compensation Scheme.

(2) The object of the Scheme is, in the event of a member's insolvency, to provide cover for claims arising from that member's handling of clients' assets and financial instruments.

(3) The Scheme's obligations are financed by the members such that their liability is in the first instance pro rata, subsidiarily joint and several.

(4) The Scheme may not invoke objections against an injured party beyond the objections an investment firm itself has in relation to the injured party.

(5) The ministry may by regulations make further provision concerning the Scheme, including rules on the activities and financing of the Scheme, institutions obliged to join the Scheme, the extent of liability, and on the rights and duties of the members and possible injured parties.

(6) The ministry may decide the extent to which the rules governing the Norwegian Investor Compensation Scheme 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 claims do not need to be covered by the Scheme.

Section 9–13 *Initial capital*

(1) 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 may only provide certain investment services, Finanstilsynet may authorise lower initial capital, but not lower than the equivalent of EUR 125,000 in Norwegian currency.

(2) The ministry may by regulations make exceptions from subsection (1) and make further provision concerning initial capital.

Section 9–14 *Capital charge in relation to the business activity*

(1) An investment firm shall at all times comply with the capital requirements ensuing from sections 9–15 and 9–16, and as well as with regulations and individual decisions made pursuant to these provisions.

(2) An investment firm shall be organised and run in a proper manner. This entails inter alia that the firm shall have:

1. a clear organisation structure,
2. a clear distribution of responsibilities,
3. clear and appropriate governance and control arrangements,
4. appropriate policies for identifying, controlling, monitoring and reporting risk to which the institution is, or may become, exposed.

(3) An investment firm's governance and control arrangements and policies and procedures shall be in proportion to the risk attending and the scope of the firm's business activities.

Section 9–15 *Calculation of capital charge*

(1) An investment firm's common equity tier 1 capital shall at all times constitute at least 4.5 per cent of risk weighted assets under rules laid down in regulations. An investment firm's tier 1 capital shall at all times constitute at least 6 per cent of the same risk weighted assets. An investment firm's own funds shall at all times constitute at least 8 per cent of the same risk weighted assets.

(2) In the case of investment firms that are not credit institutions, own funds may in no case be less than the amounts stated in section 9–13 subsection (1).

(3) The basis for calculating the capital charge shall be the sum of risk-weighted assets in respect of credit risk, market risk and operational risk.

(4) Credit risk shall be measured using risk weights laid down in regulations (standard approach) or risk parameters established entirely or in part by the institution itself using internal methods for classifying and quantifying credit risk (internal ratings based (IRB) approach).

(5) Market risk shall be measured with a basis in rules laid down in regulations or in the IRB approach.

(6) Operational risk shall be measured as: a share of average income (basic approach), a share of the income within the various business areas multiplied by an indicator of loss experience established by the ministry (template approach) or based on the IRB approach to operational risk (advanced approach).

(7) Finanstilsynet may by regulations or by individual decision exempt investment firms authorised to provide investment services as mentioned in section 2–1 subsection (1) nos. 3 and 5, and management companies for securities firms authorised to carry on active management, from capital charges in respect of operational risk.

(8) Internal approaches to credit risk and market risk, and advanced approaches in respect of operational risk, may only be used to calculate capital charges where the supervisory authority has given its approval.

(9) Finanstilsynet may in special cases and for a limited period consent to an investment firm maintaining lower capital adequacy than that required by this section.

(10) The ministry may by regulations lay down provisions:

1. concerning what is to be regarded as common equity tier 1 capital, tier 1 capital and tier 2 capital, and the composition of own funds,
2. concerning the basis for measurement of credit risk, market risk and operational risk, what is to be regarded as common equity tier 1 capital, tier 1 capital and tier 2 capital, and the composition of own funds
3. concerning the use of IRB approaches,
4. concerning collateral that can be taken into account when calculating minimum capital charges, and,
5. requiring that investment firms' common equity tier 1 capital or tier 1 capital at investment firms shall constitute at minimum a specific percentage of the value of their assets and off-balance sheet liabilities, without risk weighting, and rules for such calculations (unweighted tier 1 capital ratio).

Section 9-15a *Requirements on capital conservation buffers, systemic risk buffers, buffers for systemically important entities and countercyclical capital buffers*

(1) An investment firm shall have a capital conservation buffer consisting of common equity tier 1 capital which shall constitute 2.5 percentage points in addition to the minimum capital charge under section 9-15 subsection (1).

(2) An investment firm shall have a systemic risk buffer consisting of common equity tier 1 capital in addition to the minimum capital charge under section 9-15 subsection (1) and the capital conservation buffer under the preceding subsection. The ministry shall set the requirement for the systemic risk buffer. The requirement may in special cases be set higher or lower than 3 per cent.

(3) An investment firm which is systemically important shall have a buffer consisting of common equity tier 1 capital in addition to the minimum capital charge under section 9-15 subsection (1), a capital conservation buffer and a systemic risk buffer pursuant to the two preceding subsections. The ministry sets the requirement for such buffer. The ministry may by regulations set criteria for what entities are to be regarded as systemically important and set special activity rules and capital adequacy requirements for such entities.

(4) An investment firm shall have a countercyclical capital buffer consisting of common equity tier 1 capital which shall constitute between 0 and 2.5 percentage points in addition to the minimum capital charge under section 9-15 subsection (1) and the capital conservation buffer, the systemic risk buffer and the buffer for systemically important entities under the preceding subsections. The ministry sets the requirement for the countercyclical capital buffer. The requirement may in special circumstances be set higher than 2.5 percentage points.

(5) If an investment firm does not meet the four buffer requirements mentioned, it shall prepare a plan for increasing its common equity tier 1 capital adequacy, and it cannot pay dividends to shareholders or bonuses to employees without the consent of Finanstilsynet.

(6) The ministry may by regulations lay down provisions concerning conservation buffers, systemic risk buffers, buffers for systemically important entities and countercyclical capital buffers, concerning the calculation of the buffer requirements and concerning the consequences if the requirements are not met.

(7) The ministry may by regulations exempt investment firms from the provisions of the present section.

Section 9-15b *Liquidity and stable funding*

(1) An investment firm shall ensure that it at all times has sufficient liquid assets to meet its liabilities as they fall due.

(2) An investment firm shall have in place a documented liquidity strategy and ensure prudent liquidity management in accordance with policies established by the board of directors. The investment firm's management and control system shall be tailored to the nature, complexity and scale of its activities and establish methods for measuring liquidity risk.

(3) If Finanstilsynet finds the liquidity risk associated with the activities to be inappropriate Finanstilsynet may order measures to be taken to rectify the situation.

(4) The ministry may by regulations make further provision for the implementation of the provisions of the present section.

(5) The ministry may by regulations set minimum requirements for an investment firm's holding of liquid assets (liquidity reserve).

(6) The ministry may by regulations set minimum requirements for the composition of an investment firm's funding sources in order to ensure stable funding of its activities and mitigate risk related to meeting future borrowing needs (stable funding).

(7) The ministry may by regulations exempt investment firms from the provisions of the present section.

Section 9–16 *Assessment of overall capital needs and supervisory follow-up*

(1) An investment firm shall at all times maintain an overview of, and at regular intervals assess, the individual risks and the overall risk, including systemic risk, associated with its activities. An investment firm shall moreover at all times have own funds appropriate to the risk inherent in and the volume of the activities carried on by the firm.

(2) In the assessment of risk associated with the activities of the investment firm and of its overall risk exposure, account shall be taken of credit risk, liquidity risk, funding risk, market risk and currency risk, operational risk, systemic risk, and other risk associated with its individual business areas. The assessment shall include risk exposure resulting from the transfer of the firm's assets to, or the posting of such assets as collateral in favour of, other firms.

(3) An investment firm shall assess its capital needs in the short and longer term and how these capital needs can be met. Such assessment shall include the size, and the composition and distribution, of the capital in relation to the type and scale of the risk attending the business at all times and in relation to such risk as could arise.

