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7 - Finland: Protecting Minority Investors and Compensating Their Losses

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Cambridge University Press

2019-01

Pönkä , I H V 2019 , 7 - Finland: Protecting Minority Investors and Compensating Their Losses . in P-H Conac & M Gelter (eds) , Global Securities Litigation and Enforcement . Cambridge University Press , pp. 303-330 . <https://doi.org/10.1017/9781316258118.008>

<http://hdl.handle.net/10138/309562>

<https://doi.org/10.1017/9781316258118.008>

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Protecting minority investors and compensating their losses in Finland

VILLE PÖNKÄ*

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1. Capital markets

The Helsinki Securities Exchange – the first securities exchange in Finland – was established in the year 1912. At that time, Finnish capital markets were rather undeveloped, and they remained both undeveloped and isolated for decades. In fact, only after the liberalization of capital markets, the modernization of tax legislation, and the increase in national wealth in the mid-1980s did securities exchange in Finland begin to increase rapidly.¹ Other factors also made a positive impact on Finnish capital markets, such as new securities market regulation,² the improvement of investor protection, and the development of modern electronic trading and clearing services. These developments began to attract foreign investors.

Around the years 2007–2009, so-called multilateral trading facilities or “alternative marketplaces” (*vaihtoehtoinen markkinapaikka*) began to operate in Finland, and since then, a considerable portion of the securities exchange has been concentrated on them. These alternative marketplaces provide their customers faster and cheaper services than “traditional” exchanges – such as the Helsinki Securities Exchange – and thus have created genuine competition between different marketplaces.³ Partly owing to this competition, the Helsinki Securities Exchange has merged with the NASDAQ-group in order to retain its position as the primary

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¹ Prior to the 1980s, Finnish capital markets were rather bank-oriented.

² The government bill concerning the securities markets legislation is HE 32/2012, *Eduskunnalle arvopaperimarkkinoita koskevaksi lainsäädännöksi*; see pp. 24–5, pp. 49–51.

³ Multilateral trading is also regulated more lightly than is trading on a “traditional” securities exchange.

securities marketplace in Finland. Today, the Helsinki Securities Exchange is called Nasdaq Helsinki. At the moment, the only alternative marketplace operating in Finland is Nasdaq First North, operated by Nasdaq Helsinki.

Before presenting more detailed information about Finnish listed companies, it is necessary to briefly describe the business forms used for business activities in Finland. As in the other Nordic countries, businesses in Finland appear in very few forms. In fact, Finnish legislation recognizes only five different forms of business, of which two are generally used for normal, profit-making business activities. All Finnish business forms – the limited liability company (*osakeyhtiö*), the partnership (*henkilöyhtiö*)⁴, the cooperative (*osuuskunta*), the European Company (*eurooppayhtiö*) and the European Cooperative Society (*eurooppaosuuskunta*) – are governed by separate acts.⁵

The limited liability company (or a company limited by shares) is by far the most common type in Finland. Of the more than 300,000 registered businesses currently operating in the country, over 270,000 are registered as limited liability companies.⁶ This is an enormous number considering the size of Finland's population, even though many companies might not actually be operating. Thus, in view of the national economy of Finland, the significance of the limited liability company cannot be exaggerated.

In Finland, however, the legislation recognizes only one form of the limited liability company. Although companies of this type can be either *private* ("closed") or *public*, no separate laws exist for them. In other words, the Finnish Companies Act (*Osakeyhtiölaki* 624/2006, hereafter Companies Act or FCA) governs all limited liability company types, and no hybrid company structure exists that, for example, combines some attributes of partnerships and corporations.

Along with private and public limited liability companies, there are *listed* companies. This means that a public company is not automatically a listed company; in order to be listed, a public company must fulfill the qualifications and abide by the procedural requirements stated in the Companies Act, the Securities Markets Act (*Arvopaperimarkkinalaki* 746/2012, hereafter FSMA), and the Nasdaq Helsinki Ltd Rules of Exchange (*Nasdaq Helsinki Oy Pörssin Säännöt*, hereafter Rules of Exchange).⁷

At present, only about 248 Finnish limited liability companies are registered as public companies, of which just over half have securities listed on the Nasdaq Helsinki Securities Exchange. Even though the number of limited liability companies has been rapidly increasing, for many years, the number of public and listed companies has been decreasing.⁸

⁴ Finnish law recognizes both general partnerships (*avoin yhtiö*) and limited partnerships (*kommandiittiyhtiö*).

⁵ For general information in English about Finnish business forms, see Jukka Mähönen, 'Finland – Corporate governance: Nordic tradition with American spices', in Fleckner and Hopt (eds.), *Comparative Corporate Governance. An Functional and International Analysis* (New York 2013), pp. 393–443 Ville Pönkä, 'Forms of Finnish Companies and the Main Principles of Company Law', in Nuotio, Melander, and Huomo-Kettunen (eds.), *Introduction to Finnish Law and Legal Culture* (Helsinki, 2012), pp. 143–52 and 'Groups of Companies – the Finnish Model' working paper available at SSRN: <https://ssrn.com/abstract=3052128>, pp. 3–4 and Heikki Toiviainen, *An introduction to Finnish business law. A comprehensive survey of the foundations and main rules of Finnish corporate law* (Helsinki, 2008).

⁶ These numbers are based on statistics given by the National Board of Patents and Registration of Finland.

⁷ The current Rules of Exchange came into force on 31 January 2018.

⁸ It is also important to note that according to the Finnish Cooperatives Act (*Osuuskuntalaki* 421/2013) also cooperative shares can be listed. According to chapter 5, section 2 of the Cooperatives Act cooperatives which have

By the end of August 2015, there were 127 companies listing securities on the Nasdaq Helsinki Securities Exchange.⁹ At the end of 2016, the total market value of these companies was about EUR 209 billion.¹⁰ Companies that have securities listed on the Nasdaq Helsinki Securities Exchange operate in various business sectors, although compared to many other European countries, some of these sectors have no – or relatively few – business activities. These sectors include oil and gas, food and beverages, and health care. On the other hand, some business sectors have much more significance in Finland compared to European averages. These sectors include industrial goods and services, banks, and telecommunications. Although the business activities of the Finnish listed companies are limited to a few major sectors, Finnish companies are relatively active in international business operations.¹¹

In Finland today, listings are quite rare. In fact, between 2001 and 2012, only 37 new companies listed securities on the Nasdaq Helsinki or Nasdaq First North lists.¹² During the past decade, many Finnish companies also delisted owing to mergers, bankruptcies, and other reasons. Another deplorable feature of Finnish capital markets is that start-up companies are not usually listed, but rather are sold to Finnish venture capitalists or foreign investors. Hence, the enhancement of the growth possibilities of start-up companies has been considered one of the greatest challenges to the Finnish economy.¹³

Foreign investors own about 46 percent of the shares of Finnish listed companies. The second biggest group of owners is households – i.e., private Finnish investors – who have a little more than 20 percent in holdings. Public bodies, such as state and public pension funds, own 9 percent and Finnish companies own about 11 percent of the shares of Finnish listed companies.¹⁴ Because of the financial crisis, the ownership structure of Finnish listed companies has become more national. For example, in the beginning of the year 2008, about 60 percent of the shares of Finnish listed companies were owned by foreign investors; since then, their share of ownership has decreased by roughly 14 percent.¹⁵ However, on a European scale, the share of ownership by foreign investors is still higher in Finland than in most other European countries.¹⁶

listed shares are called “listed cooperatives.” No cooperative has yet been listed in Finland, but in other countries cooperative listings have occurred. See, e.g., O.F. van Bekkum and J. Bijman, ‘Innovations in Cooperative Ownership: Converted and Hybrid Listed Cooperatives’ in Rajagoplan (ed.) *Cooperatives in 21st Century. The Road Ahead* (Hyderabad, India 2007) pp. 34–56. See also Ville Pönkä, ‘Are Cooperative Societies Transforming into Cooperative Companies? Reflections on the Finnish Cooperatives Act’, *European Business Law Review* 1/2019 (waiting to be published).

