

Exclusion grounds and mandatory requirements

Procurement Reference: LUP 2023-1
Procurement European Equity Funds

Exclusion Grounds

Criminal Offences

The Swedish Fund Selection Agency shall exclude a Fund Manager from participation in a procurement if The Swedish Fund Selection Agency in some manner learns that the Fund Manager or the Investment Manager, through a legally binding judgement, has been found guilty of one of the following crimes:

1. any criminal activity referred to in Article 2 in the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime,
2. corruption as defined in Article 3 in the Council Act of 26 May 1997 establishing, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, corruption in accordance with Article 2.1 in the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, or corruption in accordance with national provisions,
3. fraud as referred to in Article 1 of the Convention established on the basis of Article K.3 in the Treaty on European Union, on the protection of the European Communities' financial interests,
4. money laundering or the financing of terrorism, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council on preventing the use of the financial system for the purpose of money laundering and the financing of terrorism, on amending the regulation (EU) No. 648/2012 and on the abrogation of Directive 2005/60/EC of the European Parliament and the Council and Directive 2010/78/EU of the European Parliament and the Council in its original wording,
5. terrorist offences or offences linked to terrorist activities, as defined in Articles 3 and 5–12 in Directive (EU) 2017/541 of the European Parliament and the Council from 15 March 2017 on combating terrorism, on replacing Council Framework Decision 2002/475/JHA and on changing the Council Decision 2005/671/JHA in its original wording, or inciting or aiding and abetting or attempting to commit an offence, as referred to in Article 14 in that Directive, or
6. human trafficking as defined in Article 2 of Directive 2011/36/ EU of the European Parliament and the Council of 5 April 2011 on preventing and combating human trafficking and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, in its original wording.

If the Fund Manager is a legal entity, the Fund Manager shall be excluded if a person in the administrative, management or supervisory body of that Fund Manager or Investment Manager, has been found guilty of such a crime. The same applies if the person found guilty of such a crime has powers of representation, decision or control in relation to the Fund Manager or the, Investment Manager.

Time Limit for Exclusion

The Swedish Fund Selection Agency may not allow a judgement that was rendered more than five years ago to be the basis for a decision to exclude a Fund Manager in accordance with what is stated above under Criminal Offences.

Unpaid Taxes and Social Security Contributions

The Swedish Fund Selection Agency shall exclude a Fund Manager from participation in a procurement if the Swedish Fund Selection Agency in any way learns that the Fund Manager or the Investment Manager is in breach of their obligations relating to the payment of taxes or social security contributions in the country in which it is established or the country where the procurement is taking place, and this has been determined by a judicial or administrative decision that has become legally binding.

The Swedish Fund Selection Agency may exclude a Fund Manager from participation in the procurement if the Swedish Fund Selection Agency can demonstrate by any other appropriate means that the obligations referred to in the first paragraph have not been fulfilled.

Other Misconduct Relating to a Fund Manager's Operations

The Swedish Fund Selection Agency may exclude a Fund Manager from participation in procurement, if:

1. The Swedish Fund Selection Agency can show that the Fund Manager or the Investment Manager is in breach of applicable environmental, social or labour law obligations,
2. The Fund Manager or Investment Manager
 - a) is bankrupt or is the subject of insolvency or liquidation proceedings,
 - b) has their assets administered by a liquidator or by the court,
 - c) is in an arrangement with creditors, or
 - d) has suspended their business activities or is in any analogous situation arising from a similar procedure under national laws and regulations corresponding to those in items a–c,