(4) The board of directors shall monitor and manage the investment firm's overall risk and regularly assess whether the firm's management and control arrangements are tailored to the risk level and scale of its activities. The ministry may by regulations make provision for the monitoring, assessment, management and control of risk and capital need. The ministry may set higher capital requirements or impose activity restrictions to ensure that the firm's own funds are in accordance with its risk exposure.

(5) Finanstilsynet shall ensure that the investment firms under its supervision have in place appropriate and clear policies and procedures, in accordance with law and provisions laid down in pursuance of law, for assessing, managing and controlling risk and capital need. Finanstilsynet shall assess the risks to which the particular investment firm is, or may become, exposed and the risk that the investment firm represents to the financial system.

(6) Finanstilsynet may require investment firms to maintain own funds higher than the statutory minimum requirements; see the Financial Supervision Act section 4 first subsection no. 4.

(7) The ministry may by regulations lay down provisions concerning internal guidelines for assessing, managing and controlling risk and capital need.

Section 9–17 *Information requirement*

(1) An investment firm shall make available to the public information on its business, on the risk attending the firm and on its own funds in accordance with provisions laid down in regulations.

(2) The ministry may by regulations lay down provisions concerning:

1. investment firms' public disclosure of information,
2. requirements as to documentation, including provisions making exceptions from Act of 14 April 2000 No. 31 relating to the Processing of Personal Data (Personal Data Act).

Section 9–18 *Corrective measures and orders*

(1) Investment firms that do not meet requirements of sections 9–14, 9–15, 9-15a, 9-15b, 9–16 or 9–17 or of regulations pursuant thereto shall without delay take necessary measures to rectify the situation. Failure to comply with the requirements may cause Finanstilsynet to order an investment firm to:

1. modify the organisation, management and control of its business activity and the strategies, processes, policies and procedures upon which the operation of its business is based,
2. maintain a higher capital level than the sum of minimum requirements stated in section 9-15 and buffer requirements in section 9-15a,
3. modify or curtail its activities,
4. reduce the risk attending its activities, including products and systems.
5. reduce the difference in maturity between the liabilities and assets of the firm,
6. limit the scope of performance related remuneration,
7. use the profit for the year to increase the tier 1 capital ratio and not to pay dividend or interest on tier 1 capital.

(2) Finanstilsynet may issue an order under subsection (1) to a group of firms that are exposed to the same type of risk, or that entail the same type of risk for the financial system.

Section 9–19 *Exception from the Public Limited Companies Act section 8–1 and the Private Limited Companies Act section 8-1*

The Public Limited Companies Act section 8–1 and the Private Limited Companies Act do not apply to investment firms.

Section 9–20 *Maximum exposure to a single counterparty*

(1) An investment firm’s overall exposure to a single counterparty may at no time exceed a prudent level.

(2) The ministry may adopt regulations on maximum overall exposure to a single counterparty, including on the procedure for calculating on- and off-balance sheet items.

(3) The ministry may lay down provisions whereby the limit on maximum exposure to a single counterparty also applies to exposures to two or more counterparties in cases where the balance of influence or financial relations between them is such that financial problems of one counterparty may entail payment difficulties for the other counterparty.

Section 9–21 *Consolidation*

(1) The requirements of sections 9–14 and 9–20 shall be applied on a consolidated basis 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 entity as mentioned in no. 1, or
3. has a parent company, unless half or more of the activity of the group is not licensable and is not subject to the capital requirements of the present chapter or to corresponding capital requirements.

(2) The requirements of section 9–14 shall be applied on a consolidated basis where the investment firm:

1. holds a capital interest in another entity as mentioned in the Financial Institutions Act section 2a-2(h), or

2. is under common management with another entity as mentioned in the Financial Institutions Act section 2a-2(i). Finanstilsynet may by regulations or by administrative decision make exceptions from the first sentence.

(3) In case of consolidation of subsidiaries, consolidated accounts shall be based on the principle of full consolidation. In case of consolidation of non-subsidiaries, accounts shall be based on the principle of proportional consolidation.

(3) The ministry may make further provision concerning consolidation, including rules on what is to be regarded as a subsidiary or parent company under subsection (1).

III Cross border activity etc.

Section 9–22 *Branches etc.*

(1) Investment firms shall notify Finanstilsynet before establishing a branch in Norway. The manager of such a branch shall satisfy the requirements of section 9–9 subsection (1).

(2) An investment firm authorised to provide investment services may provide such services in another EEA state in accordance with the rules of section 9–23.

(3) An investment firm may after receiving authorisation from Finanstilsynet establish a branch or subsidiary outside the EEA.

(4) Subsection (1) first sentence and subsections (2) and (3) do not apply to credit institutions.

Section 9–23 *Notification of business in another EEA state*

(1) An investment firm that is not a credit institution and that wishes to carry on business in another EEA state shall notify Finanstilsynet accordingly.

(2) The notification shall contain the following information:

1. where the firm intends to carry on business, and
2. a programme of operations stating in particular the investment services it intends to provide and whether the firm intends to use tied agents.

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

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

(4) An investment firm or regulated market that operates an MTF and wishes to pursue such activity in another EEA state shall notify Finanstilsynet accordingly. The notification shall indicate where the undertaking intends to provide such arrangements. Finanstilsynet shall within one month of receiving such notification forward it to the competent authority in the host state. Finanstilsynet shall upon request and within a reasonable period forward details of the identity of established members and the participants to the competent authority in the host state.

(5) Where the investment firm intends to make use of tied agents, Finanstilsynet shall upon request and within a reasonable period forward details of the identity of the tied agents to the competent authority in the host state.

(6) When notified of business carried on directly from a place of business in Norway, Finanstilsynet shall within one month of receiving such notification forward it to the competent authority in the host state and inform the investment firm accordingly. The investment firm may provide the investment services concerned in the host state as from the date of notification.

(7) When notified of the establishment of a branch in another EEA state, Finanstilsynet shall within three months of receiving such notification forward it to the competent authorities in the host state and inform the investment firm accordingly. Finanstilsynet shall also forward details of any compensation scheme 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 conduct of business rules, the branch may be established and start operations. The same applies where no information has been received from the authorities of the host state within two months of their receipt of notification from Finanstilsynet.

(8) Forwarding to the host state authorities pursuant to subsection (7) shall not take place if Finanstilsynet 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. Finanstilsynet shall in such case inform the investment firm of the grounds for its decision within three months of Finanstilsynet's receipt of all information in the matter.

(9) In case of any change in particulars provided pursuant to subsections (1) to (5), the investment firm or regulated market operating the MTF shall notify Finanstilsynet and the competent authority 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.

(10) Finanstilsynet shall inform the host state authorities if changes are made in particulars which have been provided concerning compensation schemes whose purpose is to protect clients of the branch.

Section 9–24 *Investment firms with their head office in another EEA state*

(1) Sections 9–1 and 9–8 shall 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. Where a firm establishes further places of business in Norway, they shall be regarded as a single branch.

(2) Within two months of Finanstilsynet's receipt of notification from the authorities of another EEA state concerning establishment of a branch pursuant to subsection (1), Finanstilsynet shall prepare the supervision of the branch and inform the investment firm of the conditions, including the rules of business conduct, that apply to the pursuit of business in Norway. The branch may be established as soon as Finanstilsynet has provided the information mentioned, or at the latest two months after Finanstilsynet has received notification.

(3) As soon as Finanstilsynet has received notification from the authorities of another EEA state of cross-border activity pursuant to subsection (1), Finanstilsynet shall inform the investment firm of the conditions, including the conduct of business rules, which apply to the pursuit of business in

Norway. The investment firm may provide the investment services in question as from the date of Finanstilsynet's receipt of notification from the home state.

(4) In case of changes in the particulars of notifications received by Finanstilsynet pursuant to this section, section 9–23 subsection (7) applies equally to the investment firm's obligation to notify Finanstilsynet in writing.

Section 9–25 *Investment firms with their head office outside the EEA*

(1) An investment firm with its head office outside the EEA may be authorised by the ministry 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.

(2) The firm may be authorised to provide ancillary services as mentioned in section 2–1 subsection (2) provided it can carry on corresponding activity in its home state.

