

# Regulations and guidelines 14/2013 Third-country members

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## Legal nature of regulations and guidelines

### Regulations

Financial Supervisory Authority (FIN-FSA) regulations are presented under the heading 'Regulation' in FIN-FSA's regulations and guidelines. FIN-FSA regulations are binding legal requirements that must be complied with.

FIN-FSA issues regulations only by virtue of and within the limits of legal provisions that entitle it to do so.

### Guidelines

FIN-FSA interpretations of the contents of laws and other binding provisions are presented under the heading 'Guideline' in FIN-FSA's regulations and guidelines.

Also recommendations and other operating guidelines that are not binding are presented under this heading, as are FIN-FSA's recommendations on compliance with international guidelines and recommendations.

The formulation of the guideline shows when it constitutes an interpretation and when it constitutes a recommendation or other operating guideline. A more detailed description of the formulation of guidelines and the legal nature of regulations and guidelines is provided on the FIN-FSA website.

[fin-fsa.fi](http://fin-fsa.fi) > Regulation > Legal framework of FIN-FSA regulations and guidelines

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# 1 Scope of application and definitions

## 1.1 Scope of application

- (1) These regulations and guidelines shall apply to the following supervised entities referred to in the Act on the Financial Supervisory Authority (878/2008):
- stock exchanges
  - credit institutions providing investment services
  - investment firms
  - Finnish branches of foreign credit institutions authorised in a non-EEA state (branches of third-country credit institutions) which provide investment services
  - Finnish branches of foreign investment firms authorised in a non-EEA state.

## 1.2 Definitions

For the purposes of these regulations and guidelines, the following definitions shall apply:  
(Issued on 23.1.2018, valid from 1.2.2018)

- (2) *Stock exchange* means the operator of a regulated market referred to in chapter 1, section 2, paragraph 7 of the Act on Trading in Financial Instruments.
- (3) *Operator of a multilateral trading facility* means an entity referred to in chapter 1, section 2, paragraph 12 of the Act on Trading in Financial Instruments.
- (4) *Third country* means a state other than an EEA member state, as referred to in chapter 1, section 2, paragraph 26 of the Act on Trading in Financial Instruments.
- (5) *Member* means an investment service provider or another person to whom a stock exchange or an operator of a multilateral trading facility grants a permission to trade on the trading venue in question, as referred to in chapter 1, section 2, paragraph 15 of the Act on Trading in Financial Instruments.
- (6) *Investment service provider*, as referred to in chapter 1, section 2, paragraph 14 of the Act on Trading in Financial Instruments, means an investment firm and a foreign EEA investment firm referred to in the Act on Investment Services, a credit institution and a foreign EEA credit institution referred to in the Act on Credit Institutions that provides investment services or conducts investment activities. (Issued on 13.9.2021, valid from 1.1.2022)
- (7) *Direct electronic access* means an arrangement referred to in chapter 3, section 19 of the Act on Trading in Financial Instruments where an investment service provider acting as a member permits a client to use its trading code so that the client can electronically transmit orders relating to a financial instrument directly to the trading venue. (Issued on 13.9.2021, valid from 1.1.2022)

- (8) *Membership applicant* means a third-country investment service provider or another person as referred to in chapter 3, section 15, subsection 3 and chapter 5, section 19, subsection 2 of the Act on Trading in Financial Instruments, applying for a membership rights from a stock exchange or an operator of a multilateral trading facility. *(Issued on 13.9.2021, valid from 1.1.2022)*
- (9) *Applicant for direct electronic access* means an EEA investment service provider acting as a member, as referred to in chapter 3, section 15, subsection 1 and chapter 5, section 19, subsection 2 of the Act on Trading in Financial Instruments that is applying for a permission from a stock exchange or an operator of a multilateral trading facility to provide direct electronic access to its client, which is a third-country investment service provider or another person, as referred to in chapter 3, section 19, subsection 1 of the Act on Trading in Financial Instruments. *(Issued on 13.9.2021, valid from 1.1.2022)*

## 2 Legislative background and international recommendations

### 2.1 Legislation

The following acts are related to the matters addressed in these regulations and guidelines:

- Act on Trading in Financial Instruments (1070/2017).

### 2.2 European Union Directives

The following European Union Directives are closely related to the matters addressed in these regulations and guidelines: *(Issued on 23.1.2018, valid from 1.2.2018)*

- Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU; OJ L 173, 12.6.2014, p. 349.

### 2.3 FIN-FSA's regulatory powers

FIN-FSA's power to issue binding regulations on the subject is based on the following legal provisions: *(Issued on 23.1.2018, valid from 1.2.2018)*

- Chapter 3, section 36, subsection 2 and chapter 5, section 18 of the Act on Trading in Financial Instruments.