3. The Swedish Fund Selection Agency can show that the Fund Manager or the Investment Manager is guilty of serious professional misconduct, e.g. in case an authority responsible for supervision relating to financial companies (in Sweden the Financial Supervisory Authority [Sw. Finansinspektionen] or otherwise an equivalent authority outside Sweden) has intervened against violations of regulations, decided on sanctions or similar, which renders the Fund Manager's or the Investment Manager's integrity questionable,
4. The Swedish Fund Selection Agency has sufficiently plausible indications to conclude that the Fund Manager or Investment Manager has entered into agreements with other providers aimed at distorting competition,
5. The Fund Manager or Investment Manager has shown serious or persistent deficiencies in the performance of a substantive requirement in a previous contract with the Swedish Fund Selection Agency or the Swedish Pension's Agency, which resulted in premature termination of that contract, or in damages or other comparable sanctions,
6. The Swedish Fund Selection Agency cannot avoid distortion of competition or cannot guarantee equal treatment of all providers for reasons of disqualification and this cannot be remedied by other, less intrusive, measures than exclusion of the Fund Manager,
7. The Swedish Fund Selection Agency cannot by other, less intrusive, measures than exclusion of the Fund Manager remedy a distortion of competition from the prior involvement of the Fund Manager in the preparation of this procurement procedure
8. The Fund Manager to a significant extent
 - a) has been guilty of misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion from the procurement, or
 - b) has withheld such information,
9. The Fund Manager has undertaken to unduly influence the decision-making process of the procuring agency, or to obtain confidential information that may confer upon the Fund Manager undue advantages in the procurement process, or to negligently provide misleading information that may have a material influence on decisions concerning exclusion of Fund Managers, selection of Fund Managers that may be awarded the contract, and the awarding of contracts in general.

Time Limit for Exclusion due to Other Misconduct Relating to a Fund Manager's Operations

The Swedish Fund Selection Agency may not allow an event that occurred more than three years ago to be the basis for a decision to exclude a Fund Manager due to other misconduct relating to a Fund Manager's operations.

Investigation

The Swedish Fund Selection Agency shall, before it decides to exclude a Fund Manager, give the Fund Manager an opportunity to, within a certain period of time, make a statement about the circumstances which, according to the Swedish Fund Selection Agency, are grounds for exclusion.

Exceptions from Exclusion in Certain Cases

A Fund Manager who is subject to any of the grounds for exclusion in accordance with what is stated above under "Criminal offences", or due to other misconduct relating to a Fund Manager's operations, shall not be excluded if the Fund Manager can demonstrate their reliability by showing that they or the Investment Manager has:

1. paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct,
2. clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities, and
3. taken specific technical, organizational and personnel measures that are intended to prevent further criminal offences or misconduct.

The measures undertaken by the Fund Manager or Investment Manager shall be evaluated taking into account the gravity and circumstances of the criminal offence or misconduct.

If the Fund Manager or the Investment Manager has fulfilled their obligations regarding payment of taxes and social security contributions, including any interest accrued and fines, or has entered into a binding agreement concerning payment or similar, the Fund Manager shall not be excluded in accordance with what is stated above relating to unpaid taxes and social security contributions.

The Swedish Fund Selection Agency may refrain from fulfilling an obligation to exclude a Fund Manager, if this is justified by overriding considerations relating to the public interest.



Decisions on Exclusion

The Swedish Fund Selection Agency may at any point during a procurement exclude a Fund Manager from participating in the procurement, if there are grounds for exclusion.

The Swedish Fund Selection Agency shall promptly and in writing inform the Fund Manager of this decision and the reasons thereto.



MANDATORY FUND REQUIREMENTS

Authorizations, etc.

The fund must be a Swedish or foreign mutual fund in accordance with Chapter 1, section 1 of the Swedish UCITS Act (2004:46) and must be supervised by FI (Finansinspektionen) or fulfil the criteria set out in the Swedish UCITS Act for marketing shares in the fund in Sweden.

Furthermore, the Fund must fulfil the requirements stipulated in the Procurement Specification.

Distribution of Funds to Individuals Other than the Unit Owners

The fund, in accordance with the fund rules, cannot permit the distribution of funds to anyone other than the unit owners.

Compliance

The Fund Manager shall, at all times, conduct their operations within the premium pension sector and their fund operations in general in accordance with applicable laws and regulations.

Management Fee

The management fee shall, like other fees and costs, be charged to the fund and be deducted from the net asset value. No fees or costs may be charged to the Swedish Fund Selection Agency or the Swedish Pensions Agency. The Fund Manager may not apply a performance-based management fee in the asset class being offered in the procurement.