(3) Authorisation pursuant to subsections (1) and (2) may only be given to firms that are authorised to provide investment services and are subject to satisfactory supervision in their home state.

(4) Section 9–3 subsections (1) and (2) applies equally to applications for authorisation pursuant to subsection (1).

Section 9–26 *Application of the Securities Trading Act to foreign investment firms*

(1) For undertakings with their head office in another EEA state that provide investment services in Norway pursuant to section 9–24, application of this Act is confined to the following provisions and regulations pursuant thereto:

1. chapters 1 to 7,
2. sections 10–4 and 10–5, insofar as concerns financial instruments quoted on a Norwegian regulated market or issued by a Norwegian undertaking, and section 10–17,
3. chapters 12 to 14,
4. chapters 16 and 17.

For firms with their head office in another EEA state that provide investment services in Norway through a branch, sections 10–11, 10–12, 10–13, 10–18, 10–19 and 10–20 and regulations pursuant thereto, also apply.

(2) For firms authorised pursuant to section 9–25 the provisions of this Act apply, with the exception of:

1. section 9–10 where this is prescribed by Finanstilsynet and corresponding rules are prescribed by the law of the home state,
2. sections 9–22 subsections (2) and (3), sections 9–23 and 9–24, and chapter 16,
3. chapter 15 where this is prescribed by Finanstilsynet against the background of a supervision agreement with the home state authorities.

(3) The ministry may make exceptions from this section in cases where the firm's business activity is limited or where it is regulated by corresponding provisions laid down by the authorities of the firm's home state.

Section 9–27 *Application of the Securities Trading Act to foreign branches of Norwegian investment firms*

The ministry may make exceptions from section 10–4 in respect of business carried on by foreign branches of Norwegian investment firms. Exceptions may only be made in cases where the branch is subject to corresponding rules in the host state and on condition that the undertaking has satisfactory security for settlements. Section 8–1 subsection (3) applies to officers' and employees' own account trading in financial instruments.

IV Authorisation schemes for employees

Section 9-28 *Processing of personal data in connection with authorisation schemes for employees*

A trade organisation or associated legal entity which trains and authorises persons employed at investment firms, a tied agent, or the branch of a foreign undertaking that provides investment services in Norway, may process such data as mentioned in the Personal Data Act section 2 subsection 8b) as part of its assessment of whether an employee should be granted authorisation, deprived of authorisation or be issued with a warning

Chapter 10 Investment firms' business activity

I General provisions

Section 10–1 *Continuous conformity with conditions for authorisation*

Investment firms are required to organise their business activity in such a way that it conforms at all times with the rules of chapter 9 and the conditions set for the authorisation, and to inform Finanstilsynet of material changes in the assumptions underlying the authorisation.

Section 10–2 *Investment firms' right to carry on other business activity*

(1) An investment firm may not carry on business activity beyond that set out in section 9–1, section 9–6, or in an authorisation to carry on financing activity, unless such activities are naturally related to the investment services.

(2) Finanstilsynet may in special cases make exceptions from subsection (1).

(3) An investment firm may not:

1. carry unlimited liability in another undertaking,
2. hold assets in and participate in the operation of other business activity, or
3. wield such influence as mentioned in the Private Limited Companies Act section 1–3 subsection (2) or the Public Limited Companies Act section 1–3 subsection (2).

Section 10–3 *Employees' right to carry on business activity etc.*

(1) 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 management board, corporate assembly or supervisory board of an undertaking whose financial instruments are subject to organised trading or of the management company of a securities fund. Nor may the said employees have such influence as mentioned in the Private Limited Companies Act section 1–3 subsection (2) or the Public Limited Companies Act section 1–3 subsection (2) in such undertaking.

(2) Finanstilsynet may in special cases make exceptions from subsection (1) first sentence.

Section 10–4 *Disposal of financial instruments that the client does not own*

(1) An investment firm may only mediate and execute orders to sell financial instruments as mentioned in section 2-2 subsection (1) nos. 1 to 3 that the client does not own where the client has access to the financial instruments and the firm is assured timely delivery on the agreement date.

Section 10–5 *Securities lending*

(1) In the case of mediation of securities lending agreements the investment firm shall see to it that satisfactory collateral is provided for the loan. The collateral shall at all times correspond at least to the instruments' market value, with the addition of margin collateral pursuant to further rules laid down by the ministry.

(2) The requirement as to furnishing of collateral under subsection (1) applies equally where the investment firm lends financial instruments from its own portfolio.

(3) Loan agreements pursuant to subsections (1) and (2) and investment firms' securities lending agreements shall be standardised.

Section 10–6 *Investment firms' trade in derivatives*

(1) When mediating and trading in financial instruments as mentioned in section 2–2 subsection (1) no. 4, the investment firm shall ensure that it has satisfactory collateral for the fulfilment of its obligations. The ministry may lay down further rules on the provision of collateral.

(2) Subsection (1) applies equally to investment firms' trading on own account.

Section 10–7 *Trading in financial instruments that are registered with a securities depository*
Investment firms shall register transactions in registered financial instruments with a securities depository on the same day as the contract is entered into.

Section 10–8 *Clearing obligation*

Investment firms' trading in derivatives quoted on a regulated market shall take place through a central counterparty as mentioned in section 13–1.

Section 10–9 *Duty of confidentiality for investment firms and their employees*

(1) 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, except as otherwise prescribed in law or regulations made pursuant to law.

(2) Subsection (1) applies equally to anyone who performs work for the investment firm, even if the person concerned is not employed by the firm.

II Investor protection

Section 10–10 *Conflicts of interest*

(1) An investment firm is required to take all reasonable steps to identify conflicts of interest between the firm and its clients and between clients.

(2) If the measures taken under section 9–11 subsection (1) no. 2 are not sufficient to protect the client's interests in a satisfactory manner, the firm shall inform the client of possible conflicts of

interest. The investment firm may not undertake business on behalf of the client until the client has received such information.

(3) The ministry may make further regulations to implement this section.

Section 10–11 *Conduct of business rules*

(1) An investment firm shall carry on its business activities in accordance with the conduct of business rules. In so doing it shall safeguard the interests of clients and the integrity of the market in the best possible manner, and otherwise meet the requirements of the present section or of regulations pursuant thereto.

(2) An investment firm shall give clients and potential clients relevant information in an understandable form about:

1. the investment firm and the services it provides,
2. financial instruments and proposed investment strategies, including appropriate guidance on risk associated with investments in the instruments concerned or the strategies proposed,
3. trading systems and venues utilised by the investment firm,
4. costs and charges,

so that the client is in a reasonable position to understand the nature of and the risk attached to the investment service and the financial instruments offered, and thus be in a position to make an informed investment decision.

(3) Investment firms shall ensure that all information to clients or potential clients is correct, clear and not misleading. Marketing communications shall be clearly recognisable as such.

(4) When providing investment advice or active portfolio management, an investment firm shall obtain the necessary information regarding the client's knowledge and experience in the investment field concerned, his financial situation and his investment objectives so as to enable the firm to recommend to the client the investment services and financial instruments that are suitable for him.

(5) When providing investment services other than investment advice or active portfolio management, an investment firm shall ask the client to provide information regarding his knowledge and experience in the investment field concerned so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client. If the investment firm finds that the product or service is not appropriate to the client, the client shall be warned accordingly. If the client chooses not to provide the information that the investment firm is obliged to obtain, or where he provides insufficient information, the investment firm shall warn the client that this will make it impossible for the firm to determine what is appropriate for him.

(6) Subsection (5) does not apply to investment firms providing investment services that only consist of reception, transmission and execution of client orders, provided the following conditions are met:

1. the services must relate to shares admitted to trading on a regulated market or on an equivalent third country market, money market instruments, bonds or other debt instruments without derivative elements, UCITS or other non-complex financial instruments,
2. the services must be provided on the client's initiative,
3. the client must be clearly informed that in providing this service the investment firm is not required to assess the suitability of the instrument or service provided and that therefore he

does not benefit from the investor protection entailed by such requirement. This warning may be provided in a standardised format.

