RECOMMENDATION NO. 2

The investment firm's acquisition of transferable securities in connection with assignments

This recommendation was adopted by the board of the Norwegian Securities Dealers Association on 15 December 2000. Revised on 26 April 2022.

1. Introduction

At times, situations arise in which an investment firm must, in connection with an assignment for a client, decide whether to acquire transferable securities issued by the client. This topic becomes especially relevant in two situations:

1. When executing specific transactions that the firm has been ordered to arrange; for example by the investment firm subscribing for shares in a share issue with the objective of ensuring that the share issue is fully subscribed. In such cases, the investment firm will subscribe for securities on market terms and conditions and on the same conditions as other subscribers. The subscription will usually be for an amount equal to a share of the investment firm's fee (all or part of this), and in some cases equal to more than the firm's fee.
2. Another type of case is when the investment firm in exceptional cases receives a request– or agrees in advance – to accept settlement of the investment firm's fee in the form of transferable securities issued by the principal, for example shares. These are often early phase companies with little or no earnings that need advice and capital in connection with, for example, investments in research, further development or structural measures.

The above situations mean that conflicts of interest can arise. This recommendation provides guidelines for:

i. the investment firm's acquisition of transferable securities in connection with assignments; and
ii. how the sale of such securities is to be handled.

This recommendation only applies to the investment firm's own positions, not positions held on behalf of clients, for example as security for derivatives, the financing of securities or suchlike. The recommendation also does not apply to cases where the investment firm takes part as an underwriter to ensure that a transaction is fully subscribed before it is offered to the market, and thus becomes an owner of securities.

This recommendation applies to all investment firms that are members of the Norwegian Securities Dealers Association (VPFF).

2. Further about conflicts of interest and the background

According to the Norwegian Securities Trading Act, investment firms must be 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 clients of the firm.[1] Investment firms undertake to take all suitable steps to identify and to prevent or manage conflicts of interest between them and their clients and between their clients, and to clearly inform the client of possible conflicts of interest and of the steps taken to mitigate such risks.[2] Corresponding rules follow from the Norwegian Securities Dealers Association's Ethical Standards.[3]

The background for the requirement of avoiding conflicts of interest is that the individual investment firm (and its employees) shall give its clients the best advice irrespective of other considerations, such as the consideration of a higher return on its own investments. If the

[1] Section 9-16 (1) item 2 of the Securities Trading Act
[2] Section 10-2 (2) and (3) of the Securities Trading Act
[3] Refer to section 1-1 (2) nos. 6 and 7 of the Ethical Standards, as well as section 3-2

investment firm has a particular interest in addition to the requirement of normal earnings, this may lead to the client's interests not being fully safeguarded by the investment firm.

The fact that an investment firm owns transferable securities[4] (hereafter called securities) issued by a principal may lead to a conflict of interest that is difficult to manage. This is because, through this position, the investment firm obtains a special interest in the development in the price of the securities and the marketing of the company in question – an interest that affects the normal earnings linked to the assignment that has been carried out or will in the future be carried out for the company.

If these are ownership stakes in the company (for example in the form of shares) and the ownership stake is high, the investment firm may be perceived as a strategic owner of the company. Depending on the circumstances, a high ownership stake may also mean that the investment firm is directly or indirectly involved in the company's operations and development, including in its lead manager activities.

A position in a company may also place restrictions on the assignments that the firm can or should accept. For example, Euronext Growth Advisor may not, either alone or together with the investment firm's main shareholder and/or employees, own more than 10 per cent of the shares in the issuer company.

On this basis, investment firms should be cautious if they take positions in companies for which they carry out assignments. If the investment firm takes such positions, this should be done in accordance with more detailed guidelines adopted by the investment firm and in accordance with this recommendation.

3. Acquisition of securities issued by a principal

As a rule, the investment firm should show restraint in acquiring securities issued by a principal in connection with an assignment. This applies both when the investment firm receives securities as settlement for services it has provided, and when the investment firm subscribes for securities in connection with the raising of capital

The investment firm should establish internal procedures and rules for the acquisition and management of such securities. The objective of the guidelines is to minimise and manage the risk of conflicts of interest.

If an investment firm owns securities in companies for which it carries out assignments, the investment firm must, in connection with the assignment, consider potential conflicts of interest and how these are to be managed. Reference is made to the Norwegian Securities Dealers Association's Recommendation no. 3 concerning the requirement of disclosing own positions in research materials, and the Securities Trading Act's provisions on inside information, section 10-9 concerning the conduct of business, and section 10-10 concerning information to clients.

The following guidelines apply to acquisitions of securities:

(i) The investment firm should establish its own internal procedures for approving positions, and approval should be documented in writing.
(ii) Acquisitions or subscriptions should take place on market terms and conditions and on the same terms and conditions as those applicable to other subscribers.
(iii) The investment firm's subscription shall take precedence after clients' subscriptions if they have taken place on the same terms and conditions.
(iv) If it has been agreed that the investment firm's fee shall or may be settled in securities in the principal company, this must be clearly stated in the investor material.

[4] See the definition in section 2-4 of the Securities Trading Act

(v) No separate agreements are to be entered into between the firm's employees and the firm regarding the distribution of gains on the sale of securities that the firm has acquired as a fee for carrying out an assignment.

(vi) In the case of share issues where the investment firm underwrites the share issue, for its own account and risk, the following apply in addition:

a. If the order book is not filled up, the investment firm should consider whether it is expedient to carry out the transaction and whether the price of the securities should be reduced to obtain more subscriptions. If the investment firm subscribes for the share issue, the investment firm's subscription shall not determine the price in a book-building process, i.e. the subscription must be on market terms and conditions.
b. The investment firm should not acquire a position that exceeds [five] per cent of the securities offered in the transaction in question. The size of the position acquired must also be considered in relation to previous ownership.
c. The investor material must clearly state that the investment firm may underwrite the share issue if the order book is not full.

4. Sale of securities issued by a principal

Investment firms should establish internal procedures for the sale of securities issued by a principal in connection with an assignment for a client. The investment firm must assess and manage potential and actual conflicts of interest in connection with such sales. In the case of a sale of securities that the investment firm has acquired in connection with an assignment, the following guidelines apply:

(i) Person(s) who decide on the sale of the position cannot have inside information about the company.

(ii) The firm should have internal procedures for managing conflicts of interest in connection with the sale of the position, for example it should be clarified with Compliance that the firm does not possess inside information from the assignment in question that makes it difficult to sell the shares.

(iii) The firm must try to sell the securities without affecting the price to any mentionable extent.

(iv) The firm should consider whether there are reference prices in the market, liquidity, etc, that can justify the firm's sales price becoming the market price. The investment firm should be extra cautious if the sale takes place close in time to a raising of capital in which the firm subscribed for securities.

(v) The firm must ensure that the securities are only offered to investors that have sufficient understanding of the risks involved in the instruments. Great caution should be shown in offering the securities to non-professional investors, for example if the raising of capital was only aimed at professional investors.