FUND MANAGER REQUIREMENTS

History

The Fund Manager shall, with the exception stated below and calculated backwards from 30 June 2023, have been licensed to engage in fund operations from the relevant supervisory authority and have managed one or more funds covered by the UCITS Directive during a consecutive period of no less than three (3) years. Where the licence to conduct fund operations has been held for less than three years, an exception from the requirement may be granted if the Swedish Fund Selection Agency finds that fund management as conducted by the Fund Manager at the time nevertheless can be considered to have been conducted for at least three years. One example of a granting of such an exception is if the Fund Manager is a newly formed legal entity to which existing fund operations, which in turn have been in operation for no less than three (3) years, have been transferred in their entirety, for example as a result of a reorganization within a group of companies.

The fund's assets may only be managed, fully or partly, by Investment Managers with a licence to manage mutual funds or conduct discretionary portfolio management of financial instruments, and who have managed assets during a period of no less than three (3) years calculated backwards from 30 June 2023. In exceptional cases, the Swedish Fund Selection Agency may permit Investment Managers to have managed assets for a period of less than three (3) years at the time, on the condition that the Agency may still deem that the Investment Manager's management, and any related activities, has been ongoing for at least (3) years. One example of a granting of such an exception is if the Investment Manager is a newly formed legal entity to which existing management operations, which in turn have managed assets for no less than three (3) years, have been transferred in their entirety, for example as a result of a reorganization within its group of companies.

Experience from the Strategy

The Fund Manager shall have managed funds, and any Investment Manager shall have managed assets, within the same Strategy as is covered by this procurement during a consecutive period of at least three (3) years over the last five (5) years, calculated backwards from 30 June 2023.

Requirement on Minimum Assets under Management

Each of the Fund Manager and any Investment Manager shall have at least SEK 5 billion in total assets under their management as of 30 June 2023.



SUSTAINABILITY REQUIREMENTS

UNPRI

All Fund Managers and any Investment Managers shall have signed and be subject to the UN Principles for Responsible Investment (PRI), or be subject to the signing of the PRI principles made by another legal entity within the Fund Manager's or the Investment Manager's Group of Companies.

SFDR

The Fund shall promote e.g. environmental or social characteristics, or a combination of those characteristics (so called article 8 funds) or shall have sustainable investment as its objective (so-called article 9 funds) in accordance with Regulation (EU) 2019/2088 of the European Parliament and the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR).

UN Global Compact, UNGPs and OECD MNE Guidelines

The Fund Manager and any Investment Managers shall certify they have processes in place, integrated into the Fund's investment process and a process for active ownership, to identify and assess if portfolio holdings, existing or potential investments, are associated with violations of any of the ten principles of the Global Compact, the OECD Guidelines for Multinational Enterprises, and the UN Guiding Principles on Business and Human Rights (UNGPs). Each Fund Manager and Investment Manager shall also certify that they have guidelines in place regarding how the Fund Manager and Investment Manager should act in their capacity as an investor in the event of any identified violations in the fund's holdings. The Fund Managers and any Investment Managers must be able to accommodate exclusion of portfolio entities that do not adopt adequate measures to prevent serious future violations of the kind that emerged when assessing violations of the Global Compact, the OECD Guidelines for Multinational Enterprises, and the UN Guiding Principles on Business and Human Rights (UNGPs) and/or that have not compensated third parties who suffered serious harm due to such a verified violation.

The Paris Agreement

The Fund Manager and any Investment Managers shall certify that they have established processes, integrated into the Fund's investments process and a process for active ownership, to identify whether portfolio entities, existing or potential investments in the Fund, are taking adequate steps to comply with the Paris Agreement goals. Each Fund Manager and Investment Manager shall also certify that they have guidelines in place regarding how the Fund Manager and Investment Manager will act in their capacity as an investor based on this information.

Norm-based Exclusions

The Fund Managers and any Investment Managers must be able to accommodate exclusion of businesses that

- produce, store, trade, or use anti-personnel mines as defined by the UN Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction
- produce, store, trade, or use cluster munitions as defined by the UN Convention on Cluster Munitions
- produce, store, trade, or use biological weapons as defined by the UN Convention on the Prohibition of Development, Production, Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction
- produce, store, trade, or use chemical weapons as defined by the UN Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
- produce components for or provide services associated with nuclear arms;
- are subject to prevailing EU or UN sanctions
- have more than 5 percent of turnover attributable to the production of tobacco or tobacco products (separately or in combination);
- have more than 5 percent of turnover attributable to the extraction/production of thermal coal (separately or in combination);
- have more than 5 percent of turnover attributable to electricity production through the burning of thermal coal.