⁹ At the same time there were 19 companies listing securities on the First North Finland list.

¹⁰ See the webpages for the Finnish Foundation for Share Promotion (www.porssisaatio.fi/en/tutkimus-tilastot/)

¹¹ *Listatut yhtiöt 2013. Pörssiyhtiöiden tunnusluvut* (Liettua 2013), pp. 7–10. Knuts 2014.

¹² *Listatut yhtiöt 2013*, p. 13. Since 2012 listings in Finland have, however, slightly increased in number. See the webpages for the Finnish Foundation for Share Promotion (www.porssisaatio.fi/en/tutkimus-tilastot/).

¹³ HE 32/2012, p. 50.

¹⁴ See the webpages for the Finnish Foundation for Share Promotion (www.porssisaatio.fi/en/tutkimus-tilastot/).

¹⁵ HE 32/2012, p. 50.

¹⁶ Knuts 2014.

It is generally acknowledged that the ownership of publicly traded firms is more concentrated in Europe than it is in the United States.¹⁷ This assumption also applies – at least to some extent – to Finnish listed companies.¹⁸ Of the 15 biggest companies with securities listed on the Nasdaq Helsinki Securities Exchange, only 3 have a dispersed ownership structure (i.e., one that corresponds to the Berle-Means model). Twelve of these 15 companies have at least one shareholder who owns at least 10 percent of all the shares in the company, and, in 7 of the companies, there is at least one shareholder owning at least 20 percent of all the company shares.¹⁹

2. Securities regulation

2.1. Background

The historical roots of Finnish securities market regulation do not go very deep. The first Securities Markets Act (*Arvopaperimarkkinalaki* 495/1989) was passed in 1989. In 2012, it was replaced by legislation that refers to the Securities Markets Act, the Investment Services Act (*Sijoituspalvelulaki* 747/2012), the Act on Trading in Financial Instruments (*Laki kaupankäynnistä rahoitusvälineillä* 748/2012), the Act on the Book-Entry System and Clearing and Settlement Operations (*Laki arvo-osuusjärjestelmästä ja selvitystoiminnasta* 749/2012), the Securities Accounts Act (*Laki arvopaperitileistä* 750/2012), and the Amendment Act to the Act on Book-Entry Accounts (*Laki arvo-osuustileistä annetun lain muuttamisesta* 751/2012). Because the Finnish securities market legislation is very new, there is little up-to-date legal literature on the topic.²⁰

The Financial Supervisory Authority (*Finanssivalvonta*, hereafter FIN-FSA) is the authority for supervising Finland's financial and insurance sectors. The FIN-FSA supervises banks, insurance and pension companies, as well as other companies operating in the insurance sector, investment firms, fund management companies, and the Nasdaq Helsinki Securities Exchange. As much as 95 percent of the activities of the FIN-FSA is funded by the supervised entities, and the remaining funding is provided by the Bank of Finland.²¹ The activities of the FIN-FSA are regulated by the Act on the Financial Supervisory Authority (*Laki Finanssivalvonnasta* 878/2008, hereafter FIN-FSA Act).

As mentioned above, the FIN-FSA finances its activities mainly by levying supervision and processing fees on supervised entities and other fee-paying entities. Some of its decisions and other measures are subject to processing fees, in accordance with a fixed fee schedule. A five percent contribution is made by the Bank of Finland to the authority's funding costs. In 2016, the combined supervision and processing fees of the FIN-FSA amounted to EUR 25.7 million. The bulk of operating costs went to staff expenses (EUR 16 million). Other major expense items were real estate expenses, service charges from the Bank of Finland, training,

¹⁷ See, e.g., Mara Faccio and Harry H.P. Lang, The Ultimate Ownership of Western European Corporations, *Journal of Financial Economics* 2002, 365–395, pp. 389–393 and Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, Corporate Ownership Around the World, *The Journal of Finance* 1999, 471–517.

¹⁸ See, e.g., Vesa Puttonen, *Onko omistamisella väliä?* (Helsinki, 2004), p. 51, and Ville Pönkä, *Yhdenvertaisuus osakeyhtiössä* (Helsinki, 2012), p. 54.

¹⁹ *Listatut yhtiöt 2013*, pp. 47–166.

²⁰ See Janne Häyrynen and Ville Kajala, *Uusi arvopaperimarkkinalaki* (Estonia, 2013), Jarmo Parkkonen and Märten Knuts, *Arvopaperimarkkinalaki*, 5th edn (Estonia, 2014) and Knuts 2014.

²¹ See the webpages for FIN-FSA (www.finanssivalvonta.fi/en/About_us).

meeting and travel expenses, and services charges from external sources (altogether a total of EUR 9.7 million).²²

2.2. Enforcement activities

Finnish securities market legislation recognizes three kinds of sanctions: (1) administrative sanctions (FSMA chapter 15), (2) liability for damages (FSMA chapter 16) and (3) penal sanctions (FSMA chapter 18). In the matter of penal sanctions, however, the Securities Markets Act only refers to the Criminal Code of Finland (*Rikoslaki* 39/1889, hereafter Criminal Code or FCC). According to chapter 51 of the Criminal Code, criminalized securities market offenses include abuse of insider information (section 1), aggravated abuse of insider information (section 2), market price distortion (section 3), aggravated market price distortion (section 4), and securities market information offense (section 5).²³ Sanctions for secrecy offenses and violations are also set forth in the Criminal Code (chapter 38, sections 1–2).²⁴

The FIN-FSA may impose three kinds of administrative sanctions: (1) administrative fines (FSMA chapter 15, section 1, and FIN-FSA Act section 38), (2) public reprimands (FIN-FSA Act section 39) and (3) penalty payments (FSMA chapter 15, section 2, and FIN-FSA Act section 40). In addition, the FIN-FSA may issue an order directing the public offering or admission to public trading of securities to be postponed by at most 10 consecutive banking days at a time (FSMA chapter 17, section 1). The postponement may be ordered if the authority has reasonable grounds to suspect that the offeror of the securities or the applicant to public trading thereof or the party who, under an order, attends to the offer or the application for admission to public trading is acting in violation of the Securities Markets Act. The FIN-FSA may also prohibit anyone who markets or acquires securities as a business from continuing a procedure in violation of the Securities Markets Act (FSMA chapter 17, section 2). The above-mentioned prohibitions can be intensified with a default fine (FSMA chapter 17, section 3).

(1) The FIN-FSA may impose an administrative fine for any failure to comply with or violation of the provisions in section 38 of the FIN-FSA Act. Such failures include, for example, the failure to submit a declaration of insider holdings or other regular report. The FIN-FSA may, however, decide not to impose an administrative fine upon fulfillment of the criteria specified in section 42 of the FIN-FSA Act. No administrative fine is imposed if a case concerning the same violation is pending and subject to pre-trial investigation, consideration of charges or criminal hearing in a court of law, or if a legally valid judgment has been passed regarding the same offense.

The administrative fine payable by a legal person is EUR 5,000–100,000, and the administrative fine payable by a natural person is EUR 500–10,000. The amount of an administrative fine is based on an overall assessment and must take into account the nature, scope, and duration of the offensive practice. A table of indicative administrative fines, confirmed by the

²² See the FIN-FSA webpages (www.finanssivalvonta.fi/fi/Fiva/Toimivalta/Toiminnan_rahointus/). Fees levied by the FIN-FSA are regulated in the Act on Fees Levied by the Financial Supervisory Authority (*Laki Finanssivalvonnasta*, 879/2008).

