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Memorandum

To: Fixrate AS

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Fixrate.se – Financial regulatory analysis

1 Summary

- 1.1 Operating the Marketplace (as defined below) is not subject to financial regulatory requirements under Swedish law.

2 Background

- 2.1 Fixrate AS, present in Sweden through its subsidiary Fixrate AB, (“**Fixrate**”), is the operator of the website fixrate.se (the “**Marketplace**”). The Marketplace is a digital platform that brings together Swedish businesses seeking to deposit funds (“**Depositors**”) with Swedish banks (Sw. *bank*), credit market companies (Sw. *kreditmarknadsbolag*) or Swedish branches of foreign undertakings authorised to conduct such operations in Sweden (together “**Institutions**”) seeking to receive deposits (Sw. *inlåning*) from Depositors. Deposits refers to traditional deposits *i.e.* funds placed into an account with a fixed or floating interest rate – not a so-called structured deposit linked to the performance of an underlying asset. The functionality of the Marketplace is further described in Section 3 (*The Marketplace*) below.
- 2.2 Gernandt & Danielsson Advokatbyrå KB (“**we**”) has been asked by Fixrate to assess whether the operation of the Marketplace is subject to financial regulatory authorisation requirements under Swedish law. We present our analysis in this memorandum.
- 2.3 This memorandum is limited to the fact pattern set out herein and is not to be read as extending by implication to any other facts, matters or points in time. We assume no obligation to update this memorandum or to inform any person of any matters to our knowledge occurring after the date hereof which may affect the contents in any respect. The recipient of this memorandum may share this memorandum with third parties for

information purposes only. Any other person than Fixrate may not rely upon the memorandum.

3 The Marketplace

3.1 The functionalities

3.1.1 The Marketplace offers the following functionalities:

- (a) advertising – enables Institutions to publish adverts for deposits to be seen by Depositors, setting out the terms on which an Institution is willing to accept a deposit (*e.g.* term, minimum deposit, interest rate);
- (b) communication – facilitates exchange of standardised messages between Institutions and Depositors regarding, *inter alia*, customer due-diligence information, electronic signing of agreements provided through a solution by Signicat AS, transfer of financial information; and
- (c) archiving – allows Institutions and Depositors to exchange documents and other information relevant to their deposits sourced through the Marketplace. The Depositors store such documents and other information using the Marketplace functionality. Institutions can access documents which they have sent to or received from Depositors through the Marketplace. The documents can be accessed while the Depositor has an agreement in force with Fixrate. If a Depositor terminates its agreement with Fixrate, the Institutions will no longer be able to access documents for that specific Depositor. The Marketplace does not offer archiving services to the Institutions.

3.1.2 Institutions and Depositors register at the Marketplace and enter into user agreements with Fixrate. These agreements set out the terms and conditions for using the Marketplace. The user agreements are described in more detail in Section 3.2 (*The parties: Institutions*) and Section 3.3 (*The parties: Depositors*).

3.1.3 When a Depositor identifies an offer for a deposit that it wants to pursue, it can submit an inquiry to the Institution through the Marketplace. Upon receiving the inquiry, the Institution has the discretion to initiate the processing of the inquiry with the aim of establishing a customer relationship with the Depositor and subsequently opening a deposit account in the Depositor's name.

- 3.1.4 As part of the Institution establishing a customer relationship with the Depositor, it is incumbent upon the Institution to conduct customer due diligence in accordance with its internal procedures. To streamline this process the Depositor upon registration on the Marketplace creates and stores certain standardised know-your-customer information which the Depositor furnishes the Institution with upon submitting an inquiry to make a deposit. The Institution does not task Fixrate to gather this information from the Depositors, the information provided to the Institution by the Depositor is not tailored to the individual Institution on the Marketplace, and Fixrate is not involved in the customer due diligence procedure with the Institution. Instead, the Institution remains in charge of its own customer due diligence procedure, and it is free to ask the Depositor for additional information. Consequently, it is also within the Institution's discretion to onboard or deny the customer relationship with a specific Depositor.
- 3.1.5 Upon successfully onboarding the Depositor with the Institution, the Depositor enters into a deposit agreement with the Institution, reflecting the terms outlined in the relevant advert on the Marketplace and in the order document which is provided as part of the inquiry from the Depositor. This deposit agreement is electronically signed by both parties through the Marketplace and transmitted through the Marketplace platform. Subsequently, the agreement and other communication and information are archived and made available to both parties on the Marketplace. Fixrate is not a party to the deposit agreement between the parties and does not have any influence over the legal relationship between the Institution and the Depositor.
- 3.1.6 In connection with signing the deposit agreement, a deposit account for the Depositor is opened with the Institution. The deposit of funds is thereafter executed directly from the Depositor to the Institution. Upon receipt of the deposit, the Institution sends a confirmation to the Depositor through the marketplace platform. The deposited funds remain in the deposit account until the account is closed, at which point the funds are returned to the Depositor. Fixrate is not involved in the transfer of funds.
- 3.1.7 Throughout the duration of a deposit, both Institutions and Depositors have access to documents and other information relevant to their deposits sourced through the Marketplace. Fixrate also conducts independent calculations of outstanding deposits, accrued interest, and account reports based on the information available on the Marketplace and presents this information to the parties. When the Institution provides Depositors with

account statements and annual reports through the Marketplace, Depositors assign Fixrate – through their user agreement – to review the information received by the Institution and address any inaccuracy directly with the Institution on behalf of the Depositor.

