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Banking - Sweden

State Commission Proposes Changes to Deposit Guarantee Scheme

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Deposit Guarantee Scheme Financial Supervisory Authority Supervision and Intervention Timeframe

A state commission has published a report in which it proposes a number of changes to the deposit guarantee in order to better protect Swedish depositors and to improve financial stability. The commission's remit was to review the measures required to further improve the efficiency of the regulatory framework and supervision of institutions that accept deposits covered by the deposit guarantee scheme.

Deposit Guarantee Scheme

The deposit guarantee scheme protects deposits at banks, securities institutions and credit market companies. Investor Protection is provided for loss of an investor's financial instruments and funds at a securities institution, a fund company or a management company. The regulatory frameworks were introduced in 1996 and 1999 respectively in order to comply with the requirements of the EU directives.

The commission's remit was formulated in particular in the light of the *Custodia Case* (for further details please see "[Authority Suggests Review of Regulations in Light of Custodia Case](#)"), and the global financial crisis that occurred during Autumn 2008. Following the *Custodia Case*, the commission's main tasks were to review how the regulatory framework could be changed to provide investors with swifter access to their funds in the event of a credit institution encountering difficulties. In October 2008 the European Commission presented a proposal for an amendment of the EU Deposit Guarantee Directive (94/19/EC). The state commission's remit was thus also to:

- propose the necessary amendments to implement certain provisions of the directive;
- review the extent of the deposit guarantee scheme;
- examine how the deposit guarantee scheme could be improved to increase protection of consumers and achieve financial stability; and
- analyze the extent to which the proposed changes concerning the deposit guarantee should also cover investor protection.

This update outlines the major proposed changes.

Financial Supervisory Authority Supervision and Intervention

The commission considers that the Financial Supervisory Authority essentially has adequate legal powers necessary for it to perform its function as a supervisory authority. However, the commission proposed certain changes.

License and operating requirements

The commission proposes the imposition of special requirements for the reliability, security and speed of the systems that process information about depositors and investors, and their deposits and investments in companies and institutions that accept deposits. These requirements will be introduced in the form of operating rules which will have to be followed.

Supervision and interventions

With regard to the supervision of credit institutions, the commission proposes that the authority be given the right, as an additional supervisory tool, to appoint special inspectors with the power to inspect certain aspects of the institution. The commission also proposes that the model for the calculation of penalty fees for credit institutions be changed. To create a clearer proportionality between the size of the penalty and the

institution's financial strength, the amount of any penalty fee is to be set in relation to a percentage of the institution's average turnover during the past three financial years, up to a maximum of 3%. The nominal ceiling is to be raised to Skr200 million (approximately €18.5 million), so that penalty fees represent a more tangible sanction for large institutions as well as small.

The commission recommends certain changes to the authority's powers to intervene in the management of credit institutions. The authority is to have the right to appoint replacements for a board member or managing director if such a position is vacant. This rule is to be introduced for all undertakings subject to supervision by the authority.

Furthermore, changes are proposed with a view to securing the right of post holders appointed by the authority to remuneration for their appointment in the event of the bankruptcy of the company, since this may be an important factor in enabling the authority to appoint suitable post holders. Remuneration to an appointed managing director will not be covered by the limitation rule of four basic amounts that applies to the state wage guarantee. As regards payment to a board member appointed by the authority, the commission recommends that a general priority right for the remuneration be introduced.

The authority's obligation to appoint a public attorney in the event of the bankruptcy of a credit institution is to be replaced by a right to do the same.

Winding-up of credit institutions after revocation of licence

Under existing banking law, a banking limited company is to be wound up if its licence is revoked. However, credit market companies in the same situation shall wind up the business themselves – a procedure which has proven to be associated with certain risks and problems. The commission considers that this difference is unjustified and that credit market companies should, as a rule, also be subject to compulsory liquidation with a view to achieving the prerequisites for an orderly winding-up. However, exceptions from the obligation to liquidate for credit institutions will be possible in situations where the company wishes to continue the activity in another form. It will be possible to consent to exceptions of this kind if the authority considers that the activity for which the licence has been revoked can be wound up without detriment to depositors, other creditors or the public. In contrast to the situation under existing regulations, this activity will not be subject to licence.

Right to compensation

According to the existing regulatory framework, the deposit guarantee comes into effect in the event of bankruptcy. With a solution of this kind, there is a risk that depositors will have to wait for a long time after an institution's problems are revealed before gaining access to their funds. The commission considers changes in the regulatory framework to be necessary in order for the Swedish deposit guarantee system to comply with the requirements of the EU Deposit Guarantee Directive after the amendments were adopted on March 11 2009.

The right to payment may also come into effect when an institution indicates the existence of enduring problems in paying a deposit to a depositor. In accordance with the systematic approach in the deposit guarantee directive, decisions on the coming into effect of the guarantee in a situation of this kind shall be made within five working days, after which the guarantee authority has 20 working days to administer guarantee payouts to all depositors entitled to payment. Such decisions are to be made by the Financial Supervisory Authority. Institutions will have the right to appeal these decisions.

Tasks and powers of guarantee authority

In contrast to the existing situation, in order for the guarantee authority to be able to provide authoritative advance information to depositors on which deposits are covered by the deposit guarantee, mandatory consideration will be introduced of all kinds of accounts used by an institution to accept deposits. It is recommended that the institutions' obligation to inform depositors on whether the deposit guarantee applies to deposits in the account be retained. The content of the information thus provided will be more reliable since it will be associated in this way with an advance ruling.

To enable the guarantee authority to implement the pay-out process, in the event of payment within the 20 working days stipulated by the Deposit Guarantee Directive, the authority must have access at an early stage to reliable information about depositors and their deposits. The proposed quality requirements for the institution's IT system for information about depositors and their deposits will contribute to a swifter and simpler pay-out process.

The commission proposes that the guarantee authority be given clearer powers to obtain information that it needs in order to carry out its investigations.

Special questions relating to extent of guarantee

In the *Custodia Case*, uncertainty arose as to whether deposits made after the authority's decision to revoke the licence, but before the decision had obtained legal force, were to be considered as being covered by the deposit guarantee. In order to clarify this issue, the commission proposes that a rule be introduced to the effect that deposits will be covered by the deposit guarantee if they were made during the period in which the institution in question had a licence. In other words, the time at which the revocation decision is enforceable will be crucial. Furthermore, the commission has found that bank money orders are not covered by the Deposit Guarantee Act's definition of the term 'deposit', and proposes no changes to the definition.

The commission considers that deposited funds in individual pensions saving should be protected. This protection should be achieved by the claim on deposited funds covered by a general right of priority in a bankruptcy.

Timeframe

The proposals relating to changes in the supervisory rules and other operating rules are scheduled to take effect on July 1 2010. It is proposed that the recommended amendments to the Deposit Guarantee Act and the Investor Protection Act come into effect on January 1 2011, apart from the right to issue regulations relating to advance consideration of accounts. The commission considers that only transitional regulations are needed for the determination of penalty fees for breaches that occurred partly or wholly before the entry into effect of the legislation.

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