²³ False disclosure is an example of a securities market information offense. However, according to FCC chapter 51, section 5 false disclosure is considered a punishable crime only if the information provider has acted intentionally or through gross negligence. See also Häyrynen and Kajala 2013, pp. 620–2 and Parkkonen and Knuts, pp. 436–9.

²⁴ In Finnish jurisprudence, penal sanctions for securities markets offenses have been analyzed by Janne Häyrynen in *Arvopaperimarkkinoiden väärinkäyttö* (Vammala, 2006). See also Häyrynen and Kajala 2013, pp. 393–565 and Parkkonen and Knuts 2014, 417–64.

FIN-FSA, lists fines to be imposed according to the specific failure or violation.²⁵ However, the amount of an administrative fine is ultimately determined by a comprehensive evaluation, so that deviations from the principles on which the table is based may apply in any given case.

The administrative fine is payable to the State of Finland. If the act or neglect is particularly reprehensible, the FIN-FSA may impose a penalty payment instead of an administrative fine.²⁶

(2) According to section 39 of the FIN-FSA Act, the FIN-FSA may issue a public reprimand to a supervised entity or other financial market participant for violations other than those covered by an administrative fine or penalty payment. In addition, a public reprimand may be issued if a supervised entity's conduct is in violation of the terms and conditions of its authorization or other rules applicable to its operations. Issuance of a public reprimand presupposes wilfulness or negligence. The FIN-FSA Act also requires determination to be made that the matter does not warrant more severe action.

According to section 42 of the FIN-FSA Act, the FIN-FSA may, however, decide not to impose a public reprimand if (a) the entity, immediately upon observing the defect, takes corrective measures on its own initiative and informs the authority of the defect without delay, and the defect or neglect is not severe or recurrent, (b) the erroneous practice is considered negligible, or (c) the issuance of a public reprimand is deemed to be unequivocally unreasonable. A public reprimand may be issued instead of imposing a penalty payment if the erroneous practice is considered negligible or the issuance of a penalty payment is deemed to be unequivocally unreasonable.²⁷

(3) The FIN-FSA may, in addition to issuing a public reprimand, impose a penalty payment on a supervised entity or other legal person operating in financial markets that wilfully or negligently violates the provisions listed in section 40 of the FIN-FSA Act. These provisions concern, e.g., the obligation to publish a prospectus, ongoing disclosure obligations, public tender offers and mandatory bids, and minimum capital and financial stability requirements.²⁸

Imposition of a penalty payment presupposes wilfulness or negligence. Another condition is that the matter, when considered as a whole, does not warrant more severe action. Even if the action or neglect can be considered to fulfill the elements of a non-aggravated offense referred to in chapter 51 of the Criminal Code, the FIN-FSA may impose a penalty payment and refrain from notifying the investigating authorities of the matter. A precondition is that the act or neglect in its entirety is negligible in terms of its harmfulness, the entity's guilt as evidenced by the act, the gain obtained, and other factors related to the act or neglect.

The maximum penalty imposed by the FIN-FSA is EUR 1 million. Penalty payments exceeding this sum are imposed by the Market Court, upon the proposal of the FIN-FSA. The amount of a penalty payment is based on an overall assessment. The amount of a penalty payment must take into account the nature, scope, and duration of the practice and the financial situation of the party subject to the payment.

²⁵ See the FIN-FSA webpages (www.finanssivalvonta.fi/fi/Valvonta/Hallinnolliset_seuraamukset/Pages/Rikemaksujen_suurus.aspx).

²⁶ See also Häyrynen and Kajala 2013, pp. 571–3.

²⁷ See also Häyrynen and Kajala 2013, pp. 574–5.

²⁸ For a comprehensive list of obligations connected to the imposition of a penalty payment, see the FIN-FSA webpages (www.finanssivalvonta.fi/en/Supervision/Administrative_sanctions/Penalty_Payment).

The maximum penalty for a legal person is 10 percent of the legal person's annual turnover, prior to the act or neglect, but shall not exceed EUR 10 million. The maximum penalty payment for a natural person is 10 percent of the natural person's income, according to the latest tax return submitted, but shall not exceed EUR 100,000. Penalty payments are ordered to be payable to the State.²⁹

The FIN-FSA has imposed most of the above-mentioned administrative sanctions in practice. Between 2006 and 30 June 2017, the FIN-FSA issued 14 public warnings, 18 public reprimands, and 65 administrative fines.³⁰ However, neither the FIN-FSA nor the Market Court has utilized the penalty payment as a sanction before 2014.³¹ The reason for this is unclear. Judging by the number of criminal proceedings concerning securities market offenses, one can, however, assume that penal sanctions have been considered more suitable than administrative sanctions for the most severe securities market offenses. It is also important to note that listed companies or the shareholders of listed companies have not usually been the target of the administrative sanctions imposed by the FIN-FSA. Hence, it is reasonable to assume that Finnish listed companies abide by the rules of financial markets rather well.³²

Between 2006 and 30 June 2017, the FIN-FSA made 38 requests for police investigations.³³ Criminal sanctions thus seem to play a somewhat important role as a sanction mechanism in Finland.³⁴ There are several cases in which either a district court, a court of appeals, or the Supreme Court of Finland (later Supreme Court or KKO) has found the defendant or defendants guilty of securities market offenses.³⁵ In most cases, however, the offenses have been so minor that administrative sanctions have been considered more suitable than criminal prosecution.³⁶ In addition, it is important to remember that criminal sanctions have an important preventive function, and their efficiency cannot be measured solely by the number of condemnatory decisions.³⁷

The FIN-FSA, general courts, and the Market Court impose sanctions for securities market offenses. Non-professional investors also have the opportunity to make complaints to the Securities Complaints Board (hereafter FIN-SCB). The FIN-SCB issues statements of recommendation in disputes between customers and undertakings providing investment services. Such disputes can concern, for instance, the application of legislation, authority regulations, sound securities trading practices or contractual terms, or the service provider's code of conduct and procedures. Statements issued by the FIN-SCB are only recommended decisions and

²⁹ See also Häyrynen and Kajala 2013, pp. 575–81.

³⁰ See the FIN-FSA webpages (www.finanssivalvonta.fi/en/Statistics/sanctions).

³¹ HE 32/2012, p. 48. See also the FIN-FSA webpages (www.finanssivalvonta.fi/en/Statistics/sanctions). In 2014 the FIN-FSA issued one penalty payment and in 2016 three penalty payments.

³² See also Kai Kotiranta, *Sisäpiiritiedon syntyminen. Kontekstuaalinen tulkinta* (Sastamala, 2014), p. 161. Kai Kotiranta has also later noted that criminal actions in the securities markets are rather uncommon if they are reflected on economic criminality in general. Kai Kotiranta, 'Arvopaperimarkkinarikosoikeudellisen tulkintaopin systematisointia', *Defensor Legis* 4/2015, pp. 708–725, p. 711.

³³ See the FIN-FSA webpages (www.finanssivalvonta.fi/en/Statistics/sanctions).

³⁴ Requests for police investigations have, however, not usually led to criminal sanctions. Häyrynen 2006, p. 335.

³⁵ See, e.g., KKO 2006:110, 2009:1, 2010:45, 2010:46, 2013:53 and 2015:93.

³⁶ HE 32/2012, p. 55.

