Standard 1.4
Assessment of fitness and propriety

Regulations and guidelines
How to read a standard

A standard is a collection of subject-specific regulations and guidelines which both obliges and guides supervised entities and other financial market participants, indicates the quality level expected by the supervisor, sets out the supervisor’s key principles of good practice and provides justification for regulation.

Each paragraph in a standard is furnished with a particular margin note:

- **Norm:** A reference to a current legal or regulatory provision.
- **Binding:** A FIN-FSA regulation that is legally binding on supervised entities or other financial market participants, issued by the FIN-FSA by virtue of its regulatory power based in Finnish law.
- **Recommendation:** FIN-FSA recommendatory guidance to supervised entities or other financial market participants.
- **Application guideline/example:** A practical application guideline or example related to a norm, binding regulation or recommendation. A reference to a FIN-FSA standard or a particular point in the standard. See the attached example.
- **Justifications:** An explanation of the background, purpose and objectives of a regulation or standard.

Sample standard only

FIN-FSA standards may be accessed from www.fin-fsa.fi/eng
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1 APPLICATION

(1) This standard sets criteria for the integrity, fitness and professional competence (fitness and propriety) of persons responsible for a supervised entity’s management and key business functions, and principles to be followed in fit and proper assessment.

(2) The standard applies to the following corporations (hereafter also ‘supervised entities’):
- credit institutions and their foreign branches
- investment firms and their foreign branches
- fund management companies and their foreign branches
- custodians
- stock exchanges
- clearing corporations
- options corporations
- central securities depository
- holding companies of credit institutions and investment firms
- central body referred to in the Act on Cooperative Banks and Other Cooperative Credit Institutions
- holding companies of financial and insurance conglomerates primarily engaged in financial activities
- pawnshops.

(3) In line with the principle of home country supervision, the supervisory authorities of the home member state have responsibility for the fit and proper assessment of the management of Finnish branches of credit institutions, investment firms and fund management companies domiciled in the European Economic Area (EEA).

(4) Information regarding the manager and the deputy manager of a branch referred to in paragraph (3) is reported to the Financial Supervision Authority (FIN-FSA) in accordance with the notification procedure (see standard 1.1 on market entry, section 8.1).
1 Corporate governance and business activity

1.4 Assessment of fitness and propriety

(5) Information regarding the manager and deputy manager of a Finnish branch of a credit institution, investment firm or fund management company domiciled outside the European Economic Area (EEA) is reported to the FIN-FSA in accordance with standard RA1.4 on the reporting of fitness and propriety to the Financial Supervision Authority.

(6) In this standard, 'person responsible for management' refers to a member and deputy member of the board of directors as well as the managing director and deputy managing director.

(7) If a supervised entity has a supervisory board, provisions of section 6.3 on supervisory board shall apply.

(8) In assessing the fitness and competence of management and adherence to sound and prudent business principles, the provisions of standard 4.1 on the establishment and maintenance of internal control and risk management, as well as the principles of sound corporate governance, shall be applied, among others.

(9) Fit and proper criteria set for owners are dealt with in the standard on owner control (under preparation).
(1) Regulation on integrity, fitness and professional competence (fitness and propriety) is a central part of supervised entities’ sound corporate governance. The purpose of this standard is to support supervised entities in having and maintaining healthy corporate culture. Responsibility for the soundness of corporate governance lies primarily on supervised entities themselves.

(2) One of the key requirements for supervised entities subject to authorisation is that they have fit and proper management. This ensures that the supervised entity will be managed with professional competence as well as in accordance with sound and prudent business principles.

(3) This standard sets the supervised entity’s board of directors the obligation to specify persons responsible for the organisation’s key business functions and establish procedures for controlling the fitness and propriety of these persons.

(4) The standard also clarifies criteria set for competent management operating in accordance with sound and prudent business principles as part of the fit and proper assessment.

(5) The standard emphasises the importance of an overall assessment (made on case-by-case basis) when a person’s actions or events relating to the person can jeopardise the soundness of a supervised entity’s corporate governance or market confidence in the supervised entity’s operations.