Shareholder Engagement Policy

The Fund Manager shall certify that it has adopted an engagement policy that describes how the Fund Manager integrates shareholder engagement in their investment strategy for the Fund being offered. The policy is outlined in Chapter 2 section 17h of the Swedish UCITS Act (2004:46) (the "Act") which provision implements into Swedish law Article 3g of Directive (EU) 2017/828 of the European Parliament and the Council of 17 May 2017, amending Directive 2007/36/EC concerning the encouragement of long-term shareholder engagement (the "Directive"). On an annual basis, the Fund Manager shall publicly disclose how the aforementioned policy has been implemented. The contents of the disclosure can be found in Chapter 2 section 17i of the Act and Article 3g of the Directive. The Fund Manager shall not have availed themselves of the option in the Act or the Directive to refrain from fulfilling one or more of the requirements in paragraphs 17h and 17i of the Act or the corresponding provisions in the Directive.

Domicile etc.

The EU Commission has adopted the EU list of non-cooperative jurisdictions, as well as the EU list of high-risk third countries (collectively the "EU Lists"). The EU Lists will be amended over time. Neither the Fund Manager, the Investment Manager nor the fund may be registered or otherwise be domiciled in a jurisdiction included in either of the EU Lists. The EU Lists are appended to the procurement documents. The Fund Manager must submit evidence of the jurisdictions in which they, the Investment Manager and the fund itself, are registered or domiciled.

SANCTIONS, PARTICULARLY REGARDING THE EFFECT OF SANCTIONS DETERMINED BY THE EU

The Fund Manager must certify that no member of the board, including deputies, the CEO and his/her deputy, other senior executives or owners of more than 1% of the Fund Manager or any parent organization (with an ownership of more than 1%) is subject to sanctions (EU, UN).

The EU has imposed sanctions on Russia and Belarus in response to Russia's aggression against Ukraine.

The sanctions include a ban on:

- making payments etc. to certain listed individuals and organizations (freezing of assets).
- import, purchase and transportation of certain listed goods (import ban).

The sanctions include some limited potential for exceptions.

Contracting authorities must comply with the provisions on sanctions and may not make any payments, directly or indirectly, to operators subject to these sanctions (i.e. included in the lists of sanctions). Contracting authorities may not directly or indirectly import goods and services subject to the sanctions in question. The Swedish Fund Selection Agency has decided to follow the same or equivalent rules as those applicable to contracting authorities in this procurement.

The Fund Manager must therefore certify that neither the tenderer nor the envisaged contractual relationship is, directly or indirectly, subject to the sanctions against Russia and Belarus determined by the EU.

The certification encompasses the Fund Manager's confirmation that they:

- neither directly nor indirectly are subject to the sanctions .
- will not use subcontractors etc. subject to the sanctions, or invoke the capacity of such operators in the procurement.
- will not, within the framework of the contractual relationship, participate in the purchase, import or transportation of products and services subject to EU import restrictions.

The Fund Manager certifies that they will inform:

- The Swedish Fund Selection Agency without delay if the Fund's legal status, ownership or representation before the award decision is changed in such a way that it is no longer possible to award contracts to the Fund, considering the sanctions determined by the EU, or other entity.
- The Swedish Fund Selection Agency without delay if there is reason to suspect that the circumstances are such that a subcontractor or an invoked company is subject to sanctions.

The Fund Manager certifies that they will cooperate fully in matters relating to the enforcement of the sanctions and provide the necessary information in this regard.

MISCELLANEOUS



Information Requirements

The Fund Manager certifies that reporting to the Swedish Fund Selection Agency about all the Fund's transactions will be carried out on an ongoing basis and with such interval and such delay as follows from the provisions in the Fund Agreement.

The Fund Manager certifies that reporting to the Swedish Fund Selection Agency about the Fund's assets will be carried out on an ongoing basis and with such interval and such delay as follows from the provisions in the Fund Agreement.

Validity of Tender

The Fund Manager confirms that the tender submitted is valid during the time period as stipulated in the Procurement Guidelines section 6.9.

Acceptance of the Terms of the Fund Agreement

The Fund Manager agrees, without reservation, to the terms and conditions stated in the Fund Agreement, including its appendices.