3.2 The parties: Institutions

3.2.1 Institutions participate on the Marketplace by way of entering into a user agreement with Fixrate (the “**Institution Agreement**”). Only Institutions are eligible to register as “Institutions” on the Marketplace.

3.2.2 Under the Institution Agreement, the Institution assumes responsibility for financial services provided to the Depositor on the basis of a direct legal relationship with that Depositor, acting as the sole financial service provider in relation to the Depositor. Consequently, the Institution enters into a legal relationship directly with the Depositor, similar to any other customer relationship directly established with the Institution. Fixrate’s service to the Institution is limited to the provision of functions on the Marketplace.

3.2.3 The Institution Agreement allows the Institution to use the functionalities of the Marketplace, in particular to:

- (a) publish adverts for deposits to be seen by Depositors;
- (b) use Fixrate’s communication functionality to answer inquiries for deposits, receive know-your-customer information from Depositors, communicate with potential and current Depositors, sign agreements with Depositors, and provide Depositors with financial information relating to their deposits with Institutions, *etc.*; and
- (c) access documents they have sent to or received from the Depositors through the Marketplace.

3.2.4 Under the Institution Agreement, the Institution undertakes to perform specific actions, primarily including:

- (a) to receive inquiries for deposits in relation to adverts published by the Institution on the Marketplace;
- (b) to conduct an independent customer due diligence assessment before onboarding or denying a customer relationship with a Depositor;
- (c) to use the communication function on the Marketplace to enter into deposit agreements directly with the Depositor; and

- (d) to provide certain financial information about ongoing deposits to the Depositor via the Marketplace.

3.2.5 The Institutions compensate Fixrate for its participation on the Marketplace under the Institution Agreement. The compensation amounts to a fixed monthly fee plus an additional fee based on outstanding deposits sourced from the Marketplace.

3.3 The parties: Depositors

3.3.1 Depositors participate on the Marketplace by way of entering into a user agreement with Fixrate (the “**Depositor Agreement**”). Only legal persons established in Sweden can register as Depositors on the Marketplace. The natural person registering the Depositor may either (i) have formal signatory rights on behalf of the company, or (ii) use a power of attorney (in a format provided by Fixrate) to grant the relevant person the authority to manage the Depositor’s business on the Marketplace.

3.3.2 Under the Depositor Agreement, the Depositor acknowledges that any financial services provided to it are rendered by the Institution based on a direct legal relationship with that Institution, with the Institution acting as the sole financial service provider in relation to the Depositor. Consequently, the Depositor enters into a legal relationship directly with the Institution, similar to any other customer relationship directly established with the Institution. Fixrate’s service to the Depositors is limited to the provision of functions on the Marketplace.

3.3.3 The Depositor Agreement allows the Depositors to use the functionalities of the Marketplace, in particular to:

- (a) view adverts for deposits published by Institutions;
- (b) use Fixrate’s communication functionality to send inquiries for deposits, share know-your-customer information registered in the Depositor’s profile on the Marketplace with Institutions, communicate with Institutions, sign agreements with Institutions, and receive financial information relating to their deposits with Institutions, *etc.*; and
- (c) archive documents and other information relevant to deposits sourced to the Institution through the Marketplace.

3.3.4 Under the Depositor Agreement, Depositors can register standardised know-your-customer information to its profile on the Marketplace. Depositors can use the functionality on the Marketplace to share this information with Institutions on the Marketplace when they inquire about

a deposit with an Institution through the Marketplace. The Depositor's know-your-customer declaration form is valid for 365 days from the date of signing. Fixrate notifies the Depositor when the validity period is about to expire, encouraging them to update the information by signing a new form. Upon signing the updated form, the Depositor shares it with all Institutions where they hold an existing deposit account or have submitted a still valid inquiry to make a deposit.

- 3.3.5 In addition, the Depositor Agreement authorises Fixrate to view account statements and other financial information received by the Depositors from the Institution to review these documents. If discrepancies are detected, Fixrate will contact the Institution on behalf of the Depositor to ensure that any discrepancies are corrected.
- 3.3.6 The Depositors does not compensate Fixrate for its participation on the Marketplace.

4 Regulatory analysis

4.1 Introduction

- 4.1.1 We consider (i) banking and financing operations, (ii) payment services operations, (iii) securities operations, and (iv) certain other financial operations set out in Annex I of the Directive (EU) 2013/36 (the “**CRD**”) relevant when analysing the Marketplace from a financial regulatory perspective.
- 4.1.2 All the operations in (i)–(iv) above are subject to authorisation requirements under Swedish law and are analysed below in relation to the Marketplace.