(6) The standard also provides some examples to clarify factors affecting the overall assessment which, in individual cases, could have an impact on the assessment of the soundness of a supervised entity’s corporate governance and the fit and proper assessment of a person.
(7) The standard also contains a recommendation that a person should, on his or her own initiative, refrain from performing the functions of his position or a supervised entity’s management should take the available measures to transfer a person or relieve him from his duties for the duration of clearing the matter when necessary for ensuring the soundness of a supervised entity’s corporate governance or maintaining or restoring market confidence.
3

INTERNATIONAL FRAMEWORK


(2) In addition, the standard is based on the following international recommendations:

- Core Principles for Effective Banking Supervision, Basel Committee on Banking Supervision, Basel, October 2006
- Supervision of Financial Conglomerates, Papers prepared by the Joint Forum on Financial Conglomerates, February 1999; Fit and Proper Principles Paper
- European Standards on Fitness and Propriety to provide Investment Services, 99-FESCO-A, April 1999.

(3) Core Principles for Effective Banking Supervision require that, when granting an authorisation, a supervisory authority must ascertain that a credit institution will be managed in a sound and prudent manner. The credit institution must also have a management with sufficient expertise and integrity throughout the institution’s lifespan, and have in place sufficient measures to this end.

(4) The objective of the Joint Forum (the Basel Committee on Banking Supervision, IOSCO and IAIS) is to create common principles for supervisors to ensure that financial and insurance conglomerates are managed soundly and prudently. According to these principles, factors relating to the assessment of fitness and propriety of management include a person’s criminal record, financial position, possible civil actions to pursue personal debts, sanctions applied by authorities or self-regulating bodies and previous...
questionable business practices. Fitness and propriety tests are applied both in connection with new appointments and on the occurrence of specific events. One of the guiding principles is that entities within a conglomerate will take the measures necessary to ensure that fitness and propriety criteria are met on a continuous basis.

(5) Fesco's (currently CESR) standard seeks to set the minimum requirements to be fulfilled by the management and persons carrying out key functions when an investment firm applies for an authorisation or makes new appointments. Individuals must be of sufficiently good repute and sufficiently experienced in order to be competent and capable of performing the functions currently performed or which it is proposed they should perform. The management is always expected to ensure the fitness and propriety of other employees in the company and to pursue appropriate internal policies and procedures to this end.
(1) International regulation relating to the subject matter of this standard is based on the following directives:


(2) National regulation relating to the subject matter is based on the following legislation:

- sections 22, 24, 40, 49 and 93 of the Credit Institutions Act (121/2007) (credit institutions);
- sections 9, 10, 12, 12b and 29 of the Investment Firms Act (579/1996) (investment firms);
- sections 5a, 5b, 5e and 30a (fund management companies) and sections 9, 9a and 9d (custodians) of the Mutual Funds Act (48/1999);
- chapter 3, sections 1a, 2 and 2c (stock exchanges) and chapter 4a, sections 1a, 2 and 3 (clearing companies) of the Securities Markets Act (495/1989);
- chapter 2, sections 12a, 2 and 3 of the Act on Trading in Standardised Options and Futures (772/1988) (options corporations);
- chapter 3, sections 12 and 12a of the Act on the Book-Entry System (826/1991) (central securities depositories);
- sections 5 and 12 of the Act on Cooperative Banks and Other Cooperative Credit Institutions (1504/2001);
- sections 14 and 16 of the Act on the Supervision of Financial and Insurance Conglomerates (699/2004);
- sections 9 and 10 of the Act on Foreign Credit and Financial Institutions in Finland (1608/1993);
- sections 8 and 9 of the Act on the Right of Foreign Investment Firms to Provide Investment Services in Finland (580/1996) and
- sections 7 and 8 of the Act on Foreign Fund Management Companies in Finland (225/2004).
5 KEY PRINCIPLES OF THE ASSESSMENT

5.1 General principles

(1) An authorisation is granted on the condition that a supervised entity is managed with professional competence as well as in accordance with sound and prudent business principles throughout the supervised entity’s lifespan.

(2) The primary responsibility for ensuring that persons responsible for a supervised entity’s management and key business functions are fit and proper rests with the supervised entity itself.

(3) It is recommended that a supervised entity establishes the assessment and control of fitness and propriety of persons responsible for the supervised entity’s key business functions as stated in this standard and that it follows the standard’s assessment principles.

(4) A fit and proper assessment comprises the consideration of three factors: integrity, fitness and professional competence. Each factor is assessed independently. This means that, for example, lack of integrity cannot be compensated with good professional competence.