(7) The investment firm shall establish a client register that includes the documents agreed between the firm and the client, including documents that set out the terms on which the firm will provide services to the client. The register of the parties' agreed rights and obligations may be incorporated by reference to other documents or to public law regulation.

(8) The investment firm shall by means of a contract note or by other means give the client adequate reports on the services provided. These reports shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. Completed assignments shall be confirmed by contract note.

(9) Before undertaking business with an investor, an investment firm shall state what compensation is provided under the guarantee mentioned in section 9–12.

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

(11) This section and section 10–10 subsection (1) second sentence apply equally to the firm's employees and officers and to persons and undertakings who exercise such influence in the investment firm as mentioned in the Private Limited Companies Act section 1–3 subsection (2) or the Public Limited Companies Act section 1–3 subsection (2).

(12) The ministry may make supplementary regulations concerning the requirements set forth in the present section. The ministry may by regulations lay down further requirements in regard to documentation of the firms' investment advice.

Section 10–12 *Execution of orders on terms most favourable to the client*

(1) When executing clients' orders, an investment firm shall take all reasonable steps to obtain the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other relevant consideration.

(2) Investment firms shall have in place effective systems, procedures and arrangements for complying with the provision of subsection (1). Investment firms shall inter alia establish and implement a policy on execution of client orders.

(3) The order execution policy shall include, in respect of each class of instruments, information on the different execution venues utilised and the factors affecting the choice of venues. It shall at least include those venues that usually provide the best possible result for the execution of client orders.

(4) Before executing client orders, investment firms shall provide information to their clients on their order execution policy and shall obtain the prior consent of their clients to the execution policy. Where the order execution policy allows for client orders to be executed outside a regulated market or MTF, the investment firm shall obtain the prior express consent of their clients before proceeding to execute their orders outside a regulated market or MTF. Clients shall be notified of any material changes to arrangements as mentioned in subsection (2), including changes to their order execution policy.

(5) Investment firms shall monitor the arrangements established in keeping with subsection (2) in order to identify and correct any deficiencies. Inter alia they shall assess, on a regular basis, whether the execution venues included in the execution policy provide for the best possible result for the client or whether they need to make changes.

(6) At their clients' request, investment firms shall be able to demonstrate that they have executed clients' orders in accordance with the firm's order execution policy.

(7) The ministry may lay down supplementary regulations to the requirements set forth in this section.

Section 10–13 *Handling of client orders*

(1) Investment firms shall implement procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders relative to other client orders or the investment firm's trading on own account. These procedures and arrangements shall allow for the execution of comparable client orders in the order in which they are received.

(2) In the case of a client limit order in respect of shares admitted to trading on a regulated market which is not immediately executed due to prevailing market conditions, investment firms are, unless the client expressly instructs otherwise, required to take immediate measures to facilitate earliest possible execution by making the limit order public in a manner easily accessible to other market participants. The public disclosure obligation is deemed to be met by making the order available on a regulated market or an MTF.

(3) The ministry may lay down supplementary regulations to the requirements set forth in this section.

Section 10–14 *Transactions with eligible counterparties*

(1) Investment firms authorised to provide services as mentioned in section 2–1 subsection (1) nos. 1 to 3 may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under section 10–11, section 10–12 or section 10–13 subsection (1) in respect of those transactions or in respect of any ancillary service directly related to those transactions.

(2) The following are invariably deemed to be eligible counterparties:

1. investment firms,
2. credit institutions,
3. insurance companies,
4. securities funds and their management companies,
5. pension funds and their management companies,
6. other financial institutions,
7. entities as mentioned in section 9–2 subsection (2) nos. 7 to 9,
8. public bodies, including central banks and supranational organisations.

(3) The requirements of section 10–11, section 10–12 and section 10–13 subsection (1) shall however apply where an eligible counterparty requests this of the investment firm.

(4) The ministry may make supplementary regulations to this section, including regulations to extend the range of eligible counterparties, and may lay down special rules for such extension.

Section 10–15 *Provision of services through another investment firm*

(1) Where an investment firm transmits instructions to perform investment or ancillary services on behalf of a client to another investment firm, the investment firm which receives the instructions may rely on the client information given without approaching the client.

(2) The investment firm which transmits the instructions will remain responsible for the completeness and accuracy of the information transmitted, and for the appropriateness for the client of the recommendations or advice provided and otherwise in conformity with section 10–11.

(3) The investment firm which receives the instructions is obliged to perform the service or transaction, based on information and advice as mentioned in subsection (2), in accordance with all relevant provisions of chapter 10.

Section 10–16 *Tied agents*

(1) An investment firm may appoint tied agents for the purpose of promoting its services, soliciting business or receiving orders from clients and transmitting them, placing financial instruments and providing advice in respect of such financial instruments and services offered by that investment firm, provided the investment firm is itself authorised to provide such services. The activity of tied agents does not require authorisation under section 9–1. A tied agent may act on behalf of only one investment firm.

(2) The investment firm is responsible for all actions of a tied agent acting on behalf of the firm and shall when it appoints a tied agent ensure that it remains in compliance with its obligations under this Act. The investment firm is required to ensure that a tied agent always discloses the capacity in which he is acting when contacting any client or potential client. He must at least disclose the investment firm's identity, the services he provides as a tied agent, and the investment firm's full and unconditional responsibility for his activity as a tied agent. The information shall be given in writing, or by voice-recorded telephone call.

(3) Tied agents shall be registered in a public register which shall be maintained by Finanstilsynet. The register shall contain information on tied agents established in Norway, and on Norwegian investment firms' tied agents established in other EEA states where the use of tied agents is not permitted. Registration in Norway may only take place in cases where the investment firm confirms that its tied agents are fit and proper. Investment firms may only use tied agents who are registered in Norway or on a similar register in another EEA state. Where an investment firm's use of a tied agent ceases it shall notify Finanstilsynet accordingly.

(4) The ministry may make supplementary regulations to this section. The ministry may make further provision concerning tied agents and their activities.

Section 10-16a *Consideration of disputes by appeal board*

The Financial Institutions Act section 2-12b applies equally to investment firms.

III Market integrity and transparency

Section 10–17 *Obligation to make voice recordings*

Pursuant to further rules laid down by the ministry, investment firms are obliged to:

1. make voice recordings in connection with their provision of investment services and ancillary services, and
2. to retain voice recordings and other types of documentation related to such services.

Section 10–18 *Reporting of transactions*

(1) Investment firms shall as quickly as possible, and no later than the close of the following working day, report to Finanstilsynet or Finanstilsynet's designee details of transactions in any financial instruments quoted on a regulated market,

(2) The reports shall in particular include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution and the transaction prices and the identity of the investment firms concerned.

(3) The reports may be made by the investment firm itself, a third party acting on its behalf or by a trade-matching or reporting system approved by Finanstilsynet or by the regulated market or MTF through whose systems the transaction was completed.

(4) The ministry may make supplementary regulations concerning investment firms' reporting under this section, including who shall send and receive the reports, and may lay down further requirements on the contents of reports. The ministry may also extend the reporting obligation to include transactions in financial instruments not quoted on a regulated market.

Section 10–19 *Systematic internalisation*

(1) Investment firms shall notify Finanstilsynet upon commencement or cessation of systematic internalisation. Investment firms shall

1. publish firm quotes in shares admitted to trading on a regulated market for which there is a liquid market, or
2. in the case of shares admitted to trading on a regulated market for which there is not a liquid market, disclose quotes to their clients on request.

(2) The prices quoted under this section shall reflect the prevailing market conditions for the shares to which they relate. Investment firms may quote different prices for different sizes.

(3) The rules of this section apply to trading up to standard market size.

(4) The ministry may make further regulations on systematic internalisation.

Section 10–20 *Post-trade disclosure*

(1) Investment firms shall disclose information on transactions in shares admitted to trading on a regulated market or MTF that they conclude outside a regular market or MTF. The information shall be made public as close to real-time as possible in a manner easily accessible to other market participants.