### 3 Objectives

- (1) The purpose of these regulations and guidelines is to define the conditions subject to which a stock exchange or an operator of a multilateral trading facility may grant the rights of a member to a third-country investment service provider or another person. In addition, these regulations and guidelines define the conditions subject to which a stock exchange or an operator of multilateral trading facility may grant a member, as referred to in chapter 3, section 15, subsection 1 and chapter 5, section 19, subsection 2 of the Act on Trading in Financial Instruments, a permission to provide direct electronic access to a third-country investment service provider or another person. *(Issued on 13.9.2021, valid from 1.1.2022)*
- (2) The objective of these regulations and guidelines is to ensure smooth and reliable trading as well as settlement of transactions. Another objective is to fulfil the requirement provided in chapter 3, section 36, subsection 2 and chapter 5, section 18 of the Act on Trading in Financial Instruments to secure FIN-FSA's right to obtain information on the clients of a member and their transactions. *(Issued on 23.1.2018, valid from 1.2.2018)*

## 4 Requirements applying to third-country members and users of direct electronic access

- (1) In accordance with chapter 3, section 15, subsection 3 of the Act on Trading in Financial Instruments, the stock exchange may grant the rights of a member to a third-country investment service provider or another person if the applicant fulfils the requirements laid down in the law, FIN-FSA regulations and the rules of the stock exchange or multilateral trading facility. In accordance with chapter 5, section 19, subsection 2 of the Act on Trading in Financial Instruments, the rules on access to a multilateral trading facility must meet the requirements provided in chapter 3, section 15 of the Act. *(Issued on 23.1.2018, valid from 1.2.2018)*
- (2) In accordance with chapter 3, section 19, subsection 1 of the Act on Trading in Financial Instruments, a foreign investment service provider or another person may operate as a client using direct electronic access if it fulfils the requirements laid down in the law, FIN-FSA regulations and the rules of the stock exchange. In accordance with chapter 3, section 19, subsection 2 of the Act on Trading in Financial Instruments, the stock exchange shall ensure that members assess the suitability of their clients for the use of the arrangement referred to in subsection 1. *(Issued on 13.9.2021, valid from 1.1.2022)*
- (3) In accordance with chapter 5, section 19, subsection 2 of the Act on Trading in Financial Instruments, the rules on access to a multilateral trading facility must meet the requirements provided in chapter 3, section 19 of the Act. *(Issued on 13.9.2021, valid from 1.1.2022)*
- (4) In accordance with chapter 3, section 36, subsection 2 and chapter 5, section 18 of the Act on Trading in Financial Instruments, FIN-FSA will issue more detailed regulations on the prerequisites under which the stock exchange or operator of multilateral trading facility may grant the rights of a member to a third-country investment service provider or another person. In addition, FIN-FSA will issue more detailed regulations on the prerequisites under which a foreign investment service provider or another person may operate as a client with direct electronic access. By virtue of the provisions above, FIN-FSA provides the following regulations. *(Issued on 13.9.2021, valid from 1.1.2022)*

### REGULATION (paragraphs 5–14)

- (5) The stock exchange or operator of multilateral trading facility must examine the fitness and propriety, experience and other appropriateness of the member applicant's owners and management, the arrangement of the anticipated activities and the applicant's background information in order to assess that the participation of the applicant in trading will not endanger the integrity of trading. A person shall not be considered reliable where he or she has been sentenced to imprisonment during the five years preceding the assessment, or to a fine during the three years preceding the assessment, for a criminal offence that can be considered to indicate the applicant's obvious unfitness or has otherwise through previous action proved to be obviously unfit for ownership or to be in the management of the applicant company. *(Issued on 13.9.2021, valid from 1.1.2022)*
- (6) The stock exchange or operator of multilateral trading facility must ensure that a member applicant has adequate financial and other resources to fulfil the obligations arising from trading in financial instruments. *(Issued on 13.9.2021, valid from 1.1.2022)*