(5) An assessment must be conducted whenever a new person is appointed to act in a position in which he is responsible for a supervised entity’s management or a key business function. An assessment must also be conducted before a person is appointed to a new position more significant than the one held previously or when a person’s responsibilities increase substantially. An assessment must also be conducted whenever the fitness and propriety of a person is jeopardised in the manner described in this standard.
1 Corporate governance and business activity

1.4 Assessment of fitness and propriety

Recommendation
Issued on 20 March 2007
Valid from 1 July 2007

It is recommended that a supervised entity updates information regarding the person regularly and in accordance with section 6.1.1.

Application guideline
Issued on 20 March 2007
Valid from 1 July 2007

(7) Integrity and fitness can be lost or jeopardised as provided in sections 5.2 and 5.3. Professional competence can be jeopardised as provided in sections 5.3 and 5.4.

Binding
Issued on 20 March 2007
Valid from 1 July 2007

(8) Professional competence of management and compliance with sound and prudent business principles can be jeopardised, for example, if a supervised entity, in its operations, does not adhere to standard 4.1 on the establishment and maintenance of internal control and risk management, or the principles of sound corporate governance.

Binding
Issued on 20 March 2007
Valid from 1 July 2007

(9) A fitness and propriety test shall be applied on a case-by-case basis as an overall assessment, taking into account all factors affecting the evaluation. The aim is to ensure the maintenance of confidence in a supervised entity’s activities under all circumstances.

5.2 Integrity

(10) Persons responsible for a supervised entity’s management shall always show integrity and be persons whose capacity has not been restricted.

Application guideline
Issued on 20 March 2007
Valid from 1 July 2007

(11) The loss of integrity or the restriction of legal capacity can lead to a person not being appointed as a member or deputy member of the board of directors or the managing director or deputy managing director, or that the person can no longer continue to act in the above-mentioned positions.

Norm
Issued on 20 March 2007
Valid from 1 July 2007

(12) If the FIN-FSA finds that a person referred to in paragraph 11 is responsible for the management of a credit institution, an investment firm, a holding company of either of these two, a fund management company, a custodian, or a holding company of a financial and insurance conglomerate primarily engaged in financial activities, the FIN-FSA can prohibit the person from acting as a member or a deputy member of the board of directors or as a managing director or a deputy managing director, as separately provided in law.

5.2.1 Legally valid sentences of imprisonment and pecuniary penalties

(13) A person referred to in paragraph 10 shall not be deemed to show integrity if the person has been sentenced to imprisonment within the last five years or to a fine within the last three years for a crime which can be deemed
to indicate that the person is manifestly unsuitable as a member or deputy member of the board of directors or the managing director or deputy managing director of a supervised entity.

(14) A person is manifestly unsuitable if he has, for example, taken illegal action in order to obtain personal financial benefit at someone else’s expense.

(15) The following list comprises examples of criminal offences that can constitute grounds for the assessment of manifest unsuitability. The list is not exhaustive: fraud and other dishonesty (Penal Code, chapter 36); receiving and money laundering offences (Penal Code, chapter 32); offences by a debtor (Penal Code, chapter 39); theft and embezzlement (Penal Code, chapter 28); extortion (Penal Code, chapter 31); forgery (Penal Code, chapter 33); providing false documentation to a public authority, registration offence (Penal Code, chapter 16); security markets offences (Penal Code, chapter 51); accounting offence and bribery (Penal Code, chapter 30).

(16) The time periods referred to in paragraph 13 above start from the date on which a judgment has come into force and end on the commencement date of the term of office of a member or deputy member of the board, or of the managing director or deputy managing director.

5.2.2 Adjudication of bankruptcy and restriction of legal capacity

(17) A person referred to in paragraph 10 may not be adjudged bankrupt. Bankruptcy begins when a court has decided to adjudicate bankruptcy. Bankruptcy ends on account of a court decision, lapse of bankruptcy, composition or abatement.

(18) The capacity of a person may not be restricted as provided in the Guardianship Services Act (442/1999).

(19) A person may not be subject to business prohibition as provided in the Business prohibition Act (1059/1985).