(2) Disclosure shall at least include the volume and price and the time at which the transactions were concluded.

(3) The Act on Regulated Markets section 29 subsection (3) on delayed disclosure applies.

(4) The ministry may make supplementary regulations on investment firms' reporting under this section, and may extend the obligation under subsection (1) to include financial instruments other than shares.

Chapter 11 Operation of multilateral trading facilities

Section 11–1 *Trading and execution of transactions on an MTF*

(1) Anyone operating an MTF shall in addition to meeting the requirements of section 9–11:

1. have objective trading rules, including objective criteria for the efficient execution of orders,
2. have rules governing the financial securities that can be traded under the systems of the trading facility,
3. have rules, based on objective criteria, regarding access to the trading facility, see subsection (2),
4. ensure access to sufficient publicly available information to enable users to make an informed investment judgement, taking account of the type of user and type of financial instrument,
5. clearly inform the users of the trading facility of their responsibility for settlements,
6. ensure that a basis is laid for efficient and punctual completion of settlements on the MTF, and
7. immediately comply with any order from Finanstilsynet to suspend or remove a financial instrument from trading; see section 15–7 subsection (7).

(2) Investment firms, credit institutions and others may receive access to an MTF provided that they have adequate capital, an appropriate organisation and sufficient technical systems, and are otherwise considered fit to participate in trading in relation to the obligations entailed by such access.

(3) The requirements of sections 10–11, 10–12 and 10–13 do not apply to transactions on an MTF between persons as mentioned in subsection (2), or between such persons and the MTF. The requirements of sections 10–11, 10–12 and 10–13 apply however to clients of the persons mentioned.

(4) Where a transferable security that is admitted to trading on a regulated market is traded on an MTF without the issuer's consent, the issuer shall not be subject to disclosure obligations as a result of such trade.

Section 11–2 *Monitoring of compliance with the rules of the multilateral trading facility*

(1) Operators of an MTF shall establish effective arrangements and procedures for the regular monitoring of compliance by its users with its rules. Operators of an MTF shall monitor transactions under their systems in order to identify breaches of relevant laws and regulations, including the rules on market abuse in chapter 3, the facility's own rules and disorderly trading conditions.

(2) Operators of an MTF shall immediately report to Finanstilsynet any suspicion of significant breaches of relevant laws and rules, including rules on market abuse in chapter 3, the facility's own rules and disorderly trading conditions.

(3) Operators of an MTF shall assist Finanstilsynet in the event of suspicion of market abuse; see chapter 3. Such assistance shall be provided free of charge to Finanstilsynet.

(4) The ministry may by regulations lay down further rules on compliance monitoring at multilateral trading facilities.

Section 11–3 *Pre-trade transparency requirements for multilateral trading facilities*

(1) Operators of an MTF 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 admitted to trading on a regulated market. This information shall be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours.

(2) Finanstilsynet may exempt operators of an MTF from the obligations of subsection (1).

(3) The ministry may by regulations make provision concerning the disclosure of information on orders etc., including rules requiring disclosure of information on financial instruments other than shares which are admitted to trading on a regulated market, and on Finanstilsynet's power to grant exemption under subsection (2).

Section 11–4 *Post-trade transparency requirements for multilateral trading facilities*

(1) Operators of an MTF shall make public the price, volume and time of the transactions executed under its systems in respect of shares admitted to trading on a regulated market. Details of such transactions shall be made public, on a reasonable commercial basis, as close to real-time as possible.

(2) Subsection (1) does not apply to details of trades made public by a regulated market.

(3) Finanstilsynet may entitle operators of an MTF to delay public disclosure under subsection (1).

(4) The ministry may by regulations make concerning the disclosure of details of executed transactions, including rules requiring disclosure of information on financial instruments other than shares admitted to trading on a regulated market, and on Finanstilsynet's power to grant exemption under subsection (3).

Part 4 Clearing and settlement of transactions in financial instruments

Chapter 12 General provisions

Section 12–1 *Execution of orders*

Investment services as mentioned in section 2-1 subsection (1) no. 2 shall be provided in the name of the investment firm. The investment firm is responsible to the principal and to the party with whom it concludes an agreement for due performance of orders that it has executed. The investment firm is not responsible to the principal in cases where the principal has approved the other party beforehand.

Section 12–2 *Investment firm's right of security*

(1) An investment firm has the right to retain such financial instruments as it has purchased for a principal insofar as concerns claims arising from the assignment.

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

(3) A cover sale as mentioned in subsection (2) shall be effected at market price or a price that is reasonable in relation to the market situation.

Section 12–3 *General rules of invalidity*

In case of purchase or sale of financial instruments through an investment firm the ordinary rules of contract invalidity apply to the relationship between the purchaser and the seller.

Section 12–4 *Objection in case of delayed performance*

Where a party fails to honour his obligations by the agreed date the other party must, except as otherwise agreed, immediately notify the matter if he wishes to invoke such delay as a basis for terminating the agreement.

Chapter 13 Central counterparties

Section 13–1 *Conditions for carrying on activity as a central counterparty*

(1) Central counterparty operations may only be carried on by a central counterparty authorised by the ministry.

(2) A central counterparty shall be organised as a public limited company. The ministry may by regulations or individual decision make exceptions from this provision.

(3) Board members, the general manager and others participating in the actual management of a central counterparty shall have relevant qualifications and professional experience, be of good repute, and otherwise not have displayed improper conduct giving reason to presume that the position or office will not be discharged in a satisfactory manner. Any replacement of board members or general manager shall be notified to Finanstilsynet pursuant to section 9-9 third subsection.

(4) Any owner of a substantial holding in a central counterparty shall be deemed fit to ensure sound and prudent management of the undertaking. Section 9-10 is applicable in the event of changes in the shareholder structure.

(5) A central counterparty shall have a risk committee. The risk committee shall oversee the undertaking's risk management, and report to the board of directors. The ministry may by regulations make further provision regarding the risk committee's composition and tasks.

(6) The ministry may give a foreign central counterparty that has been authorised to conduct counterparty operations and is subject to satisfactory supervision in its home state authorisation to conduct counterparty operations in Norway. The ministry may by regulations or individual decision make exceptions from this provision in respect of foreign central counterparties.

Section 13–2 *Capital adequacy and liquidity*

(1) A central counterparty shall ensure that it at all times has sufficient security, financial resources and liquidity to fulfil its obligations.¹

¹ See section 2-6.

(2) A central counterparty shall have own funds in an amount equivalent to at least EUR 7.5 million. The ministry may by regulations stipulate what are to be regarded as own funds.

(3) A central counterparty shall on a continuous basis calculate and require the provision of sufficient security for the performance of contracts that it enters into as a party or otherwise guarantees the performance of.

(4) The ministry may by regulations or individual decision impose further requirements on central counterparties' security, financial resources and liquidity. Further, the ministry may by regulations make provision concerning the supervisory authorities' oversight and approval of models used by central counterparties to fulfil subsections (1) to (3) of this section.

Section 13–3 *Central counterparty activity*

(1) A central counterparty shall have in place satisfactory systems for the management of risk attending its activity.

(2) A central counterparty shall have clear, non-discriminatory and objective rules for participation in the counterparty arrangement.

(3) A central counterparty may only pursue activities that are naturally related to the conduct of counterparty activity. Finanstilsynet may order a central counterparty to keep related activities separate from its counterparty activity.

(4) The ministry may by regulations make further provision to the effect that, notwithstanding other legislation, a central counterparty may as part of its counterparty activity furnish a guarantee instead of entering as a party. The ministry may also by regulations make further provision regarding the organisation of a central counterparty's activity, including imposing requirements on the treatment of participants' and clients' assets, and to the effect that provisions of the Bankruptcy Act and the Satisfaction of Claims Act shall not apply to such participants' or clients' assets.

Section 13–4 *Confidentiality and information requirement*

(1) Employees, officers and other persons with determinative influence in a central counterparty shall treat as confidential any information about the personal or business circumstances of others which may come to their knowledge in the course of their work, except as otherwise prescribed in law or regulations.