- (7) The stock exchange or operator of multilateral trading facility must ensure that an applicant for direct electronic access examines the information specified in paragraphs 5 and 6 on the third-country investment service provider or another person before direct electronic access is granted and thereafter via periodic reviews. *(Issued on 13.9.2021, valid from 1.1.2022)*
- (8) Regulation applicable to an investment service provider applying for a membership or to a client using direct electronic access must correspond to internationally accepted recommendations on the supervision of securities markets and the prevention of criminal abuse of the financial system. *(Issued on 13.9.2021, valid from 1.1.2022)*
- (9) The stock exchange or operator of multilateral trading facility must ensure that FIN-FSA has the right to obtain the information required in the supervision of the clients of an investment service provider applying for a membership and of their transactions.
- (10) The stock exchange or operator of multilateral trading facility must ensure that FIN-FSA has the right to obtain the information required in the supervision of the transactions of a third-country client and its clients, if any, using direct electronic access. *(Issued on 13.9.2021, valid from 1.1.2022)*
- (11) The stock exchange or operator of multilateral trading facility must inquire from FIN-FSA whether there is an adequate agreement on the exchange of information in place between FIN-FSA and the competent authority of the investment service provider, or correspondingly, an adequate agreement on the exchange of information between FIN-FSA and the competent authority of the country from which the other person applying for a membership or that is using direct electronic access will conduct its trading. *(Issued on 13.9.2021, valid from 1.1.2022)*
- (12) The stock exchange or operator of multilateral trading facility must require a consent from the member applicant that it will disclose to FIN-FSA any requested information on itself and its clients that is required for supervision. *(Issued on 13.9.2021, valid from 1.1.2022)*
- (13) The stock exchange or operator of multilateral trading facility must require a consent from the applicant for direct electronic access that it will disclose to it and FIN-FSA any requested information on its third-country clients using direct electronic access that is required for supervision. *(Issued on 13.9.2021, valid from 1.1.2022)*
- (14) Another person applying for a membership or using direct electronic access may only be granted the right to trade on its own account. *(Issued on 13.9.2021, valid from 1.1.2022)*

**GUIDELINE (paragraph 15)**

- (15) According to FIN-FSA's interpretation, in making the assessments referred to in paragraphs 5 and 6, the stock exchange or operator of multilateral trading facility must obtain at least the following background information on the member applicant, in addition to other information required by it. According to FIN-FSA's interpretation, the stock exchange or operator of multilateral trading facility must ensure that the applicant for direct electronic access must obtain, in accordance with paragraph 7, at least the following background information on clients using the direct electronic market access, to complete the assessment referred to in paragraphs 5 and 6. *(Issued on 13.9.2021, valid from 1.1.2022)*
- Current Articles of Association and an excerpt from the Trade Register or comparable documents.

- Report on owners whose direct or indirect holdings amount to at least one-tenth of the voting rights conferred by all the shares.
- Report on the members of the board of directors and the managing director or comparable persons.
- Financial statements for the most recently ended financial period. If the most recent financial statements have been prepared earlier than six months before the filing of the application, a statement signed by the Board of Directors or similar body of the company on the impact of material events after the financial period on the financial position and result of the company.
- A description of the organisation, division of duties and responsibilities and a statement on the number of personnel.
- A statement concerning a potential authorisation, if any, and competent authority supervising the activities of the company.
- A statement on clearing and settlement arrangements for securities transactions.
- A statement on the investment service provider's internal principles and guidelines for the prevention of the use of its services in criminal activities (such as customer due diligence as well as anti-money laundering and terrorist financing guidelines and principles). *(Issued on 13.9.2021, valid from 1.1.2022)*

## 5 Reporting to FIN-FSA

By virtue of chapter 3, section 36, subsection 2 and chapter 5, section 18 of the Act on Trading in Financial Instruments, the FIN-FSA provides the following regulation. *(Issued on 23.1.2018, valid from 1.2.2018)*

### REGULATION (paragraph 1-2)

- (1) The stock exchange or operator of multilateral trading facility must notify FIN-FSA of the acceptance of a third-country investment service provider or another person as a member before it commences trading.
- (2) The stock exchange or operator of multilateral trading facility must notify FIN-FSA before the commencement of trading if it accepts the application by an applicant for direct electronic access to provide direct electronic access for third-country investment service providers or other persons. In addition, the stock exchange or operator of multilateral trading facility must notify FIN-FSA, after the acceptance referred to above, the names and contact information of third-country clients using direct electronic access. *(Issued on 13.9.2021, valid from 1.1.2022)*

## 6 Revision history

These regulations and guidelines have been amended after their entry into force as follows:

*Issued on 23.1.2018, valid from 1.2.2018*

- references to regulation in chapters 1.2, 2.1, 2.3, 3 and 4 amended to correspond to the provisions of the new Act on Trading in Financial Instruments (1070/2017)

*Issued on 13.9.2021, valid from 1.1.2022*

- conditions under which a third-country investment service provider or another person may use direct electronic access introduced by amending chapters 1.2, 3, 4 and 5
- the dates of issue and entry into force of chapter 2.3 were not amended, since the regulatory powers are included in existing provisions in chapter 3, section 36. subsection 2 and chapter 5, section 18 of the Act on Trading in Financial Instruments

The additions are related to amendments made to the Act on Trading in Financial Instruments by Act (530/2021).