5.3 Fitness

5.3.1 Overall assessment

(20) A supervised entity shall always have competent management that is capable and fit to perform the tasks entrusted to it and that can claim the confidence of customers, owners and markets in the supervised entity's operations under all circumstances.
(21) Fitness shall be assessed as an overall assessment, taking into account all factors affecting the evaluation. The assessment shall be conducted on a case-by-case basis as to ensure the maintenance of the soundness of a supervised entity’s corporate governance and market confidence in the supervised entity’s operations.

(22) Consequently, any element mentioned in the list below (paragraph 29) does not alone necessarily constitute grounds for a person to be deemed as not meeting the fit and proper test. On the other hand, for example pending legal proceedings in a matter relating to financial irregularities, seeking of own benefit or offences referred to in section 5.2.1 (15) may jeopardise the soundness of a supervised entity’s corporate governance and requires therefore action by the supervised entity’s management.

Self-assessment by a person

(23) If a person’s fitness and propriety are jeopardised he himself should always primarily assess the significance of his position to the soundness of the supervised entity’s corporate governance and market confidence in the supervised entity’s operations.

Assessment by the management of a supervised entity

(24) The FIN-FSA recommends that a person, on his own initiative, renounces or refrains from performing the functions of his position for the duration of clearing the matter whenever necessary for ensuring the soundness of a supervised entity’s corporate governance or maintaining or restoring market confidence.

(25) A supervised entity’s management shall assess the significance of the situation and occurrences for the soundness of the supervised entity’s corporate governance and market confidence in the entity’s operations.

(26) The FIN-FSA recommends that a supervised entity’s management takes the available measures to transfer a person or relieve him from his duties for the duration of clearing the matter whenever necessary for ensuring the soundness of the supervised entity’s corporate governance or maintaining or restoring market confidence.
5.3.2 Factors affecting overall assessment

*Jeopardising competent management, operating in accordance with sound and prudent business principles*

(27) Failure to pass the fit and proper test can result from the fact that a supervised entity is not managed with professional competence as required in section 5.5 of the standard.

(28) Failure to pass the fit and proper test can also result from the fact that a person is not carrying out his responsibilities carefully as is expected considering his professional competence and experience and as provided in section 5.4, even though the supervised entity’s operations as such raise no comments.

*Other factors that could jeopardise the soundness of corporate governance and market confidence in a supervised entity’s activity*

(29) The following list comprises examples of situations in which a supervised entity’s management may have to assess the fitness of persons responsible for management and key business functions from the perspective of sound corporate governance and market confidence. The list is not exhaustive.

- Criminal matters: pending criminal trial in a court or pending or ended pre-trial investigations in a matter relating to financial misconduct or the seeking of own benefit, for example the misuse of a position of trust or any other criminal offence that can compromise market confidence in a supervised entity’s operations or weaken a person’s capacity and possibilities to act in the position to which he has been appointed.

- Civil matters: debt restructuring; enforcement; registered payment defaults; other civil disputes or financial irregularities that can be relevant when assessing a person’s financial position and that can jeopardise market confidence in a supervised entity’s operations or weaken a person’s capacity and possibilities to act in the position to which he has been appointed.

- Disciplinary actions, objections or other reprimands: for example decisions given by a market court, an authority, the disciplinary board of a stock exchange, the board of directors of a stock exchange, the board of directors of an options corporation, the board of the Finnish Central Securities Depository, an auditing board or a bar association; ie objections, warnings, conditional fines, disciplinary fines imposed on the basis of self regulatory provisions and revocations of rights.
Application guideline
Issued on 20 March 2007
Valid from 1 July 2007

(30) The fitness of a person can also be subject to an assessment if he has such financial links or conflicts of interest that could significantly compromise market confidence in a supervised entity's operations or weaken the person's capacity and possibilities to act in the position to which he has been or will be appointed.

Application example
Issued on 20 March 2007
Valid from 1 July 2007

(31) Financial links and conflicts of interest refer for example to a person's direct and indirect holdings in, agreements and other arrangements with a supervised entity or another entity operating in financial markets (eg customer company) or other links with an external party, including positions of trust, board membership or a contract for services with the supervised entity's customer company.

5.4 Professional competence

(32) An authorisation is granted on the condition that a supervised entity be managed with professional competence as well as in accordance with sound and prudent business principles throughout the supervised entity’s lifespan.