³⁷ Häyrynen 2006, pp. 345–6.

as such, are not subject to appeal. However, a dispute can also be submitted to a district court. The FIN-SCB issues statements free of charge.³⁸

Neither the FIN-FSA nor the courts can settle with issuers and other instances who have violated securities laws. The FIN-FSA has, however, a wide arsenal of different kinds of flexible sanctions, and thus minor offenses can be dealt with by means of public warnings and reprimands. In cases of minor offenses, it is also possible that the officials will not take any measures.

Besides the FIN-FSA, the Nasdaq Helsinki Securities Exchange can sanction issuers who violate securities legislation and listing rules. According to the Rules of Exchange, disciplinary matters are handled by the exchange and by the Disciplinary Committee appointed by the exchange's board of directors. The Nasdaq Helsinki Securities Exchange may bring any matter before the Disciplinary Committee if required by the nature of the matter, the recurrence of the breach, the need to establish a precedent, or any other corresponding reason (Rule 9.2.1).

According to Rule 9.2.2 of the Rules of Exchange, if a listed company, its parent company, or the issuer of some other security commits a breach of applicable law, any regulations based thereon, the Rules of Exchange or any regulations, guidelines or decisions of the Nasdaq Helsinki Stock Exchange, its agreement with the exchange, any commitment issued to the exchange, or good securities market practice, then such breaching party may be subject to the following sanctions:

- (1) First, the Disciplinary Committee may issue a warning to the party who has breached the above-mentioned rules.
- (2) In addition to a warning, the Disciplinary Committee may impose a fine. The amount of the fine, between EUR 10,000–500,000, shall be paid to the Nasdaq Helsinki Securities Exchange. In imposing a sanction, the Disciplinary Committee is to give consideration to the seriousness of the breach, the size of the breaching party, and other circumstances.
- (3) If the breach is particularly serious, the Disciplinary Committee may, in addition to a warning and a fine, propose to the Nasdaq Helsinki Securities Exchange the delisting of the security in question. In these cases, the Disciplinary Committee is required to issue a statement on the seriousness of the breach. If the breach is of a minor nature, then the Nasdaq Helsinki Securities Exchange may handle the matter and issue a reprimand to the party in question.

Between 2002 and 2017, the Disciplinary Committee issued a total of 24 warnings and disciplinary fines. It is reasonable to assume that the sanctions given have been effective, since only one sanctioned company has been sanctioned more than once. The Disciplinary Committee issued mostly warnings (19 warnings and one reprimand), and the disciplinary fines imposed (11 fines) have been relatively modest, e.g., EUR 20,000 or 100,000.³⁹ No company has been delisted from the Nasdaq Helsinki Securities Exchange for securities market offenses.

³⁸ See the FIN-FSA webpages (www.finanssivalvonta.fi/en/Financial_customer/Customer_protection/Assistance/Appeals/Securities_Board/).

³⁹ See the webpages for the Nasdaq European Surveillance (<http://business.nasdaq.com/list/Rules-and-Regulations/european-surveillance/disciplinary-processes/decisions-and-sanctions/helsinki.html>). Only one fine, imposed in 2014, has been over EUR 50,000.

2.3. Disclosure requirements

It was initially required in chapter 6, section 4, of the Securities Markets Act that issuers of securities admitted to trade on a regulated market had to publish, without undue delay, all their decisions and all information on the issuer and its activities materially affecting the value of the company's securities. In 2016 chapter 6 (titled 'Ongoing disclosure obligation') of the Securities Markets Act was, however, replaced by a simple reference to the Council Regulation 596/2014 on market abuse (hereafter Market Abuse Regulation or MAR). In practice, the effects of this amendment have been quite minor since article 17 of the Market Abuse Regulation is very similar to the repealed chapter 6 of the Securities Markets Act.⁴⁰

Anyone who offers securities to the public or applies for the admission to public trading of a security is obliged to publish a prospectus (FSMA chapter 4, section 1). A prospectus must always be drawn up and published when securities are offered to the public or an application is submitted for public trading in the European Union or for corresponding trading in a country in the European Economic Area (hereafter EEA).⁴¹ A prospectus must also be published (a) when a shareholder of a listed company makes a public offer concerning securities held that have already been issued and (b) when an unlisted company issues securities and offers them to the public. The prospectus must be published before the effective date of the offer or the listing of the securities, and it must be kept available to the public throughout the period of the offer (FSMA chapter 4, section 16). The specific content of the duty to publish a prospectus is regulated in chapters 3–5 of the Securities Markets Act.

Disclosure of periodic information refers to the issuer's obligation to provide information on its financial performance on a regular basis. This involves the disclosure of interim reports, financial statement releases, financial statements, and management reports. The duty to disclose periodic information and the specific content of this duty are regulated in chapter 7 of the Securities Markets Act. In addition, the FIN-FSA has the right to issue more detailed regulations on the contents of the disclosure duty (FSMA chapter 7, section 18). In July 2016, the FIN-FSA issued regulations and guidelines (6/2016) concerning disclosure obligations for issuers.⁴²

Besides the above-mentioned disclosure requirements, the issuer of securities is obliged to disclose all sales carried out with its own shares (FSMA chapter 8, section 2). A shareholder also must disclose information on her/his ownership interest to the company and the FIN-FSA when the portion reaches, exceeds, or falls below 5, 10, 15, 20, 25, 30, 50, or 90 percent or two-thirds of the voting rights or total number of shares of a Finnish company whose share is admitted to public trading (FSMA chapter 9, section 5). According to the same rule, the disclosure notification shall also be submitted when a shareholder is party to an agreement or other arrangement which, when effected, will result in the said threshold being reached or exceeded or in the portion of holdings falling below the said threshold.⁴³

⁴⁰ HE 65/2016 *eduskunnalle laiksi arvopaperimarkkinalain muuttamisesta ja eräksi siihen liittyviksi laeiksi*, p. 20.

⁴¹ HE 32/2012, pp. 107–8.

⁴² See the FIN-FSA regulations and guidelines (www.finanssivalvonta.fi/en/Regulation/Regulations/New/Documents/2016_06/2016_06.M2_en.pdf).

⁴³ For more information on disclosure requirements see Häyrynen and Kajala 2013, pp. 159–290 and Parkkonen and Knuts 2014, pp. 143–280.

3. Shareholder litigation

3.1. Substantive law

The material basis for a civil suit relating to the disclosure of false information or non-disclosure of required information has been described in the previous section and thus, will not be repeated here. The provisions of the Securities Markets Act concerning the disclosure of information are mostly very general and are supplemented by the Rules of Exchange. These rules are extensive, and they cannot be explained here in detail. Below, the disclosure rules included in the Rules of Exchange are explained only when necessary. The procedural rules concerning a civil suit relating to the disclosure of false information or non-disclosure of required information are found in chapter 16 of the Securities Markets Act, the Tort Liability Act (*Vahingonkorvauslaki* 412/1974), and the Code of Judicial Procedure (*Oikeudenkäymiskaari* 4/1734, hereafter FCoJP). These rules are also explained only when necessary.

