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## **Act of 15 March 2019 no. 6 on central securities depositories and securities settlement etc.**

### **(the Central Securities Depository Act)**

Last updated: LOV-2021-04-30-28 as of 15 May 2021

#### **Chapter 1. Introductory provisions**

##### **Section 1-1. Implementation of the Central Securities Depositories Regulation**

The EEA Agreement Annex IX Regulation (EU) No 909/2014 (on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (the Central Securities Depositories Regulation)) applies as law with such adaptations as follow from Annex IX to the EEA Agreement, Protocol I to the EEA Agreement, and the EEA Agreement in general.

The Ministry may make regulations on central securities depositories and securities settlement in order to fulfil Norway's obligations pursuant to the EEA Agreement. In the regulations, exemptions may be granted from the provisions that are implemented pursuant to the first paragraph.

Finanstilsynet may by regulations decide that the legal and supervisory frameworks in third countries are equivalent.

Where reference is made in this Act to the Central Securities Depositories Regulation, the Regulation as implemented pursuant to this section is meant.

##### **Section 1-2. Scope of the Act**

Unless otherwise stated by a specific provision, this Act applies to central securities depositories for which Norway is the home state. The King may by regulations determine the extent to which this Act shall be made applicable to Svalbard and Jan Mayen.

The Ministry may by regulations grant exemptions from parts of this Act and any regulations issued pursuant to this Act to branches established outside Norway by central securities depositories for which Norway is the home state.

##### **Section 1-3. Regulations for functional and secure securities registration etc.**

The Ministry may make regulations on central securities depositories, securities settlement or the registration of rights to financial instruments if so required in the interest of ensuring secure and functional central securities depositories, secure, efficient and smooth settlement, or a secure, orderly and efficient system for the registration of rights to financial instruments.

## **Chapter 2. Type of company, police certificate, supplementary set of rules etc.**

### **Section 2-1. Requirements on the type of company and police certificates**

A central securities depository shall be organised as a public limited company.

Its board members, chief executive officer and others participating in the actual management of the central securities depository shall produce an ordinary police certificate pursuant to the Police Records Act, Section 40.

### **Section 2-2. The central securities depository's supplementary set of rules etc.**

A central securities depository shall establish and publish a supplementary set of rules for its business, which may inter alia stipulate the following:

1. who shall be deemed to be the issuer of a financial instrument
2. further rules on the recording of financial instruments in the central securities depository and the procedure for when a financial instrument shall cease to be recorded
3. the fact that separate accounts must be established for specific purposes
4. requirements for how parties entitled to register shall document their identity
5. requirements regarding change notifications and statements of holdings
6. the fact that account holders and issuers can themselves carry out registrations in the register and the types of registration they can carry out
7. the fact that registrations on an account can be carried out by account operators other than the account operator for the account or financial instrument in question
8. further rules on account operators and their duties, including requirements in respect of their expertise, technical systems and capital, their right to outsource their functions, how account operators shall fulfil the duty to establish accounts pursuant to section 4-2, the requirement for account operators to obtain confirmations as mentioned in section 4-3, second paragraph, the revocation of authorisation to be an account operator, and how customers' interests shall be safeguarded in the event of revocation
9. the fact that the provisions of the Central Securities Depositories Regulation, Article 37, Paragraph 2, regarding reconciliation against other entities, and Article 34, Paragraph 5, regarding the duty to disclose to clients information about the risks associated with the services provided etc, shall apply equally to account operators
10. how the fact that an entity is entitled to access information pursuant to chapter 8 shall be documented.

The set of rules and subsequent changes thereto shall be approved by Finanstilsynet. Finanstilsynet shall decide on applications for approval of changes to the set of rules at the latest three months after receiving a complete application.

Finanstilsynet may order the central securities depository to establish rules on one or more matters as mentioned in the first paragraph.

### **Section 2-3. The right to institute proceedings before a court of law if a decision on authorisation is not made within six months**

If Finanstilsynet has not made a decision on whether or not to grant permission pursuant to the Central Securities Depositories Regulation within six months of receiving a complete application, the central securities depository may institute proceedings before a court of law.

## **Chapter 3. Recording of financial instruments in a central securities depository etc.**

### **Section 3-1. Duty to record bearer bonds in a central securities depository**

Norwegian bearer bonds shall be recorded in a central securities depository authorised or recognised pursuant to the Central Securities Depositories Regulation including bonds that are not traded on a trading venue or transferred as a consequence of an agreement regarding financial collateral.

The Ministry may by regulations grant exemptions from or supplement the duty set out in the first paragraph.