Application guideline
Issued on 20 March 2007
Valid from 1 July 2007

(33) Professional competence refers to a person’s education, professional experience, personal character and capability to act in the position to which he is appointed.

Application guideline
Issued on 20 March 2007
Valid from 1 July 2007

(34) In applying the criteria of professional competence, account is taken of the nature and scope of a supervised entity's operations. Supervised entities differ by factors including the scope of activity, organisation, the number and diversity of financial services and customer structure.

5.4.1 Managing director and deputy managing director

Application guideline
Issued on 20 March 2007
Valid from 1 July 2007

(35) Managing director and deputy managing director are expected to possess sufficient education, professional experience suitable for the position, experience in directorship and other qualifications required for the successful fulfilment of the responsibilities of the position.

Application guideline
Issued on 20 March 2007
Valid from 1 July 2007

(36) A person shall also possess such general knowledge of the supervised entity’s business area as is deemed necessary with regard to the nature and scope of the supervised entity’s operations.

Application guideline
Issued on 20 March 2007
Valid from 1 July 2007

(37) General knowledge of a supervised entity’s business area can refer to such knowledge of the business that a person can have obtained for example by working at the supervised entity or in other lines of business/another
industrial sector in functions where the person has familiarised himself with the operation of financial markets.

(38) It is recommended that a managing director always possess good knowledge of the supervised entity’s business area, has experience in the business from a sufficiently long time and that there is proven evidence of the director's success in the business.

5.4.2 Members and deputy members of the board of directors

(39) The criteria of professional competence of the board of directors is assessed collectively.

(40) Each member of the board of directors shall possess such general knowledge of the supervised entity’s business area as is deemed necessary with regard to the nature and scope of the supervised entity’s operations. However, the members of the board of directors of a fund management company elected by the unit holders need not possess knowledge of mutual fund or investment firm activity (section 5e of the Mutual Funds Act).

(41) General knowledge of a supervised entity’s business area can refer to such knowledge of the business that a person can have obtained for example by working for the supervised entity or by working in another industrial sector in functions in which the person has familiarised himself with or has gained experience from the operation of financial markets, or by acting in positions of trust in the supervised entity.

(42) It is recommended that a member of the board of directors who has insufficient knowledge of the supervised entity’s business area is given the possibility to acquire education and knowledge necessary for carrying out the responsibilities of the position.

5.5 Competent management operating in accordance with sound and prudent business principles

(43) In assessing management that is professionally competent and operating in accordance with sound and prudent business principles, the provisions of standard 4.1 on the establishment and maintenance of internal control and risk management, as well as the principles of sound corporate governance, shall apply.

(44) Sound and prudent business principles comprise at least the following:

- establishment and maintenance of sound corporate governance
- establishment of sufficient high-grade internal control and risk
management that covers all activities of the supervised entity
- ensuring the reliability and correctness of financial information
- adequate safeguarding of a supervised entity’s assets and customers’ funds
- appropriate and adequate IT and/or manually operated systems to support operations.

(45) On conditions more closely provided by law, the FIN-FSA can prohibit a person from acting as a member or deputy member of a board of directors or as a managing director or deputy managing director if it finds that a credit institution, an investment firm, a holding company of either of these two, a fund management company, a custodian, or a holding company of a financial and insurance conglomerate primarily engaged in financial activities is not managed with professional competence and in accordance with sound and prudent business principles.
MEASURES OF THE SUPERVISED ENTITY

6.1 Approval of control policies and procedures

(1) A supervised entity shall have sound corporate governance enabling effective risk management, as well as adequate internal control and adequate risk management processes in relation to its operations.

6.1.1 Persons responsible for management

(2) The board of directors shall approve and document principles as well as establish and document procedures to control and ensure that persons responsible for management meet the fitness and propriety criteria on a continuous basis.

(3) It is recommended that the board of directors regularly reviews (for example every other year) information relating to persons responsible for management, as appropriate and approved.

6.2 Approval of persons responsible for key business functions

6.2.1 General

(4) Sound corporate governance requires that functions central and significant for the operations of a supervised entity have been identified and that persons responsible for them are fit and proper.

(5) The board of directors shall identify the persons responsible for the supervised entity’s key business functions as well as establish and document policies and procedures with which it intends to ensure that these individuals...
are fit and proper in performing their responsibilities.