According to chapter 16, section 1, of the Securities Markets Act, anyone who wilfully or negligently causes damage through a procedure that is against the Securities Markets Act or against provisions issued thereunder or through a procedure that is against the Market Abuse Regulation, Transparency Directive (89/105/ETY), or the Prospectus Directive (2003/71/EY) shall be liable for compensating for the damage she/he has caused. The other sections in chapter 16 of the Securities Markets Act concern the liability for damages caused by false information provided in the summary of a prospectus (section 2), and the applicability of the Tort Liability Act (section 4).⁴⁴ In 2016 section 3, concerning the liability for damages caused by non-disclosure of suspicious securities dealings, was repealed due to article 23(4) of the Market Abuse Regulation.⁴⁵

According to chapter 4, section 9, of the Securities Markets Act, the prospectus must include a summary that clearly presents the main contents of the prospectus. Damages that are caused by information provided in the summary shall be compensated only if this information is, in light of the prospectus, misleading, inaccurate, or adversarial or if essential information provided in the prospectus is not presented (FSMA chapter 16, section 2). The purpose of this provision is to restrict the liability of the issuer. Although the summary is an important part of the prospectus, too strict liability rules concerning the summary might cause small and medium-sized enterprises (hereafter SMEs) unreasonable constraints when acquiring funding from the capital markets.⁴⁶ In other words, the purpose of the restriction of liability concerning the summary of the prospectus is to prevent complaints based on trivial flaws.

The provisions of chapter 16 of the Securities Markets Act concern all actors belonging to the scope of the application of the Act. The actors who can be sued for securities market offenses are not listed in the Securities Markets Act nor in the government bill concerning the Act. This is a conscious choice, since listing all persons who can be held liable for such offenses would be both impossible and hazardous: There is always a risk that the list is not comprehensive, and if some actor is not mentioned, then one can argue that such an actor cannot be held

⁴⁴ In Finnish jurisprudence, the liability rules of the FSMA have been strongly criticized. See, e.g., Häyrynen and Kajala 2013, pp. 583–4.

⁴⁵ The article reads as follows: "A person making information available to the competent authority in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in liability of any kind related to such notification."

⁴⁶ HE 32/2012, p. 174.

liable to compensate for the damages she/he has caused.⁴⁷ In any event, the actors who can be sued for securities market offenses include, for example, investors, listed companies, other issuers, securities dealers, and insiders.⁴⁸ The liability of the market operator (Nasdaq Helsinki Securities Exchange) is based on the provisions of chapter 11 of the Act on Trading in Financial Instruments.

The actors who can be sued for securities market offenses always depends on the material provisions that have been breached. In other words, it is essential to examine the Securities Markets Act *in casu* to determine who can be held liable for the alleged damages. A problematic question concerning this issue is that if, for example, a listed company has violated the disclosure obligations stated in the Securities Markets Act, can the injured party (the investor) sue only the company itself or also the members of the board of directors or the managing director who have acted on behalf of the company?

In Finnish jurisprudence, there has been much discussion on this topic, and there seems to be a general consensus that the liability of a member of the board of directors as well as the managing director cannot be based on the Securities Markets Act. Nor, in the case of a securities market offense, can the liability of a board member and the managing director be based on the Companies Act. According to chapter 22, section 1, of the Companies Act, “(a) Member of the Board of Directors, a Member of the Supervisory Board and the Managing Director shall ... be liable in damages for the loss that he or she, in violation of other provisions of this Act or the Articles of Association, has in office deliberately or negligently caused to the company, a shareholder or a third party.” The reference to “this Act” (the Companies Act) has been interpreted such that if the board of directors or the managing director has breached the provisions of other acts, such as the Securities Markets Act, then the persons who are responsible for the decision cannot be held liable to a shareholder or a third party. In other words, in Finland the party (the investor) who has suffered damages due to a securities market offense can sue the company responsible for the damages, but not the members of the board of directors or the managing director who have acted on behalf of the company.⁴⁹

The Securities Markets Act does not specify the actors who have the right to bring an action. It is, however, evident that the Act has to be interpreted so that all actors who have suffered damages due to a securities market offense have the right to demand compensation for their losses. Of course, this does not mean that all actors who have suffered *indirect* damages have the right to bring action. For example, false information publicized by a major market actor might cause losses not only to investors, but also to competitors operating in the same sector in the form of a general decline in market rates. In Finnish jurisprudence, it has been established that indirect effects of false information do not give the right to bring action. Without a reasonable restriction of liability, there would be a factual risk of the so-called floodgate effect.⁵⁰

⁴⁷ Currently, Finnish legislators avoid, if possible, presenting examples in legislation or in legal preparatory works. There are situations in which these kinds of examples have led to serious misunderstandings of the purpose of the examples.

⁴⁸ HE 32/2012, pp. 169, 172–3.

⁴⁹ See, e.g., Manne Airaksinen, Pekka Pulkkinen, and Vesa Rasinaho, *Osakeyhtiölaki II*, 2nd edn (Helsinki, 2010), p. 762; Jukka Mähönen and Seppo Villa, *Osakeyhtiö III – Corporate Governance*, 2nd edn (Juva, 2010), p. 465; Olli Norros, *Vahingonkorvaus arvopaperimarkkinoilla* (Juva, 2009), pp. 36–55; Ari Savela, *Vahingonkorvaus osakeyhtiössä*, 2nd edn (Keuruu, 2006), p. 136; and Heikki Toiviainen, *Esitevastuusta rahoitusmarkkinoilla*, *Lakimies* 4/2005, pp. 562–82.

⁵⁰ Norros 2009, pp. 119–22.

If an investor has bought or sold securities after false information was publicized and before it was corrected, then the issuer of such information is liable for compensating for the damages caused to the investor. There is, of course, the possibility that an investor has not bought or sold securities, but would have done so if the information provided by the issuer had been correct. In such a situation, an investor can, for example, claim that she/he has suffered losses because the false information kept him from making a profitable share acquisition. In Finnish jurisprudence, however, it has been established that false information can confer liability to compensate for damages only if an investor has bought or sold securities.⁵¹ Plaintiffs do not need to hold shares at the time of the lawsuit.

Finnish securities market legislation is vague on the definition of false information. According to chapter 1, section 3, of the Securities Markets Act, information given to fulfill the disclosure requirements as stated in the Act may not be false or misleading. If the information is found to have been false, misleading, or insufficient after its presentation, and if such information may be of material importance to an investor, then it has to be corrected or supplemented without delay.

According to the Rules of Exchange, a listed company must disclose without delay all relevant information as required in the Market Abuse Regulation (Rule 2.3.1.1). Information regarding decisions, facts, and circumstances must be sufficiently comprehensive to enable assessment of the effect of information disclosed on the listed company, its financial result and financial position, or the price of its listed securities. The given information must reflect the company's actual situation and may not be misleading or inaccurate in any way. The requirement regarding relevance dictates that the information must contain facts that provide sufficient guidance to enable evaluation of such information and its effect on the price of the listed company's securities.

False information has been defined in the government bill on the Securities Markets Act. Information is considered false if a decision, fact, or circumstance is presented in an untruthful or misleading manner. The untruthfulness of the information has to be evaluated objectively by taking into account the circumstances during which the information was publicized. Misleading information, on the other hand, can be truthful, but if it is presented in such a form or context that it might cause misunderstanding, then the information can be considered flawed. For example, if information about a company's financial difficulties is presented in too optimistic light, then such information can be considered misleading. Also insufficient information can be considered misleading if the issuer of the information "tells only half the truth," hiding facts that might have an adverse effect on the price of securities.⁵²

Information that is false, misleading, or insufficient can lead to administrative or penal sanctions, or the liability to compensate for damages but only if it may have influenced the decision-making of an investor: There has to be a *causal connection* between the information (or the lack of information) and the actions of an investor.⁵³ This assessment has to be made from the perspective of the addressee of the information; in other words, from the perspective of the investors.⁵⁴ If the information is issued to a public audience, then the requirements for truthfulness are stricter than if the information is issued only for experienced investors and/or

⁵¹ Norros 2009, pp. 112–9.

⁵² HE 32/2012, p. 98.

⁵³ Causal connection ("syy-yhteys") has the same meaning in the Nordic countries as loss causation has, e.g., in the U.S.