### **Section 3-2. Duty to destruct physical documents etc.**

If a document representing a financial instrument in a manner that may come into conflict with the provisions of this Act has already been issued, the financial instrument may only be recorded in a central securities depository once the document has been destructed, placed in safe keeping, or otherwise prevented from coming into circulation. Documents representing financial instruments issued in accordance with Norwegian law shall be destructed.

The Ministry may by regulations make further provisions on the calling-in of documents in connection with recording in a central securities depository.

### **Section 3-3. Decision to record financial instruments in a central securities depository and determination of fees**

Unless otherwise provided by or pursuant to law, an issuer of financial instruments shall decide whether such financial instruments shall be recorded in a central securities depository.

The Central Securities Depositories Regulation, Article 49, Paragraphs 1 to 4, regarding the right of issuers to arrange for their financial instruments to be recorded in a central securities depository, fees, and complaints etc. shall apply equally to applications to record financial instruments not covered by Article 49.

## **Chapter 4. Securities accounts and nominees etc.**

### **Section 4-1. Individual accounts and nominee accounts**

Unless otherwise provided by or pursuant to law, financial instruments may be registered on individual accounts, which belong to individual investors and are in the name of an individual investor, or on nominee accounts, which are in the name of a nominee.

#### **Section 4-2. Right to have an account established**

A central securities depository is obliged to establish an individual account or a nominee account for the registration of financial instruments recorded in the central securities depository. A central securities depository must not reject a customer unless the Money Laundering Act or another act or rules issued pursuant to law provide the basis for the customer to be rejected, or there is due cause to reject the customer.

#### **Section 4-3. Requirements for nominees**

Holders of nominee accounts shall be banks, credit institutions, investment firms, central securities depositories or securities fund management companies. The nominee must be subject to regulation and supervision in its home state and must be obliged to observe rules equivalent to Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Before a central securities depository establishes a nominee account for a nominee for the first time, the central securities depository shall obtain confirmation from the nominee that it is familiar with and can fulfil the duty to provide information set out in section 4-4, fourth paragraph.

Finanstilsynet may in special cases grant a central securities depository authorisation to establish a nominee account in the name of a nominee that is not covered by the first paragraph.

#### **Section 4-4. Nominee accounts**

The register must show that an account is a nominee account, and who manages the account.

The nominee is entitled to dispose over holdings on the account with binding effect for the investor, and with such legal effects as are provided for in chapter 7.

Financial instruments belonging to the nominee itself may not be registered on a nominee account managed by the party concerned. For the purposes of the rules in Sections 5-3 and 8-3, the nominee is regarded as the holder of the financial instruments on the nominee account.

The nominee is obliged to disclose information on the end-investor to the same extent and in the same manner as the central securities depository is obliged to disclose information pursuant to section 8-3, first paragraph, or other legislation.

The nominee shall establish rules for when it shall be deemed to have received notification of the establishment of a right pursuant to section 7-7. Such rules shall be approved by Finanstilsynet.

The Ministry may by regulations make further rules concerning nominees and nominee accounts, including the nominee's duty to disclosure information and its duty to retain information.

## **Chapter 5. Registration of rights to financial instruments that are recorded in a central securities depository**

### **Section 5-1. Parties entitled to register**

A person is entitled to notify registration of rights to financial instruments when such right is evidenced by the register or he establishes that such a right has passed to him.

A person is entitled to notify deletion of a security interest or other encumbrance when such right is evidenced by the encumbrance document. Such deletion may also take place where it is established that the right has lapsed.

The issuer of a financial instrument has the right to notify deregistration of the instrument from the register where it is established that the financial instrument has ceased to exist owing to redemption or other circumstance.

Furthermore, the right to notify registration accrues to any person who is entitled or has authority under other legislation to establish or transfer rights in or to financial instruments without consent from the person mentioned in the first paragraph.

### **Section 5-2. Completion of registrations**

A central securities depository shall process registration instructions without undue delay and shall carry out the registration when all the requirements for a registration have been met.

A central securities depository shall inform the party that submitted the registration instruction if it refuses to accept the instruction unless otherwise stipulated by law or a provision issued pursuant to law.

### **Section 5-3. Information that a register is required to contain**

A register shall contain information related to the financial instruments and to the holders of rights to such instruments.

The Ministry may by regulations set further requirements regarding the information the register is required to contain pursuant to the first paragraph and how such information shall be organised.

### **Section 5-4. Correcting and deleting information in the register**

A central securities depository shall correct errors in a registration when it finds the registration to be incorrect.

A central securities depository may delete from the register any information that is clearly of no significance.

Information deleted from the register shall be retained for at least ten years.

### **Section 5-5. Change notifications and statements of holdings**

Unless otherwise agreed, a central securities depository shall notify holders of rights of any change in the register that may affect their rights. The same applies to other parties who have notified a registration.