(2) The duty of confidentiality under subsection (1) shall not prevent employees, officers or other persons with determinative influence in a central counterparty from supplying a regulated market with information necessary to enable the regulated market to discharge its obligations under the Act on Regulated Markets section 27.

(3) The ministry may by regulations prescribe exceptions from the confidentiality requirement under subsections (1) and (2), and may make further provision regarding the obligation to supply information, including rules regarding the purpose for which the information may be used, and also if and to what extent payment may be charged for expenses incurred in supplying the information. The ministry may by regulations also make provision regarding a central counterparty's obligation to publish information about its activity.

Section 13–5 *Participation in counterparty arrangements*

(1) Participation in a counterparty arrangement on behalf of clients is confined to investment firms, credit institutions or other undertakings engaged in business activity covered by section 2–1. The term counterparty arrangements means arrangements for direct access, through membership, participation or by other means, to services offered by central counterparties as part of their counterparty activity.

(2) The ministry may by regulations make further provision concerning Norwegian investment firms' and regulated markets' access to foreign counterparty arrangements.

(3) The ministry may by regulations make further provision concerning conditions for participation in counterparty arrangements, including concerning participants' treatment of clients' assets, and to the effect that provisions of the Bankruptcy Act and the Satisfaction of Claims Act shall not apply to such participants' or clients' assets.

Section 13–6 *Supplementary rules*

The ministry may by regulations impose further requirements on counterparty activity and make provision for revocation of authorisation to carry on activity as a central counterparty where this is deemed necessary in the interest of secure, orderly and efficient counterparty operations.

Chapter 14 Set-off of certain financial instruments

Section 14–1 *Scope*

This chapter applies to financial instruments as mentioned in section 2-2 subsection (5) and to agreements on currency trading. The ministry may by regulations provide that this chapter shall also apply to agreements concerning other financial instruments.

Section 14–2 *Set-off*

Agreements in writing between two parties whereby the parties' obligations pursuant to agreements as mentioned in section 14–1 are to be set off at market price either on a continuous basis or upon default may be brought to bear notwithstanding sections 7–3 and 8–1 of the Satisfaction of Claims Act.

Section 14–3 *Security furnished vis-à-vis a central counterparty*

Security for agreements as mentioned in section 14–1 that is furnished vis-à-vis a central counterparty in accordance with the rules applying to the central counterparty may not be set aside under section 5–7 of the Satisfaction of Claims Act.

Part 5 Supervision, sanctions etc

Chapter 15 Supervision

Section 15–1 *Supervision of trading in financial instruments*

(1) Responsibility for supervision of trading in financial instruments and of compliance with the legislation governing securities trading rests with the ministry.

(2) Responsibility for supervision of the activities of investment firms and central counterparties, and of compliance with the provisions of this Act, rests with Finanstilsynet. The ministry may delegate Finanstilsynet's supervision of compliance with sections 5–2 and 5–3, and with regulations made to supplement these provisions, to a regulated market.

(3) Finanstilsynet oversees that annual financial statements, management reports, half-yearly financial statements and other financial reporting by Norwegian issuers of transferable securities which are quoted or for which admission to quotation has been requested on a regulated market within the EEA, are in compliance with law or regulations. The ministry may adopt regulations concerning such oversight and measures to ensure that correct information is given in cases where the financial reporting is not in compliance with law or regulations. The ministry may also delegate Finanstilsynet's authority under this subsection or under provisions laid down pursuant to this subsection to a regulated market. Oversight under this subsection encompasses financial reporting by issuers having Norway as their home state.

(4) Where a regulated market has reason to presume that a party trading in financial instruments has employed unreasonable business methods, acted contrary to conduct of business rules or otherwise violated the provisions of this Act, it shall inform Finanstilsynet.

Section 15–2 Information requirement

(1) Investment firms and central counterparties are obliged to disclose to Finanstilsynet such information as may be required about matters related to their business and activities. The same applies to investment firms' tied agents. Investment firms are obliged to produce and in the event hand over for inspection records and voice recordings in accordance with section 9–11 subsection (1) no. 7 and section 10–17 and other documents related to their activities.

(2) Where circumstances arise entailing a risk that an undertaking as mentioned in subsection (1) will be unable to meet the stipulated capital requirements, or other circumstances arise which may entail substantial risk for the operation of the undertaking, the undertaking shall inform Finanstilsynet thereof immediately. Central counterparties shall in addition notify Finanstilsynet of other material changes of significance for the undertaking's licence.

(3) An investment firm shall, to such extent and in such manner as Finanstilsynet prescribes, report transactions in financial instruments that are traded on a regulated market within the EEA where such transactions have been executed through a branch or by cross border activities in another EEA state.

(4) Finanstilsynet may, notwithstanding the duty of confidentiality, require a securities depository to disclose to it such information as it deems necessary for supervisory purposes and to do so by such means as Finanstilsynet deems appropriate.

(5) An entity is obliged to disclose to Finanstilsynet such information as Finanstilsynet deems necessary to determine whether provisions laid down in or pursuant to this Act have been violated in relation to financial instruments issued by the undertaking.

(6) Auditors of investment firms and regulated markets are required to disclose to Finanstilsynet information on the activities of such entities upon request.

(7) Issuers as mentioned in section 15–1 subsection (3) as well as their officers, employees and auditor are obliged to disclose to Finanstilsynet such information about the particular issuer's circumstances as Finanstilsynet requires for supervisory purposes under section 15–1 subsection (3). Issuers as mentioned, their officers, senior employees and auditor shall notify Finanstilsynet of any financial reporting by the issuer which in their judgement fails to give a fair view in conformity with the relevant rules for financial reporting. The information and notification requirement

pursuant to this subsection applies notwithstanding the duty of confidentiality. The ministry may by regulations make further provision concerning the information and notification requirement under this subsection, and may delegate Finanstilsynet's authority pursuant to the first sentence to a regulated market authorised as a stock exchange and require the information and notification requirement pursuant to this subsection to be fulfilled vis-à-vis a regulated market authorised as a stock exchange.

(8) Finanstilsynet shall make persons required to disclose information aware of the extent of and limits on the information requirement.

Section 15–3 *Information requirement in case of suspicion of insider trading etc.*

(1) Where it suspects an infringement of chapters 3, 4, 5, 8, 9, 10 or 11, or of regulations pursuant thereto, any party may be ordered to disclose information requested by Finanstilsynet and to present documents, including information stored by electronic and other technical means and transcripts from storage media.

(2) The information requirement of subsection (1) does not apply to information which the person concerned would be barred from disclosing in criminal proceedings. However the information requirement applies without regard to:

1. the statutory confidentiality provisions which otherwise apply to income tax assessment authorities, other tax authorities and authorities responsible for supervising public regulation of commercial activities, and
2. the duty of confidentiality mentioned in the Electronic Communication Act section 2–9 with regard to information on contract-based secret telephone numbers or other subscription information and electronic communication addresses, and
3. the duty of confidentiality mentioned in the Electronic Communication Act section 2–9 with regard to information on network traffic data, provided dispensation from the duty of confidentiality has been granted. The ministry may grant such dispensation at the request of Finanstilsynet. In the assessment of whether dispensation should be granted, importance shall be attached to the interest of confidentiality and of disclosure. The ministry may by regulations make further provision concerning Finanstilsynet's and the ministry's case handling, appeal procedure and information to suspects and others affected by the order and the decision concerning dispensation, including rules on delayed information in exceptional cases.

(3) Information obtained pursuant to this section may only be used in the case for which it was obtained. The information may be requested to be given in writing or orally by a specific deadline and may be written down or stored as a voice recording. Anyone summoned for questioning has the right to be assisted by a lawyer.

(4) This section applies even if it has been decided to secure evidence under section 15–5 and applies equally where Finanstilsynet is requested, by the authorities of another state conducting supervision as mentioned in the Financial Supervision Act, to obtain information on the basis of suspicion of similar violation of the legislation of that state.

