

Banking - Norway

Financial Supervisory Authority proposes new rules on sale of savings products

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Over the past decade, Norwegian financial institutions have sold various financial savings products to consumers, with mixed results for investors. Following the collapse of Lehman Brothers in 2008, many investors suffered huge losses on various structured products. Consequently, many investors filed complaints with the Financial Complaints Board and some have pursued their claims before the courts.

Norwegian courts have been reluctant to honour investors' claims, holding as a rule that an investor in the capital markets bears the risk of its own decision to invest. The courts have maintained that in order for there to be any departure from this rule, there must have been a significant lack of information or misleading information provided by the seller to the investor, which formed the basis for the investor's decision to invest. In both *Lognvik v Storebrand Bank*⁽¹⁾ and *Fokus Bank*,⁽²⁾ relating to investments in ING Senior Loans Derivatives, the Supreme Court rejected the investors' compensation claims. Only in a third judgment, *Røeggen*,⁽³⁾ was an investor successful. To most commentators, it is unclear why the Supreme Court came to a different conclusion in *Røeggen* than in its two former decisions. The Financial Complaints Board is presently dealing with some 2,000 similar cases in which investors are claiming compensation for losses on investments in similar products.

In order to strengthen consumer protection, the Financial Supervisory Authority recently proposed amendments to the securities legislation to the Ministry of Finance. The proposal contains provisions to amend the Securities Act in order to increase sellers' obligations by:

- including savings products which cannot be regarded as financial instruments within the meaning of the act, and thus applying the obligations already applicable as a result of implementation of the EU Markets in Financial Instruments Directive (2004/39/EC);
- requiring selling financial institutions and securities firms to document their sales and retain such documentation for at least five years; and
- compelling selling financial institutions and securities firms to secure evidence by recording phone calls through which savings products are sold and retain such recordings for five years.

It is hoped that the new obligations to document sales will prove useful in case of future disputes in relation to investment losses. It remains to be seen whether the new rules will reduce institutions' desire to sell and investors' desire to buy complex, little understood financial products.

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Endnotes

(1) Rt 2012-355.

(2) Rt 2012-1926.

(3) HR-2013-642.

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