A central securities depository shall once a year send holders of rights a statement of their holdings of or rights to registered financial instruments. The statement shall also contain any other information that may affect their rights.

## **Chapter 6 Account Operators**

### **Section 6-1. Right to use account operators**

A central securities depository may use account operators to record financial instruments and make registrations in the securities register. If a central securities depository uses account operators, the rules in this Act on the division of functions and responsibilities etc. between the central securities depository and account operators shall apply.

'Account operator' means an entity to which a central securities depository has granted authorisation pursuant to section 6-2.

Using account operators does not prevent the central securities depository from making registrations itself.

### **Section 6-2. Authorisation to be an account operator etc.**

A central securities depository may grant authorisation to be an account operator to the following entities:

1. Norges Bank and other central banks
2. Central securities depositories that are authorised or recognised pursuant to the Central Securities Depositories Regulation
3. Central counterparties authorised pursuant to Regulation (EU) No 648/212
4. Investment firms that are authorised pursuant to Directive 2014/65/EU
5. Banks or credit institutions that are authorised pursuant to Directive 2013/36/EU
6. Management companies for securities funds that are authorised pursuant to Directive 2009/65/EU.

The central securities depository may only reject an application for authorisation as an account operator if the applicant does not fulfil the requirements set in law, regulations or the central securities depository's set of rules. The central securities depository shall provide the applicant with a written reason for its refusal.

The Ministry may by regulations make further rules on account operators and their duties, including to reduce or expand the group of entities that can receive authorisation to be account operators pursuant to the first paragraph.

### **Section 6-3. The duties of account operators etc.**

An account operator is responsible for ensuring that the securities accounts and financial instruments for which it is the account operator at all times fulfil the requirements imposed by law, regulations and the central securities depository's set of rules. The rules in sections 5-1 to 5-4 regarding the registration of rights to financial instruments etc. shall apply equally to account operators that receive registration instructions.

An account operator shall comply with the following provisions in the Central Securities Depositories Regulation for the accounts and financial instruments for which it is the account operator:

1. Article 36, which addresses the integrity of securities issues etc.
2. Article 37, Paragraph 3, which addresses the ban on securities creation etc.
3. Article 38, Paragraph 5, which addresses the duty to offer different types of accounts
4. Article 38, Paragraph 6, which addresses the duty to publicly disclose the levels of protection and costs associated with different types of accounts and to offer such services on reasonable commercial terms.

Account operators shall retain documentation in respect of the basis for registrations in the register for a minimum of ten years.

An account operator shall have clear and accessible arrangements for dealing with complaints associated with its activities as an account operator. An account operator shall be able to document the complaints and how they have been processed.

#### **Section 6-4. The right of account operators to outsource functions**

Account operators are not permitted to outsource their functions as account operators unless otherwise stated by the central securities depository's set of rules, cf. section 2-2.

If the central securities depository in its set of rules has given account operators the right to outsource functions, the provisions on outsourcing in the Central Securities Depositories Regulation, Article 30, Paragraphs 1 to 3 shall apply equally.

An account operator shall in the outsourcing agreement ensure that the outsourcing does not have any adverse effect on the central securities depository's ability to conduct control pursuant to section 6-5.

#### **Section 6-5. The central securities depository's control of account operators etc.**

A central securities depository shall carry out satisfactory control of whether the activities of its account operators are conducted in accordance with the law, regulations and the central securities depository's set of rules.

A central securities depository shall without undue delay inform Finanstilsynet if an account operator materially or repeatedly breaches provisions of law, provisions laid down in accordance with law, or the central securities depository's set of rules.

Account operators shall provide the central securities depository with the information that the central securities depository needs in order to comply with its duties pursuant to law, regulations and its own set of rules.

#### **Section 6-6. Revocation of authorisation to be an account operator**

A central securities depository may revoke an account operator's authorisation pursuant to section 6-2 either wholly or in part if the account operator:

1. no longer fulfils the requirements to be an account operator that are laid down in law, regulations, the central securities depository's set of rules or its authorisation
2. fails to use the authorisation during the 12 months after it was granted, expressly relinquishes the authorisation, or has not operated activities as an account operator for the previous six months
3. obtained authorisation to be an account operator by means of incorrect or incomplete information of material significance
4. has materially or repeatedly breached the law, regulations, or the central securities depository's set of rules
5. is dissolved or liquidated, cannot meet its liabilities as they fall due, enters into debt settlement proceedings, a compulsory debt settlement or bankruptcy proceedings, or a decision is adopted to apply resolution tools to it
6. does not provide the central securities depository with the information that it needs to carry out its functions pursuant to law or regulations
7. does not comply with its duty to provide information to Finanstilsynet or with a rectification order from Finanstilsynet.