⁵⁴ See, e.g., Supreme Court decision KKO 2015:93.

other professionals.⁵⁵ For example, in the case Helsingin HO 16.9.2004 S 01/3610, the Court of Appeals of Helsinki found that misspellings in a listing prospectus could not constitute liability for damages because the addressee of the information was considered a professional investor. KKO 2015:93.

According to the Rules of Exchange, false, misleading, or insufficient information has to be “inside information” (as defined in article 7 of the Market Abuse Directive) to lead to the above-mentioned sanctions or the liability to compensate for damages (Rule 2.3.1.1). The determination of what constitutes inside information must be based on the facts and circumstances in each case, and, where doubts persist, the listed company may contact the Nasdaq Helsinki Securities Exchange for advice. The Exchange’s employees, of course, are subject to the duty of confidentiality.

According to the above-mentioned rule in evaluating whether information should be considered inside information, the factors to be considered may include (a) the expected extent or importance of the decision, fact, or circumstance compared with the listed company’s activities as whole, (b) the relevance of the information with regards to the main determinants of the price of the listed company’s securities, and (c) all other market variables that may affect the price of the securities. When the listed company has received information from an external party, the reliability of the source can also be taken into consideration.

An additional basis for evaluation is whether similar information in the past has had a price-sensitive effect or if the listed company itself has previously treated similar circumstances as price-sensitive. This does not, however, prevent listed companies from making changes to their disclosure policies, but inconsistent treatment of similar information should be avoided.⁵⁶

In Finland, situations in which information disclosed by a listed company has been considered false, misleading, or insufficient are relatively rare. On the other hand, a rather common violation of the disclosure requirements is that the information issued is correct and sufficient, but the disclosure obligations have been fulfilled too late or all market participants have not been granted simultaneous access to the information.⁵⁷ According to chapter 1, section 4, of the Securities Markets Act, anyone who offers securities for public trading or applies for admission of a security to public trading, or otherwise has a duty to disclose information for investors is required to keep sufficient information on factors that may have material effect on the value of the security and make the information equally available to the investors. The disclosure of information may be delayed only in accordance with the Securities Markets Act.

According to Rule 2.3.1.1 of the Rules of Exchange, a listed company must ensure that all market participants have simultaneous access to any inside information about the listed company. The company is also required to ensure that the information is treated confidentially and that no unauthorized party is given such information prior to disclosure. As a consequence of the foregoing, inside information may not be disclosed to analysts, journalists, or any other parties, either individually or in groups, unless such information is simultaneously made public

⁵⁵ HE 32/2012, p. 98.

⁵⁶ In jurisprudence Sakari Sedbom has recently analyzed the definition of inside information. See Sakari Sedbom, ‘Sisäpiiritiedon määritelmä ja sisäpiiritiedon määrittäminen yritysjärjestelyssä’, *Lakimies* 6/2017, pp. 838–63.

⁵⁷ Jarkko Karjalainen, Olli Laurila, and Jarmo Parkkonen, *Arvopaperimarkkinalaki*, 4th edn (Helsinki, 2009), pp. 421–4.

to the market. Simultaneous access to information is an important element of the principle of equal treatment of investors.⁵⁸

According to chapter 3, section 1a, of the Accounting Act (*Kirjanpitolaki*, 1336/1997), a financial statement must include a forecast of the company's expected development of its business activities. In addition, according to chapter 7, section 11, of the Securities Markets Act, an interim report of a listed company must include an assessment of the likely development of the issuer during the current financial period to the extent that this is possible and must present a clarification of the factors that form the basis for the assessment. The Rules of Exchange do not, however, require the listed companies to disclose a forecast. According to Rule 2.3.3.1 within the framework of the legislation, it is up to the listed company to decide the extent to which it will make a forecast or other forward-looking statements.

A "forecast" is interpreted as an explicit figure for the current financial period and/or the following financial periods. It can also, for instance, include a comparison to a previous period or indicate a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or the following financial periods. A "forward-looking statement," on the other hand, is a more general description of the company's expected future developments.⁵⁹

Forecasts and other forward-looking statements must, to the extent possible, be presented in an unambiguous and consistent manner. Information regarding underlying conditions, for example, should be described clearly so that investors can evaluate such information properly. The timeframe of the forecast should be provided as well. Changes in forecasts must be disclosed if it is reasonably expected that such changes will be price-sensitive.⁶⁰

The information provided in forecasts and other forward-looking statements must be correct and sufficient. If an investor suffers damages due to false, misleading, or insufficient information disclosed in a forecast or other forward-looking statement, then the issuer of such information is liable for compensating for the damages caused.

In Finland, the liability for damages caused by false, misleading, or insufficient information cannot be avoided by means of "safe harbours."⁶¹ As mentioned above, the information that the listed company discloses must reflect the company's *actual situation* and may not be misleading or inaccurate in any matter. Thus, liability for disclosed information cannot be avoided, e.g., by following accounting standards that give a misleading picture in a particular case. In Finnish jurisprudence, the general attitude toward all kinds of non-statutory restrictions on liability for damages caused by false, misleading, or insufficient information has been very negative.⁶² It is also not possible to waive liability, e.g., in the articles of association of a listed company. The disclosure provisions of the Securities Markets Act are indispositive and thus cannot be restricted in the articles of association.

According to chapter 16, section 1, of the Securities Markets Act, the liability for compensating for damages implies that the damages have been caused *wilfully* or *negligently*. The meanings of wilfulness (*tahallisuus*) or negligence (*huolimattomuus*) have not been defined in

⁵⁸ Pönkä 2013, pp. 204–8.

⁵⁹ Rule 2.3.3.1 of the Rules of Exchange.

⁶⁰ *Ibid.*

⁶¹ Article 11 of the Market Abuse Directive ('Market soundings') includes, however, a safe harbour rules.

⁶² Norros 2009, pp. 33–5.

the Securities Markets Act nor in the government bill concerning the Act. In Finnish jurisprudence and legal practice, wilfulness is understood to refer to an act of intent (*dolus*). Negligence, on the other hand, refers to carelessness (*culpa*) and is divided into three categories: (a) gross negligence (or “recklessness”), (b) “normal” negligence, and (c) slight negligence.⁶³ All degrees of negligence can establish liability to compensate for damages caused by violations of statutory disclosure obligations.⁶⁴

Chapter 16 of the Securities Markets Act does not include any provisions on the burden of proof. In the government bill concerning the Act, it is stated that, due to “the nature of the Securities Markets Act,” issues concerning the burden of proof cannot be resolved by general rules of law, and the question of which party – the plaintiff or the defendant – carries the burden has to be resolved *in casu*.⁶⁵

The main rule is that, in a civil case, the plaintiff must prove the facts that support the action (FCoJP chapter 17, section 1). If the defendant presents a fact in his favour, then she/he must also prove it. However, if the damages have been caused by violating the explicit disclosure provisions of the Securities Markets Act, then the issuer of the false, misleading, or insufficient information usually has to show that she/he has not acted wilfully or negligently to avoid the liability of compensating for the damages.⁶⁶ In other words, in the case of a disclosure violation, the plaintiff has to show that she/he has suffered damages due to false, misleading, or insufficient information and that there is a causal connection between such information and the alleged damages. Next, the issuer of the information has to show that she/he has not acted wilfully or negligently. In general, the rules concerning the burden of proof are relatively flexible, and the courts have wide discretion in choosing which party is responsible for showing evidence and how much.⁶⁷

In Finland, there are no statutory rules on how courts should calculate the amount of compensation an investor should recover due to a violation of the disclosure obligations. In Finnish jurisprudence, this issue has been assessed mainly by Olli Norros, who has formed general guidelines for calculating the amount of such compensation.⁶⁸

The starting point here is that the amount of damages has to be estimated by comparing the market reaction caused by false, misleading, or insufficient information in a hypothetical situation, namely, that no violation would have occurred had correct information been made available. Such “abnormal” market reactions can establish the liability for compensating for damages only if the investment revenue (the value of the securities) is significantly different when compared to the “normal” (hypothetical) development of the value of the investment. It is, of course, very hard to define the “normal” (hypothetical) development of the value of an investment; the only way to do this is by examining the earlier developments of market rates and other market variables. The investor has the burden of proof concerning the amount of

⁶³ Ari Saarnilehto et al., *Varallisuusoikeus*, 2nd edn (Helsinki, 2012), pp. 523–6.