4.2 Banking and financing

- 4.2.1 The Swedish Banking and Financing Business Act (SFS 2004:297) (Sw. *lagen om bank- och finansieringsrörelse*) (the “**Banking Act**”) is relevant with respect to services that constitutes (i) banking, and/or (ii) financing operations.
- 4.2.2 The Banking Act defines banking operations as follows.
- “business which includes: 1. payment provision through general payment systems, and 2. receipt of funds which, following notice of termination, are available to the creditor within not more than 30 days”.¹
- 4.2.3 The Banking Act defines financing operations as follows.

¹ Chapter 1, Section 3 of the Banking Act.

“a business, which includes commercial operations, the purpose of which is: 1. to accept repayable funds from the public; and 2. to grant loans, provide guarantees for loans or, for financing purposes, to acquire claims or grant rights of use in personal property (leasing)”.²

4.2.4 Fixrate do not receipt any funds. This means that Fixrate is not conducting (i) banking, or (ii) financing operations under the Banking Act.

4.2.5 While the Depositors receive banking services such services are provided by the Institutions, not Fixrate.

4.3 Securities operations

4.3.1 The Swedish Securities Markets Act (SFS 2007:528) (Sw. *lagen om värdepappersmarknaden*) (the “**Securities Markets Act**”) is relevant with respect to various services in relation to financial instruments.

4.3.2 The Securities Markets Act defines financial instruments as follows.

“transferable securities, money market instruments, shares in collective investment undertaking, derivative financial instruments, and emission allowances, including such instruments which are issued through distributed ledger technology”.³

4.3.3 Fixrate does not offer any services in relation to products that would qualify as financial instruments under the Securities Markets Act. This means that Fixrate is not conducting securities operations in the meaning of the Securities Markets Act.

4.4 Payment services

4.4.1 The Swedish Payment Services Act (SFS 2010:751) (Sw. *lagen om betaltjänster*) (the “**Payment Services Act**”) is relevant with respect to services pertaining to payments and payment accounts.

4.4.2 Key denominators for payment services are that they involve activities where *payment transactions* and/or *payment accounts* are present.

4.4.3 The Payment Services Act defines payment transactions as follows.

“deposits, withdrawal or transfer of funds initiated by the payer or the payee, regardless of any underlying obligations between the payer and the payee”.⁴

² Chapter 1, Section 4 of the Banking Act.

³ Chapter 1, Section 4 of the Securities Markets Act.

⁴ Chapter 1, Section 4 of the Payment Services Act.

- 4.4.4 The Payment Services Act defines payment accounts as follows.
- “an account held in the name of one or more payment service users and intended for the execution of payment transactions”.⁵
- 4.4.5 In relation to payment accounts, the Payment Services Act states that an online service for providing aggregated information about one or more payment accounts that the payment service user has with one or more other payment service providers is a payment account information service (Sw. *kontoinformationstjänst*).⁶
- 4.4.6 Fixrate does not process or is otherwise involved in any payment transactions. While Fixrate does provide financial information regarding deposits sourced through the Marketplace, such information does not relate to payment accounts since the deposit accounts is not intended for the execution of payment transactions. This means that Fixrate is not providing payment services in the meaning of the Payment Services Act.
- 4.4.7 While the Depositors use payment services – for example, to transfer funds to be deposited to Institutions – such services are provided by Institutions or other service providers of the Depositors, not Fixrate.
- 4.5 Other financial activities**
- 4.5.1 The Swedish Currency Exchange and Other Financial Operations Act (SFS 1996:1006) (Sw. *lagen om valutaväxling och annan finansiell verksamhet*) (the “CEA”) is relevant with respect to certain financial activities that are not subject to authorisation requirements pursuant to other legislation.
- 4.5.2 The definition of financial activities under the CEA largely corresponds to the activities set out in Annex I of the Directive (EU) 2013/36 (the “CRD”). These financial activities includes (i) providing and brokering credit, for example in the form of consumer credits and credit against liens on immovable property or receivables, and (ii) participating in financing, for example by acquiring receivables and leasing.
- 4.5.3 While there is limited guidance regarding the activities in Annex I of the CRD, none of them are immediately applicable to the activities on the Marketplace. In addition, the manner in which these activities are phrased in the CRD indicates that they are constructed to primarily encompass various outgoing financing activities – not ingoing deposits to financial

⁵ Chapter 1, Section 4 of the Payment Services Act.

⁶ Chapter 1, Section 2 of the Payment Services Act.

institutions as such. This means that Fixrate should not be considered to be conducting financial activities within the meaning of the CEA.

4.6 Conclusion

4.6.1 We hold the view that Fixrate is not conducting activities subject to financial regulatory requirements under Swedish law when operating the Marketplace.

4.6.2 We hold this view based on the following.

- (a) Fixrate does not receive any funds from Depositors;
- (b) Fixrate does not offer any services in relation to financial instruments;
- (c) Fixrate is not involved in any payment flows or services in relation to payment accounts; and
- (d) none of the activities listed in Annex I of the CRD are immediately applicable to the activities on the Marketplace.

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