Decisions to revoke authorisation pursuant to the first paragraph shall be handled in accordance with the rules on the handling of complaints laid down in accordance with the Central Securities Depositories Regulation, Article 32, Paragraph 2.

### **Section 6-7. Unwinding the account operator model**

If a central securities depository decides to unwind the account operator model either wholly or in part, it shall notify Finanstilsynet and the account operators concerned in writing at the latest twelve months before the change enters into force.

Finanstilsynet may, within six months' of receiving notice pursuant to the first paragraph, set terms and conditions for the unwinding to be carried out.

## **Chapter 7. Legal protection and other effects of registration and notification**

### **Section 7-1. Legal protection and other legal effects of registration on a securities account**

Registering a right on a securities account in a central securities depository pursuant to section 4-1 provides legal protection and other legal effects as provided in this chapter.

A central securities depository shall establish rules for when a right shall be deemed to be registered. These rules shall be approved by the Ministry.

### **Section 7-2. Legal effects of registration for financial instruments that have been recorded through a link to another central securities depository etc.**

If a central securities depository records financial instruments that have already been recorded in another central securities depository or in another register, the rights to the financial instruments shall have the

legal effects set out in sections 7-3 and sections 7-4 when registered on a securities account in the first-mentioned central securities depository.

### **Section 7-3. Conflicting rights**

A registered right takes precedence over a right that is not registered or that is registered at a later point in time.

Notwithstanding the first paragraph, an earlier right takes priority over a later right if the later right has been acquired by agreement and the acquirer of the later right knew or should have known of the earlier right upon registration.

Notwithstanding the first paragraph, an earlier right takes precedence over a later right if the later right has been acquired by inheritance.

### **Section 7-4. Defects in the transferor's title**

Where a right that has been acquired by agreement is registered in accordance with section 7-1, it cannot be asserted against the acquirer that the transferor's title was not in accordance with the content of the register. This shall not apply if the acquirer knew or should have known of the transferor's defective title at the time the right was registered. The first sentence does not apply to conflicts between conflicting rights as mentioned in section 7-3.

### **Section 7-5. Issuer's objection**

Where a right that has been acquired by agreement is registered in accordance with section 7-1, an issuer of debt instruments cannot assert objections as mentioned in the Promissory Notes Act, Section 15, against the acquirer. Such objections may nevertheless be made if the acquirer knew or should have known of them at the time the right was registered. The Promissory Notes Act, Section 18, shall apply equally.

The issuer may in all cases assert objections as mentioned in the Promissory Notes Act, Sections 16 and 17.

### **Section 7-6. Payment releasing the debtor from his obligations**

Payment by a debtor to the party who is registered as the party entitled to receive payment on the due date in accordance with the register entry releases the debtor from his obligations, even if the recipient was not entitled to receive payment. This does not apply where the debtor knew or should have known of the recipient's defective title when the payment took place.

### **Section 7-7. Legal effects of registration on a nominee account in a central securities depository**

Dispositions of financial instruments registered on a nominee account shall have legal effects as provided in sections 7-3 and 7-4 when the nominee receives notification of the disposition. However, the legal effects only come into play if the nominee fulfils the requirements in section 4-3.

Nominees as mentioned in the first paragraph shall establish rules for when the nominee shall be deemed to have received notification of the establishment of a right pursuant to the first paragraph. Such rules shall be approved by Finanstilsynet.

### **Section 7-8. Regulations on financial instruments issued in accordance with the legislation of another state etc.**

The Ministry may by regulations provide that the rules in this chapter shall not apply either wholly or in part to financial instruments issued in accordance with the legislation of another state if they are subject to legal effects pursuant to the legislation of the state in which they were issued that are not compatible with the provisions of this chapter.

The Ministry may by regulations provide that the legal effects as mentioned in section 7-2 shall not come into play for financial instruments that have already been recorded in another central securities depository or in another register and that are subject to legal effects that are not compatible with section 7-2.

## **Chapter 8. Duty of confidentiality and access to information**

### **Section 8-1. Duty of confidentiality**

Unless provided by this Act or another act, officers, employees and the auditor of a central securities depository are obliged to prevent anyone gaining access to or knowledge of information that they receive in the course of their work relating to anyone's business or private circumstances. The same applies to account operators and other persons who carry out work or assignments on behalf of a central securities depository or an account operator.

The duty of confidentiality also applies after the person concerned has completed the service, assignment or office.