⁶⁴ Norros 2009, pp. 168–70.

⁶⁵ HE 32/2012, p. 169. See also Norros 2009, p. 28.

⁶⁶ *Ibid.*, p. 56.

⁶⁷ See e.g. Juha Lappalainen, Todistustaakka siviiliprosessissa, In Lappalainen et al. (eds.), *Yritysoikeus* (Saarijärvi 2006), pp. 580–90, pp. 582–3.

⁶⁸ Norros 2009, pp. 263–320.

alleged damages caused by the violations of the disclosure obligations. In addition, she/he has to show that there is a causal connection between the violations and the alleged damages.⁶⁹

There are no precedents given by the Supreme Court on how courts should calculate the amount of compensation an investor should recover due to a violation of the disclosure obligations.⁷⁰ The adequate amount of compensation has to be estimated *in casu*, and it is usually impossible to show the exact amount of damages an investor has suffered. In Finland, the courts have rather wide discretion to decide the right amount of compensation for damages. According to chapter 17, section 6, of the Code of Judicial Procedure, if the issue relates to the amount of damages and no evidence is available or if evidence can only be presented with difficulty, then the court shall have the power to assess the amount of compensation, within reason.⁷¹

3.2. Enforcement

In the case of investor suits, there are often many small investors with related claims, all of which can be traced to the same event. In Finland, however, investors cannot bring a class action due to securities market offenses. According to section 1 of the Act on Class Action (*Ryhmäkannelaki* 444/2007), the Act applies, within the limits of the competence of the Consumer Ombudsman, to the hearing of a civil case between a consumer and a business as a class action. However, the Act does not apply to a civil case concerning the conduct of an issuer of securities or the offeror in a takeover bid or mandatory bid, as referred to in the Securities Markets Act. In other words, in Finland, there is no mechanism for bundling a large number of investor claims into a single suit.⁷²

The disclosure obligations of a listed company have been described above in section 2.3. Besides these obligations, a listed company does not have any additional obligation to issue information, e.g., about its internal processes or the decisions that led to false, misleading, or insufficient disclosures. In Finland, this is not an issue because, as mentioned above in section 3.1, the party (the investor) who has suffered damages due to a disclosure violation can sue the company responsible for the damages, but not the members of the board of directors or the managing director who have acted on behalf of the company. Thus, information about the internal decision-making process of a company in breach of the disclosure obligations is unnecessary for the investor.

According to chapter 5, section 25, of the Companies Act, a shareholder can, however, in a general meeting request that the board of directors and the managing director provide more detailed information on circumstances that may affect the evaluation of a matter dealt with by the meeting. If the meeting deals with the financial statements, then this right also applies to more general information on the financial position of the company, including the relationship of the company to another corporation or foundation in the same group. However, the information may not be provided if doing so would cause essential harm to the company. The evaluation of the harmfulness of the disclosure of the requested information has to be made *in casu*.

⁶⁹ *Ibid.*

⁷⁰ Mårten Knuts and Olli Norros, Rikos- ja vahingonkorvausoikeudellinen sääntely arvopaperimarkkinoiden ohjausvälineinä, *Lakimies* 7–8/2011, pp. 1408–27, p. 1409.

⁷¹ See also Katri Havu, Damages estimations according to the Finnish code of juridical procedure in a state of change? Notes regarding estimations, fairness and economic losses, *Liikejuridiikka* 1/2015, pp. 8–27.

⁷² See also HE 32/2012, p. 56 and KKO 2000:82.

In listed companies, the board of directors and the managing director have to consider the nature of the request information very carefully before issuing an answer. With the principle of equal treatment of investors taken into account, the requested information should usually be issued in a manner that provides all investors simultaneous access to the information.⁷³

As mentioned above in section 2.2, the FIN-FSA has often imposed different kinds of administrative sanctions for securities market offenses. These kinds of enforcement activities have not had a significant impact on civil liability. It is possible, however, to establish the legal basis for civil liability in an enforcement action, but in order to receive compensation for damages, the investor has to show that there is a causal connection between the wrongdoing and the alleged damages.⁷⁴ Thus, an enforcement action cannot establish the legal basis for the liability for compensation for damages. In Finland, there is no empirical data on the relationship between administrative sanctions and civil liability for the same violation.

Besides administrative sanctions, criminal proceedings and especially condemnatory decisions may have an impact on the liability to compensate for damages. However, in criminal proceedings, investors cannot make claims, and thus injured investors have to file separate suits if they want to demand compensation for damages. The rule was established in a famous precedent given by the Supreme Court in the year 2000 (KKO 2000:82), and the same rule was later adopted by the legislature in drafting the Securities Markets Act.⁷⁵

The fact that investors cannot demand compensation for damages in criminal proceedings means that injured investors are often tempted to wait for the outcome of the criminal proceeding before filing their own suits. In such a case, the investors have to follow the ongoing criminal proceeding very closely to see that their right to demand compensation for damages does not fall under the statute of limitations. According to sections 4 and 7 of the Act on the Statute of Limitations on Debt (*Laki velan vanhentumisesta* 728/2003), the right to demand compensation for damages falls under the statute of limitations in three years' time if the period of limitation has not been interrupted by the creditor (meaning here the investor who has suffered damages due to securities market violations).⁷⁶ In KKO 2013:53, the Supreme Court found that the right to demand compensation for damages falls automatically under the statute of limitations when a judgment has gained legal force if (a) the process has lasted more than three years and (b) the investors have not, during the criminal proceeding, taken action to interrupt the period of limitation of their right to demand compensation for the damages they have suffered.⁷⁷

According to chapter 21, section 1, of the Code of Judicial Procedure, the party who loses the case is liable for all reasonable legal costs incurred by the necessary measures taken by the opposing party unless otherwise provided for by an act ("the loser pays rule"). Compensable legal costs include the costs of the preparation for the trial and the participation in the proceedings, as well as the fees of the attorney or counsel (CoJP chapter 21, section 8). In addition, compensation shall be paid for the work caused by the trial to the party and for the losses directly linked to the trial. If the decision of a lower court is appealed, then the liability

⁷³ Sakari Helminen, Osakkeenomistajan kyselyoikeuden laajuus, *Defensor Legis* 4/2013, pp. 499–512, p. 504.

⁷⁴ The concept of causal connection has been explained in chapter 3.1.

⁷⁵ HE 32/2012, p. 57. See also Pekka Timonen, KKO 2000:82 – Syyteoikeus arvopaperimarkkinarikoksen johdosta, in Timonen (ed.), *KKO:n ratkaisut kommentein II:2001* (Jyväskylä, 2001), pp. 60–5.

⁷⁶ See also Olli Norros, *Vahingonkorvausvelan vanhentuminen* (Liettua, 2015), pp. 199–365.