(5) Anyone has the right to refuse to answer questions or to hand over documents or items if such answer or handover may render the person liable to punishment or to a sanction akin to punishment. Finanstilsynet shall inform the person of this right.

(6) The ministry may by regulations lay down further rules on the content of the information requirement and on the treatment of surplus information.

Section 15–4 *Information requirement vis-à-vis the competent authority*

The competent authority responsible for supervising bids may require investment firms, undertakings and individuals to disclose information that may be of significance in relation to matters dealt with in chapter 6. Section 17–1 applies to the setting aside of the information requirement.

Section 15–5 *Securing of evidence*

(1) In seeking evidence Finanstilsynet may, where there is reasonable cause to assume that provisions of chapter 3, see regulations pursuant to such provisions, have been infringed, or where it is necessary in order to fulfil Norway's obligations under agreements with other states:

1. demand access to any premises, properties and other storage areas where evidence of infringement may be found,
2. demand access to homes if there is particular cause to assume that evidence is being kept there,
3. confiscate items, including copies of documents and other information, and information stored by electronic and other technical means, which may be significant as evidence for further examination, and to seal business premises, books, business documents or technical storage media for the duration of the investigation and as long as deemed necessary.

(2) Petitions for authorisation to secure evidence shall be presented by Finanstilsynet to the district court in the jurisdiction where it is most practical to do so. The court shall make a formal decision before securing of evidence can commence. The individual to whom the petition is addressed shall not be notified of the petition or decision. An appeal against the decision shall not have postponing effect. The Criminal Procedure Act sections 200 and 201 first subsection, sections 117 to 120, see sections 204, 207 to 209, 213 and chapter 26 and the Public Administration Act section 15 second and third subsections, apply insofar as appropriate.

(3) Finanstilsynet may demand police assistance to implement a decision to secure evidence.

(4) Where there is no time to await a court decision, Finanstilsynet may request the police to seal off areas where evidence may be located until such time as the court's decision is available.

(5) The ministry may issue further regulations regarding the securing of evidence and treatment of surplus information.

Section 15–6 *Finanstilsynet's duty of confidentiality*

(1) Finanstilsynet's board members and officers, including persons mentioned in the Financial Supervision Act section 2 fifth subsection, are subject to a duty of confidentiality pursuant to the Financial Supervision Act section 7 first subsection.

(2) Where supervision gives cause to suspect that someone has suffered or will suffer loss as a result of non-compliance with provisions of or pursuant to law, Finanstilsynet may inform that person of the circumstance in question.

(3) Whoever performs work or service for Finanstilsynet or the ministry must not disclose to unauthorised persons information about measures or sanctions related to contravention of

provisions of chapters 3, 4 or 5 of this Act, if publication of such information may lead to a serious disturbance in financial markets or cause disproportionately large damage to the involved parties.

Section 15–7 Orders, etc.

(1) Finanstilsynet may issue an undertaking as mentioned in section 15–1 subsection (2) with a corrective order if the undertaking acts in contravention of law or regulations pursuant to law. A corrective order may also be made where an investment firm acts contrary to internal guidelines and instructions as mentioned in section 9–11. The same applies if the management or board of directors of an investment firm fail to meet the requirements as to good repute and experience prescribed in section 13–1 subsection (3) and sections 9–8 subsection (2) and 9–9.

(2) Subsection (1) applies equally where Finanstilsynet is informed by the supervisory authorities of another EEA state that a Norwegian investment firm has violated rules governing the firm's business activities in the country concerned. Finanstilsynet shall in such case inform the competent authority of the corrective orders made.

(3) Finanstilsynet may prohibit investment firms from carrying on business activities not deemed to be satisfactorily regulated by law, regulations pursuant to law or internal guidelines and instructions as mentioned in section 9–11 where such activities may expose the firm or its clients to unwarrantably large risk. Finanstilsynet may also order that such activities shall only take place on certain conditions.

(4) Where a shareholder with a qualifying holding is deemed unfit to ensure sound and prudent management of the undertaking, or a shareholder has omitted to notify Finanstilsynet as required by section 9–10 subsections (2) or (3), or by section 13-1 subsection (4), or acquires shares in contravention of Finanstilsynet's refusal pursuant to section 9–10 subsection (4) or section 13-1 subsection (4), Finanstilsynet may make an order that prohibits the exercise of voting rights attached to such shares or that requires that the shares be disposed of as prescribed in the Act on Regulated Markets section 35 subsection (4).

(5) Finanstilsynet may order fulfilment of the information and notification requirement in section 15–2 subsection (7). The Financial Supervision Act section 10 second subsection applies.

(6) Where Finanstilsynet has cause to assume that someone is acting in violation of this Act or of provisions pursuant thereto, Finanstilsynet may order the person concerned to bring the violation to a halt. The order may include any measure necessary to that end.

(7) Finanstilsynet may order a temporary or permanent halt to trading in certain financial instruments if called for on special grounds.

(8) Finanstilsynet may order an undertaking as mentioned in section 15-1 subsection (3) to procure the documentation that Finanstilsynet requires in order to perform oversight under section 15-1 subsection (3). The Financial Supervision Act section 10 second subsection applies.

Section 15–8 Appeal board

(1) The ministry may by regulations provide that an appeal board shall decide appeals against orders made under provisions laid down pursuant to section 15–1 subsection (3).

(2) The Public Administration Act is applicable to the activity of the appeal board. The ministry may make further provision concerning periods for appeal, the contents of an appeal, appeal reply and oral proceedings and concerning the composition and activity of the appeal board.

(3) The appeal board's expenses on handling appeals under subsection (1) shall be met by Finanstilsynet and apportioned among issuers of transferable securities quoted on a regulated market in the EEA having Norway as their home state. The ministry shall fix the members' remuneration.

(4) A fee may be charged for handling an appeal as indicated in subsection (1). The ministry may make further provision concerning when a fee shall be charged, the size of such fees and their collection.

Section 15–9 *Exchange of information with other supervisory authorities*

(1) Finanstilsynet shall forward reports received in accordance with section 10–18 to

1. authorities of other EEA states, provided they are the supervisory authority in respect of the most relevant market for the financial instruments to which the reports relate,
2. the supervisory authorities of the investment firm's home state, unless these authorities do not wish to receive such information.

(2) The ministry may make regulations on the exchange of information under this section, and on what shall be considered to be the most relevant market under subsection (1) no.1.

Chapter 16 Supervision of investment firms with their head office in another EEA state

Section 16–1 *Information requirement*

(1) Finanstilsynet may for statistical purposes require an investment firm that provides investment services in accordance with section 9–24 to submit reports on its activities.

(2) Finanstilsynet may require investment firms as mentioned in subsection (1) to furnish such information as Finanstilsynet deems necessary for the purpose of checking their compliance with the rules governing their activities in Norway.

Section 16–2 *On-site inspection*

(1) After notifying Finanstilsynet beforehand the competent authorities in the investment firm's home state may, in cooperation with Finanstilsynet, undertake on-site inspection of a branch established in accordance with section 9–24. When requested by the competent authorities of the home state, Finanstilsynet may undertake such inspection as mentioned.

(2) Subsection (1) does not prevent Finanstilsynet from carrying out such on-site inspection as is deemed necessary for the purpose of checking a branch's compliance with the rules governing its activities in Norway.

Section 16–3 *Orders regarding corrective measures etc*

(1) Finanstilsynet shall issue an investment firm which provides investment services pursuant to section 9–24 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.

(2) Finanstilsynet may take measures to prevent further contraventions if an order pursuant to subsection (1) is not complied with.

(3) Before Finanstilsynet makes an order pursuant to subsection (1), the supervisory authorities of the investment firm's home state shall be notified and given an opportunity to take measures to bring the unlawful circumstance to an end.

(4) Where it is necessary for the purpose of protecting the interests of investors and others to whom services are provided by the investment firm, Finanstilsynet may take necessary measures without such notification as mentioned in subsection (3).

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

Chapter 17 Sanctions

Section 17–1 *Cumulative daily fine etc*

(1) The takeover supervisory authority may impose on an undertaking or person who neglects its/his duties under chapter 6 a cumulative daily fine which shall run until the circumstance has been rectified.