### **Section 8-2. Duty of confidentiality in relation to notification of infringements**

Officers and employees of a central securities depository or a credit institution that is designated pursuant to the Central Securities Depositories Regulation, Article 54, have a duty of confidentiality in respect of the names and any other identifying information about persons who have reported or provided tip-offs or other information about infringements of this Act and its associated regulations, unless it is necessary for this information to be used as part of further investigations into the infringement or subsequent administrative or legal proceedings. The rules set out in the first sentence also apply to the name and any other identifying information about physical persons who are alleged to be responsible for the infringement.

The rules set out in the first paragraph shall apply equally to account operators and other persons that carry out work or functions on behalf of a central securities depository or account operator.

### **Section 8-3. Right of access to information**

Notwithstanding the duty of confidentiality pursuant to section 8-1, the following applies with regard to the right to obtain information from a central securities depository:

1. An account holder is entitled to receive all information registered on the securities account.
2. A holder of a security interest or a holder of any other limited right registered on a securities account is entitled to receive all information registered on the account that may have a bearing on such right.

3. The District Court and the Execution and Enforcement Commissioner are entitled to be informed of any registered financial instruments belonging to a defendant, debtor or person adjudicated incompetent, and of whether other limited rights are attached to such instruments. The administrator of the Register of Bankruptcies, the court, the administrator in bankruptcy and the chairman of a debt settlement committee appointed by the court are entitled to receive all information recorded on a debtor in bankruptcy or a debtor undergoing debt settlement proceedings, or on a deceased person in connection with division of the decedent's insolvent estate, including all information on financial instruments recorded in the central securities depository. The same applies to the chairman of an administration board appointed for a financial institution by the Ministry of Finance or Finanstilsynet.
4. Unless otherwise provided by law or regulations, anyone is entitled to receive information registered about a financial instrument.
5. Where a party is entitled by law to receive information and such information exists in the register of a central securities depository, the party has a right to receive this information from the central securities depository.

Where a party is entitled by company legislation or equivalent legislation in another EEA state to receive information about owners and other holders of rights to financial instruments issued in accordance with the legislation of the EEA state in question, and the information exists in a central securities depository, the party has a right to receive this information from the central securities depository. With regard to shares and other financial instruments comparable to shares that are issued pursuant to the legislation of a country outside the EEA, the issuer has the right to receive information about who owns its shares if the issuer is entitled to receive such information pursuant to the issuer country's company legislation or equivalent legislation.

The Ministry may by regulations make further provisions on the right of access to information, including to expand the right of access to information pursuant to this provision, and may make provisions on the right of a central securities depository to provide information to another central securities depository with which it has established a link pursuant to the Central Securities Depositories Regulation, Article 48.

#### **Section 8-4. Information for use in research**

Finanstilsynet may decide that a central securities depository may provide information for use in research notwithstanding the duty of confidentiality pursuant to section 8-1 when this is found to be reasonable and does not create a disproportionate disadvantage for other interested parties.

Conditions may be attached to decisions as mentioned in the first paragraph in respect of inter alia who shall be responsible for the information and who shall have access to it, its storage, the return of borrowed material, the deletion of copies, whether the researchers shall have the right to approach or gather further information about the parties with whose information they were provided, and how the information can be used in general.

Requests for dispensation from the duty of confidentiality in accordance with the first paragraph shall be sent to the central securities depository, which shall make a recommendation on the matter to Finanstilsynet.

The Ministry may lay down regulations to supplement and implement the provisions of this section (8-4).

### **Section 8-5. Researchers' duty of confidentiality**

Anyone who provides a service or carries out work in connection with research for which a central securities depository has, in accordance with section 8-4, first paragraph, provided information that is covered by the duty of confidentiality, has a duty to prevent others from gaining access to or knowledge of the information concerned.

The information can only be used for the purpose of research and in accordance with the stated purpose and any conditions that were applied as provided for in section 8-4, second paragraph.

The duty of confidentiality shall not prevent:

1. the information from being made known to those parties whom it directly concerns, or others to the extent agreed by those who are entitled to confidentiality
2. the information from being used when the need for protection must be deemed to be safeguarded by the information being provided in statistical form, or by the identifying characteristics being omitted in some other way.

Before providing the information, the central securities depository shall make the recipients of the information aware of the duty of confidentiality and the penal provisions of the Norwegian Penal Code, Sections 209 and 210. The central securities depository may demand a written statement to the effect that the recipients of the information are aware of the rules and will comply with the duty of confidentiality.

The Ministry may lay down regulations to supplement and implement the provisions of this section (8-5).

### **Section 8-6. Access to information in central securities depositories**

The police shall have electronic access to information in central securities depositories. Searches of the register shall only take place on the basis of the police's need for information in connection with preventing and combating crime.