⁷⁷ See also Mårten Knuts, KKO 2013:53. Arvopaperimarkkinoita koskeva tiedottamisrikos ja tiedon olennaisuus, in Timonen (ed.), *KKO:n ratkaisut kommentein I:2013* (Liettua, 2013), pp. 454–79.

for compensating for the legal costs incurred in the appellate court shall be determined on the basis of what has happened in the appeal proceedings and whether the appeal has been successful or not (CoJP chapter 21, section 16).

Because of “the loser pays rule,” legal costs, in practice, have a very strong impact on incentives to litigate.⁷⁸ In Finland, court fees are rather moderate, but attorneys’ fees and other costs are usually so high that they may discourage minority investor litigation. It is important to point out, however, that if the case has been so unclear that the losing party had a justifiable reason for pursuing the proceedings, then the court may require the parties to be liable for their own legal costs in full or in part (CoJP chapter 21, section 8a). Usually, investor suits have such substantive merit that “the loser pays rule” is not applied as such. Also, if in view of the circumstances giving rise to the proceedings, the situation of the parties, or the significance of the issue, and taking all aspects of the case into account it would be manifestly unreasonable to render one party liable for the legal costs of the other, then the court may on its own motion reduce the payment liability of a party (CoJP chapter 21, section 8b). In practice, it is fairly common for the court to reduce the payment liability of a party, especially if the party liable for the litigation costs of one party (the “loser”) is a natural person and the other party (the “winner”) is a business.

In Finland, situations where lawsuits have been allegedly brought to coerce a listed company into a settlement do not exist. Such suits would be very risky for the plaintiff, since, if the winning party (the plaintiff) were to bring an action without the opposing party having given real cause to do so, or otherwise deliberately or negligently caused a frivolous trial to be held, then the winning party is liable for the legal costs of the opposing party. If, in light of the circumstances, there is strong reason to require the parties to be liable for their own legal costs, the “loser pays rule” can however be set aside (CoJP chapter 21, section 4).

In Finland, there are no specific plaintiffs known for bringing lawsuits based on securities market offenses. As mentioned above, investor claims cannot be bundled into a single suit; hence, there are no organizations that specialize in bringing class actions on behalf of minority investors. Neither are there law firms that specialize only in securities market issues. However, all big law firms in Finland basically deal with such matters. These firms usually have a separate department specialized in securities market legislation. It is also worth mentioning that on a European scale, Finnish law firms are relatively small, and most legal issues concerning the securities markets are concentrated in the biggest firms, which are few in number.

The fact that securities market offenses are relatively rare and that such offenses are not concentrated under the jurisdiction of a special court means that Finnish judges usually do not have adequate knowledge of how to deal with securities market issues. In Finland, judges of district courts have in fact been criticized for their lack of business-related understanding.⁷⁹ Thus, disputes concerning business matters are resolved, if possible, by alternative methods, including arbitration.

Both civil and criminal suits concerning securities market offenses are dealt with by district courts. The decision of a district court can be appealed to a court of appeal. The decisions of the courts of appeal can in turn be appealed to the Supreme Court, provided that the Supreme Court grants leave to appeal. Because there are two levels of appeal, the enforcement

⁷⁸ Jarkko Männistö, Oikeudenkäyntikulut kannustimena – taloustieteellinen analyysi oikeudenkäyntikulujen korvausvelvollisuuden vaikutuksista, *Lakimies* 1/2005, pp. 79–97.

⁷⁹ See, e.g., Ari Savela, Osakeyhtiölain yhdenvertaisuusperiaate, *Defensor Legis* 1/2010, pp. 3–24, p. 6.

of both civil and criminal liability for securities market offenses can take many years. In other words, an investor who decides to demand compensation for damages based on securities market offenses has to be prepared for a very long process. Otherwise, there are no significant factors that could negatively affect the legal process. For instance, the level of corruption has been considered very low in Finland, and no outside party can intervene in the decision-making of the courts.

3.3. Competence of Finnish courts

According to chapter 10, section 25 of the FCoJP a Finnish court is competent to consider a case with an international nature, if the case is connected to Finland.⁸⁰ Such competence does not, however, exist if the judgment to be given by the Finnish court in the case could clearly not have legal relevance for the parties. In addition, the provisions of chapter 10 of the FCoJP apply, unless otherwise provided by another act, legislation of the European Community, or an international agreement binding on Finland.⁸¹

According to the legal preparatory works of the Finnish securities legislation, no exceptions to the rules of chapter 10 of the FCoJP exist.⁸² Thus courts in Finland will accept jurisdiction over a foreign issuer if the case is connected to Finland. In a civil liability proceeding a Finnish court will apply Finnish law, unless otherwise agreed by the disputing parties.

According to chapter 1, section 1 of the Securities Markets Act, the Act shall apply in Finland as well as in other countries if so provided elsewhere in the Act. Situations where the Securities Markets Act is applied outside Finland are not listed in the Act, and provisions concerning the international scope of application of the Securities Markets Act are integrated into the material provisions of the Act.⁸³

As a main rule, the Securities Markets Act shall apply to an issuer of a share whose corporate-law home state is Finland (i.e., whose registered office is located in Finland) and whose share has been admitted to public trading in another state belonging to the EEA. If the corporate-law home state of the company whose share is publicly traded in Finland is another state within the EEA, then the Securities Markets Act is not applicable. However, if the corporate-law home state of the company whose share is publicly traded in Finland is a state not belonging to the EEA, then the Securities Markets Act shall be applied.⁸⁴ In other words, if, for example, a Swedish company has shares that are publicly traded in Finland then Swedish securities markets legislation shall be applied to a liability claim.

⁸⁰ In international securities litigation the "connection to Finland" requirement is very important and it means that Finnish courts will only examine such claims that have an actual connection to Finland. If, e.g., a foreign company has listed shares in Finland, an investor suit regarding this company shall be settled by a Finnish court only if the shares of the said company have been acquired from securities markets governed by Finnish law.

⁸¹ See also Juha Lappalainen, Dan Frände and Risto Koulu, Tuomioistuimet, in Frände et al. (eds.), *Prosessioikeus*, 4th edn (Helsinki, 2012), pp. 235–397, pp. 310–30.

⁸² HE 32/2012, p. 70.

⁸³ *Ibid*, p. 94.

⁸⁴ Karjalainen, Laurila and Parkkonen 2009, pp. 6–16, Petri Mäntysaari, *Osakeyhtiö toimijana* (Helsinki, 2002) p. 37 and Ari Savela, *Suomen kansainvälinen yhtiöoikeus* (Jyväskylä 2003) pp. 216–8.

3.4. Conflict of laws

There are no statistics on the number of Finnish companies that have securities listed on securities exchanges abroad. This number is presumably relatively small, and a quick overview of some of the largest securities exchanges indicates that only a few Finnish companies have securities listed on foreign exchanges.⁸⁵

Enforcement of foreign judgments in investor suits against Finnish companies that have securities listed abroad is, in practice, problematic. The main rule is that a foreign judgment is not enforceable in Finland, unless otherwise stipulated in Finnish law or agreed to in an international treaty on recognition and enforcement of judgments.⁸⁶ Within the EU area, the Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters concerns also investor disputes.

If a foreign judgment is not enforceable in Finland, it might still have significant importance when the case is later tried in a Finnish court. Especially if a foreign court has followed national legislation in its judgment (e.g., if a U.S. court has applied U.S. law), Finnish courts are usually reluctant to re-interpret foreign law.⁸⁷

⁸⁵ It is also important to notice that Nasdaq Helsinki Securities Exchange has not attracted foreign companies, and only four foreign (Swedish) firms have securities listed its main list.

⁸⁶ Risto Koulu, *Kansainvälinen prosessioikeus pääpiirteittäin* (Vantaa, 2003), p. 212.

⁸⁷ Koulu 2003, pp. 212–3.