(6) It is recommended that the managing director reviews regularly (for example every other year) information relating to persons responsible for key business functions, as appropriate and approved.

### 6.2.2 Managers of foreign branches

(7) The following shall always be considered as persons responsible for key business functions:

- manager and deputy manager of a foreign branch of a Finnish credit institution, investment firm and a fund management company
- manager and deputy manager of a Finnish branch of a foreign credit institution, investment firm and a fund management company domiciled outside the European Economic Area (EEA).

(8) Persons referred to in paragraph (7) above shall be reported of to the FIN-FSA in accordance with standard RA1.4 on the reporting of fitness and propriety to the Financial Supervision Authority.

### 6.2.3 Other persons responsible for key business functions

(9) Other persons responsible for key business functions are for example:

- member and a deputy member of a management group
- head of a business area
- other person comparable to the persons mentioned above.

(10) Information on persons referred to in paragraph (9) is not reported to the FIN-FSA.

(11) The FIN-FSA recommends that information and results of assessments regarding persons referred to in paragraph (9) are kept so that the FIN-FSA has access to them.

### 6.2.4 Persons responsible for the compliance function and internal audit

(12) The FIN-FSA recommends that supervised entities follow the provisions of this standard when assessing the fitness and propriety of persons responsible for the compliance function and internal audit.

(13) The FIN-FSA recommends that information regarding persons referred to in paragraph (12) is reported to the FIN-FSA in accordance with standard RA1.4 on the reporting of fitness and propriety to the Financial Supervision Authority.
6.3 Assessment of members of the supervisory board

(14) It is recommended that in those supervised entities that have a supervisory board, the supervisory board itself approves principles according to which it establishes, as appropriate, the fit and proper assessment of its members.

(15) It is recommended that the supervisory board complies with the principles of this standard when deciding on the establishment of the fit and proper assessment of its members.

6.4 Obligation to act

(16) The management of a supervised entity shall immediately take sufficient action to ensure the soundness of corporate governance and the maintenance of market confidence when the fitness and propriety of a person responsible for management or a key business function is jeopardised.

(17) Persons responsible for a supervised entity’s management shall decide on measures they consider necessary for ensuring sound corporate governance, and make their assessment and the respective measures known to the FIN-FSA in accordance with chapter 5 of standard RA1.4 on the reporting of fitness and propriety to the Financial Supervision Authority.

(18) The FIN-FSA recommends that the management of a supervised entity takes immediately available action to rearrange a person’s duties or relieve the person of his duties for the duration of clearing the matter whenever necessary for ensuring the soundness of a supervised entity’s corporate governance or maintaining or restoring market confidence.
7

REPORTING TO THE FINANCIAL SUPERVISION AUTHORITY

(1) Persons subject to reporting requirement, the contents of the notifications and the date of notification are defined in the relating standard RA1.4 on the reporting of fitness and propriety to the Financial Supervision Authority.
DEFINITIONS

Management of a supervised entity:
- board of directors and managing director

Person responsible for management:
- member and deputy member of the board of directors, managing director and deputy managing director

Person responsible for key business functions:
- manager and deputy manager of a foreign branch of a Finnish credit institution, investment firm or fund management company
- manager and deputy manager of a Finnish branch of a corporation domiciled outside the European Economic Area (EEA)
- other person specified by the supervised entity itself, for example a member and deputy member of a management group, head of a business area or another person comparable to persons mentioned above.
FURTHER DETAILS

Please find the necessary contact information in the list of Persons in charge for standards provided on the FSA website. For further information, please contact:

- Institutional Supervision, tel. +358 10 831 5207
- Conduct of Business, tel. +358 10 831 5336
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REVISION HISTORY

When this standard entered into force (on 1 July 2007), it repealed the following regulations and guidelines:

- Guideline on the contents of fit and proper assessments and on the reporting requirement (101.10)
- Regulation on written reporting on the fitness and propriety of owners, directors and managers in connection with changes (203.17), except for provisions concerning owners. More detailed provisions on owners will be given in the forthcoming standard on owner control.

This standard has been modified as follows:

- Issued on 31 December 2008, valid from 1 January 2009:
  As from 1 January 2009, pawnbroking institutions are no longer supervised by FIN-FSA. As a result, the standard is not applicable to pawnbroking institutions from 2009 onwards.