Finanstilsynet shall have electronic access to information in central securities depositories. Searches of the register shall only take place on the basis of Finanstilsynet's need for information in connection with its supervisory tasks.

Norges Bank shall have access to information in central securities depositories. Searches of the register shall only take place on the basis of Norges Bank's need for information in connection with its duties pursuant to the Central Bank Act or to support its surveillance of capital adequacy and financial stability.

Upon application from a regulated market, multilateral trading facility or organised trading facility that has its headquarters in an EEA member state, Finanstilsynet may, in special cases, order a central securities depository to give the applicant electronic access to all or parts of the registered information if this is necessary for effective market surveillance. The central securities depository may demand that the marketplace cover the costs of establishing and maintaining such electronic access.

## **Section 8-7. Payment**

A central securities depository may demand payment for providing information to account holders, holders of rights and others, including for providing change notifications and statements of holdings. However, this does not apply in regard to information to which public authorities are entitled by law or regulations.

The Ministry may by regulations make provisions regarding a central securities depository's charges for providing information as mentioned in the first paragraph.

## **Chapter 9. Damages**

### **Section 9-1. A central securities depository's liability for damages**

A central securities depository is liable for direct financial losses inflicted as a result of errors arising in connection with its registration business. The first sentence also applies to errors in the securities register that have arisen as a result of settlement services.

The first paragraph does not apply where the central securities depository proves that the error is due to circumstances beyond the central securities depository's control and whose consequences it could not reasonably be expected to avoid or overcome. The first paragraph also does not apply to financial losses suffered by a party in its capacity as a settlement participant or account operator for the central securities depository.

Liability for damages as mentioned in the first paragraph is limited to direct losses, and such liability is in all cases limited to NOK 500 million for the same error.

In the case of financial losses other than as mentioned in paragraphs one to three, the central securities depository is liable if the losses are due to negligence on its part or on the part of any party for which the central securities depository is responsible.

Claims for damages shall be handled in accordance with the central securities depository's rules on the handling of complaints laid down in accordance with the Central Securities Depositories Regulation, Article 32, Paragraph 2.

### **Section 9-2. An account operator's liability for damages and the central securities depository's joint and several liability**

If an error pursuant to section 9-1 can be attributed to an account operator, the account operator is liable. The provisions in section 9-1, first to fourth paragraphs, shall apply equally to account operators.

An injured party may in all circumstances direct its claim against the central securities depository. For losses that can be attributed to an account operator, the central securities depository is jointly and severally liable with the account operator for NOK 50 million per error. Above this amount, the central securities depository is not liable for losses that can be attributed to an account operator.

Claims for damages submitted to an account operator shall be handled in accordance with the rules on complaints as mentioned in section 6-3, third paragraph.

### **Section 9-3. Contributory negligence**

Where the injured party itself has wilfully or through negligence caused or contributed to the losses, the damages may be reduced or barred.

## **Chapter 10. Winding up and resolution**

### **Section 10-1. Decisions to dissolve or wind up**

Unless otherwise provided by law, any decision to dissolve or wind up the activity of a central securities depository shall be reached by the general meeting by voting on a decision with the same majority as required for changes to the articles of association. Such a decision shall be notified to Finanstilsynet, which may within 30 days of receipt request further information about the basis for the decision and its effects.

A decision pursuant to the first paragraph shall be approved by the Ministry, which may attach conditions to its approval. If the Ministry has not ruled otherwise within three months of Finanstilsynet having received the decision and any additional information, the decision shall be deemed to have been approved.

Approved decisions pursuant to the first and second paragraphs shall be published in the Brønnøysund Register Centre's electronic announcement publication and at least two national newspapers.

### **Section 10-2. Notifying Finanstilsynet**

The board of directors and chief executive officer of a central securities depository are, each on their own account, obliged to notify Finanstilsynet if there is reason to fear that in the near future the central securities depository may not be able to:

1. fulfil requirements made in or pursuant to this Act
2. carry out its core functions
3. meet its liabilities as they fall due, or
4. continue its activities due to a serious loss of confidence, a financial loss that may materially impair or threaten the central securities depository's capital adequacy, or other circumstances that have arisen.

If the auditor of any central securities depository becomes aware of circumstances mentioned in the first paragraph, he shall notify Finanstilsynet as mentioned in the first paragraph unless he has received confirmation from Finanstilsynet that such notification has already been given.

The notification shall contain all relevant information related to the central securities depository's financial situation and market position, and shall explain the reasons for the difficulties.

### **Section 10-3. Prohibition against filing insolvency proceedings**

Debt settlement or bankruptcy proceedings pursuant to the Debt Settlement Proceedings and Bankruptcy Act may not be initiated against a central securities depository that is authorised pursuant to this Act.

#### **Section 10-4. Resolution**

The rules in the Financial Institutions Act, Chapter 20, and associated regulations shall apply to central securities depositories authorised to provide banking-type ancillary services pursuant to the Central Securities Depositories Regulation, Article 54, Paragraph 2.

The Ministry may by regulations provide that the rules in the Financial Institutions Act, Chapter 20, and associated regulations shall also apply either wholly or in part to other central securities depositories. The Ministry may additionally by regulations make rules that waive or supplement the rules mentioned in the first sentence.

#### **Chapter 11. Supervision, administrative measures and sanctions etc.**

##### **Section 11-1. Competent authority and supervision**

Pursuant to the Central Securities Depositories Regulation, Article 11, Finanstilsynet is the competent authority.

Unless otherwise stated by a specific provision, Finanstilsynet shall supervise compliance with the provisions of this Act.

##### **Section 11-2. Duty of confidentiality in relation to sanctions and notification of infringements etc.**

Anyone who carries out work for, or provides a service to, Finanstilsynet or the Ministry has a duty of confidentiality in respect of information that concerns measures and sanctions that relate to infringements of the rules of this Act or regulations issued pursuant to this Act, provided that the publication of the information could damage the stability of the financial markets or an ongoing investigation, or could cause disproportionate damage to the parties concerned. The Public Administration Act, Section 13 a, shall apply equally insofar as it is relevant. The Public Administration Act, Section 13, first and second paragraphs, and Section 13 b, shall not apply to information as mentioned in the first sentence.

Anyone who carries out work for, or provides a service to, Finanstilsynet has a duty of confidentiality in respect of information as mentioned in section 8-2, first paragraph (on notification), unless use of the information is essential as part of further investigations into the infringement, a subsequent public administration case or a trial. The duty of confidentiality pursuant to the first sentence also applies to the provision of information to the parties to the case and their representatives. The Public Administration Act, Section 13, first and second paragraphs, Section 13 a and Section 13 b shall not apply to information as mentioned in the first sentence.

##### **Section 11-3. Duty to provide information to Finanstilsynet**

Central securities depositories and any entity within the same group are obliged to provide any information that Finanstilsynet requests related to circumstances concerning the entity's activities and to present and provide Finanstilsynet with documentation concerning the activities. The first sentence shall apply equally to account operators and other persons that carry out work or assignments on behalf of a central securities depository or an account operator.

**Section 11-4. Duty of notification in respect of disposals of a significant proportion of a central securities depository's activities, mergers and demergers etc.**

A central securities depository shall send Finanstilsynet written notice of a decision to dispose of a significant proportion of its activities as mentioned in Section A of the Annex to the Central Securities Depositories Regulation and in the event of a merger or demerger. The change may at the earliest be implemented three months after Finanstilsynet has received notice as mentioned in the first sentence.

A central securities depository shall send Finanstilsynet written notice of a decision to establish a subsidiary company outside Norway or a branch in a country outside the EEA area before the decision to establish is implemented.

**Section 11-5. Rectification orders**

Finanstilsynet may issue a central securities depository with a rectification order if the company acts in violation of law, regulations issued pursuant to law, the conditions for its authorisation, or internal guidelines established in accordance with provisions in law or regulations, its own set of rules or its own terms of business. The same shall apply to any party that acts on behalf of a central securities depository.

Finanstilsynet may issue an account operator with a rectification order if the company acts in violation of law, regulations, or the central securities depository's own set of rules. The same applies to any party that acts on behalf of an account operator.

Finanstilsynet may issue a central securities depository whose home state is not Norway with a rectification order in the instances specified in the Central Securities Depositories Regulation, Article 24, Paragraph 5, Subparagraph 2.

**Section 11-6. Order barring voting rights attached to shares from being exercised**

If a shareholder that can exert control directly or indirectly over a central securities depository's management pursuant to the Central Securities Depositories Regulation, Article 27, Paragraph 6, does not fulfil the requirement to be a suitable person as specified in the paragraph in question or has not informed the central securities depository or Finanstilsynet pursuant to the Central Securities Depositories Regulation, Article 27, Paragraph 7, Finanstilsynet may issue an order to the effect that the voting rights attached to the shares of the shareholder in question cannot be exercised.

**Section 11-7. Measures in the event of a breach of the duties of nominees**

If any party manages a nominee account without fulfilling the requirements in section 4-3, Finanstilsynet may demand that the account be blocked. Where an account is blocked, the nominee loses the right to dispose over the financial instruments that are registered on the account, including the right to accept payments related to the financial instruments in full discharge of the payer's obligations. Blocking shall not prevent transactions approved by Finanstilsynet from being carried out.

The first paragraph shall apply equally where a nominee does not fulfil its duty to disclose information pursuant to section 4-4, fourth paragraph.

The Ministry may by regulations make further provisions regarding the forced sale of financial instruments registered on nominee accounts in a situation in which the account is managed by a party that does not

fulfil the requirements in section 4-3, or where the nominee does not fulfil its duty pursuant to section 4-4, fourth paragraph.

#### **Section 11-8. Prohibition on holding a management function**

If a board member, a chief executive officer, or an actual manager at a central securities depository or a credit institution that has been designated pursuant to the Central Securities Depositories Regulation, Article 54, has infringed a provision as mentioned in the Central Securities Depositories Regulation, Article 63, Paragraph 1, and the infringement results in the individual concerned being deemed unsuitable to hold a management position at the company, Finanstilsynet may prohibit the individual concerned from holding such management functions. The same shall apply to other physical persons who may be held responsible for the infringement.

#### **Section 11-9. Fines for infringements**

In the event of an infringement of a provision as mentioned in the Central Securities Depositories Regulation, Article 63, Paragraph 1, Finanstilsynet may impose a fine. The same shall apply in the event of an infringement of the duty to notify the central securities depository or competent authority of the acquisition or disposal of shares pursuant to the Central Securities Depositories Regulation, Article 27, Paragraph 7, Subparagraph 2. Finanstilsynet may also impose fines for infringements of section 2-1, section 3-2 first paragraph, section 3-3 second paragraph, section 4-1, section 4-2, section 4-3 first and second paragraph, section 4-4 first to fifth paragraph, chapter 5, chapter 6, section 10-1 first paragraph, section 10-2 or sections 11-3 to 11-5, or of regulations issued pursuant to these provisions.

When an entity can be fined pursuant to the first paragraph, an infringement fine may also be imposed on the board members, chief executive officer, or an actual manager at the entity if they have displayed wilful misconduct or gross negligence.

Entities may be fined up to NOK 167 million or up to 10% of the entity's total annual revenue in accordance with its most recent approved annual accounts. For a parent company or a subsidiary company of a parent company that is required to produce consolidated financial statements pursuant to Directive 2013/34/EU, the total revenue shall be the total annual revenue or equivalent revenue pursuant to relevant accounting directives in accordance with the most recently available consolidated annual accounts approved by the parent company's board of directors. The infringement fine may be set at up to twice the earnings generated as a consequence of the infringement if the fine calculated in this way is higher than if calculated in accordance with the first and second sentence of this paragraph.

Physical persons may be fined up to NOK 42 million or twice the earnings generated as a consequence of the infringement if the fine is higher when calculated in this manner.

In the event that a party is late paying an infringement fine, interest will become payable in accordance with the Interest on Late Payments Act.

The right to impose an infringement fine is time-barred five years after the infringement came to an end. This time limit is restarted by Finanstilsynet providing initial notice or taking a decision regarding an infringement fine.

The Ministry may by regulations make further provisions on the calculation of infringement fines.

### **Section 11-10. Factors taken into consideration in relation to decisions on whether to prohibit a person from holding a management function and on infringement fines**

When considering whether someone should be prohibited from holding a management function pursuant to section 11-8 or whether a fine for an infringement should be imposed pursuant to section 11-9, Finanstilsynet may take the following factors into account:

1. the seriousness and duration of the infringement
2. the degree of fault of the infringer
3. the financial means of the infringer as revealed by, for example, the entity's total revenue or by the annual income of the physical person responsible
4. gain or avoided loss as a result of the infringement
5. any losses suffered by third parties
6. the extent to which the infringer cooperates with the authorities
7. previous infringements committed by the individual responsible for the infringement.

The same factors may be considered when determining the size of infringement fines.

### **Section 11-11. Penalties**

Any person who grossly or repeatedly infringes either wilfully or through negligence the provisions as mentioned in section 11-9, first paragraph, shall be punishable by fines or up to one year's imprisonment.

Any officer, employee or auditor of an entity operating a central securities depository who wilfully or through negligence infringes the provisions of section 10-2 shall be punishable by fines or, in particularly aggravating circumstances, up to three months' imprisonment.

## **Chapter 12. Entry into force, transitional rules and changes to other acts**

### **Section 12-1. Entry into force and transitional rules**

This Act shall come into force with effect from the date decided by the King. The various provisions of the Act may be put into force at different times.

The Act of 5 July 2002 No 64 on the Registration of Financial Instruments will be repealed with effect from the date that this Act enters into force. The various provisions of the former act may be repealed at different times.

The Ministry may make transitional rules.

### **Section 12-2. Changes to other acts**

The following changes shall be made to other acts with effect from the date that this Act enters into force (...)