(2) The takeover supervisory authority shall fix the size of the fine. The fine shall accrue to the Treasury.

(3) An accrued fine falls due for payment upon demand and is enforceable by distraint.

(4) In the event of violation of obligations pursuant to chapter 7 or regulations pursuant thereto, the competent prospectus authority may impose a cumulative daily fine pursuant to further rules made by the ministry.

Section 17–2 *Surrender of gain*

(1) Where unlawful gain is obtained by negligent or wilful violation of sections 3–3 subsection (1); 3–4; 3–6; 3–7; 3–8; 3–9; 3–10; 3-14, 8–2 to 8–6; 9–5; 10–2; 10–3; 10–8 subsection (1), 10–11 or 17-5, see regulations issued pursuant to these provisions, 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 cannot be established, the amount shall be fixed on a discretionary basis.

(2) 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.

(3) Finanstilsynet may order 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. A period of up to two months is allowed in which to decide whether or not to accept the decision. Acceptance of the decision provides a basis for distraint. If the decision is not accepted, Finanstilsynet may within three months of the expiry of the period allowed 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.

(4) A deduction shall be made in the claim for surrender of gain in respect of the amount that the liable party has by judgment been ordered to repay to the injured party. The same applies if the liable party has made such repayment beforehand and proves that repayment has taken place. Where a judgment as mentioned in the first sentence is handed down after the gain has been surrendered, and the liable party 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.

(5) 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) apply insofar as appropriate.

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

Section 17-3 Penalties

(1) Anyone who wilfully or through negligence violates section 3-3 subsection (1) or section 3-8, see regulations pursuant to the latter provision, shall be punished by fine or by imprisonment not exceeding six years.

(2) A fine or imprisonment not exceeding 1 year shall be handed down to anyone who wilfully or through negligence:

1. violates sections 3-4, 3-5, 3-7, 3-11, 3-14, 7-2, 7-3, 7-7, 7-10, 8-1 to 8-7, 9-1, 9-6, 9-11 subsection (1) no. 7, 10-2 to 10-9, 10-17, 10-18, 13-1 subsection (1), 13-4, 15-2, 15-3 or 17-5, see regulations pursuant to these provisions,
2. violates section 3-6 if inside information is present in the undertaking,
3. gives misleading or incorrect information in a prospectus,
4. advertisements etc., as mentioned in sections 7-13 and 7-15,
5. violates the obligation under section 9-11 subsections (3) and (4) to keep financial instruments and assets belonging to the investor separate from those of the undertaking,
6. fails to comply with a request under section 15-5 or an order under section 15-7, or
7. is guilty of gross or repeated violation of section 3-9, section 3-10, section 4-1, section 5-2, section 5-3 or section 10-11; see regulations made pursuant to these provisions.

(3) A fine shall be handed down to anyone who grossly or repeatedly violates, wilfully or through negligence, sections 4-2 or 4-3 subsection (1) or (2), see regulations pursuant to these provisions, or to anyone who wilfully or through negligence violates section 4-3 subsections (3) or (4); see regulations pursuant to these provisions.

(4) Complicity is subject to the same penalties. Violation of subsections (2) and (3) is a misdemeanour irrespective of the size of the punishment.

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

Section 17-4 Violation penalty

(1) In the case of wilful or negligent violation of section 4-1, section 4-2 or section 4-3 subsection (1) or (2) or of regulations pursuant to these provisions, Finanstilsynet may impose a violation penalty. This penalty is also applicable to abetting. The same applies to attempted violations; see Penal Code sections 49 and 50.

(2) Finanstilsynet may impose a violation penalty on an undertaking as mentioned in section 15–1 subsection (3) whose financial reporting is not in conformity with law or regulations, where the violation was committed wilfully or through negligence. An appeal against such decision shall be decided in accordance with the rules of section 15–8.

(3) Finanstilsynet may impose a violation penalty in case of wilful or negligent violation of the provisions of sections 5–2 or 5–3 and of regulations made to supplement these provisions. Subsection (1) second and third sentences applies. Where Finanstilsynet's authority to supervise compliance with sections 5–2 and 5–3 is delegated to a regulated market in accordance with section 15–1 subsection (2), the regulated market concerned may impose a violation penalty under this subsection. An appeal against a decision handed down by a regulated market shall be decided in accordance with the rules of the Act on Regulated Markets section 41. The provision of section 15–6 subsection (3) applies equally to regulated markets.

(4) In the event of violation of obligations under chapter 7 or regulations adopted pursuant to chapter 7, the competent prospectus authority may impose a violation penalty.

(5) When the size of a violation penalty is assessed, importance shall in particular be attached to the scale and effects of the violation as well as the degree of guilt found. Violation penalties accrue to the Treasury.

(6) The final decision on a violation penalty is enforceable by distraint.

(7) Action may not be brought against a decision handed down under this section until the party has utilised the right of appeal and appeal has been decided by the appeal authority. Action may however invariably be brought where six months have elapsed since the date the declaration of appeal was submitted for the first time, and the absence of a decision by the appeal authority is not the result of negligence on the part of the appellant.

(8) Where the Norwegian National Collection Agency is ordered to collect penalties as mentioned in subsections (1) to (4), it may do so by deduction from wages or similar benefits pursuant to the Satisfaction of Claims Act section 2-7. The Collection Agency may also collect a claim by creating a security interest in respect of the claim provided the security interest can be perfected by registration or by notification to a third party, see the Mortgage Act chapter 5, and the execution proceedings can be held at the offices of the Collection Agency in accordance with the Enforcement Act section 7-9 first subsection.

Section 17-5 *Temporary prohibition of the sale of financial instruments not owned by the seller*
Finanstilsynet may temporarily prohibit the sale of financial instruments not owned by the seller in market conditions where such sale may have effects that are liable to disrupt financial stability or the integrity of the market. A temporary prohibition order shall state the period of the prohibition, which may not exceed six months. The order may be extended by a new order for up to six months at a time. Finanstilsynet may decide that a temporary prohibition can include derivative contracts with effects as mentioned in the first sentence.

Part 6 Commencement, transitional rules and amendments to other Acts

Chapter 18 Commencement and transitional rules

Section 18–1 *Commencement*

This Act comes into force as and when the King decides. The King may give effect to individual provisions at different times. The King may lay down commencement dates for the provisions of sections 5–5 and 5–6 of the Act.

Section 18–2 *Transitional rules*

(1) Authorisations under Act of 19 June 1997 No. 79 on Securities Trading (Securities Trading Act) sections 6–1, 7–1 and 8–2 remain in effect. Undertakings with such authorisations must organise their business activity in accordance with further rules laid down in regulations.

(2) Section 6–6 subsection (1) does not apply to shareholders who upon commencement of the Act came under the exception set forth in Act of 19 June 1997 No. 79 on Securities Trading (Securities Trading Act) section 4–6 subsection (2) no. 2 and who after admission to stock exchange trading have uninterruptedly owned shares representing more than 40 per cent of the votes.

(3) Section 6–6 subsection (2) applies to shareholders who cross the mandatory bid thresholds after commencement of the Act. Section 6–6 subsection (2) nonetheless applies to

1. anyone owning shares representing between 1/3 and 40% of the votes in the company upon commencement of the Act,
2. anyone who prior to commencement of the Act crossed the mandatory bid thresholds of 40% in such a manner as not to trigger the mandatory bid obligation and therefore has not launched a mandatory bid,
3. anyone who as of 1 December 1997 owned shares representing between 40% and 45% of the votes, and who has uninterruptedly owned shares representing more than 40% of the votes up to commencement of the Act without launching a bid in accordance with the mandatory bid rules.

(4) The ministry may by regulations make further transitional rules.

(5) Regulations made under Act of 19 June 1997 No. 79 on Securities Trading (Securities Trading Act) apply until otherwise provided, also after the present Act has come into force.

Chapter 19 Amendments to other Acts

Section 19–1 *Amendments to other Acts*

The following amendments to other Acts will apply as from the commencement of the present Act: