

**While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 213 of 5 March 2007. Only the Danish document has legal validity.**

**GlobalDenmark Translations, December 2007**

Executive Order on Execution of Orders by Securities Dealers<sup>1)</sup>

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Executive Order no. 213 of 5 March 2007

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The following shall be laid down pursuant to section 3(2) and section 93(3) of the Financial Business Act, cf. Consolidated Act no. 479 of 1 June 2006:

*Scope*

**1.-(1)** This Executive Order shall apply to the following activities, cf. however, subsections (2)-(4):

- 1) Danish securities dealers' activities in Denmark.
- 2) Activities in Denmark at securities dealers from third countries with a license to establish a branch or for cross-border services, cf. the Financial Business Act.
- 3) Activities in Danish branches of investment firms and credit institutions from EU/EEA countries.
- 4) Danish securities dealers' activities in other EU/EEA countries when these are cross-border activities without establishment of a branch.

**(2)** This Executive Order shall not apply for cross-border services provided in Denmark carried out by investment firms and credit institutions, which have been granted a license in another country within the European Union or a country with which the Community has entered into an agreement for the financial area.

**(3)** This Executive Order shall not apply when the customer of the securities dealer is an eligible counterparty, cf. annex 2 of the Executive Order on Investor Protection in connection with Securities Trading.

**(4)** This Executive Order shall not apply for transactions between members of a multilateral trading facility, an alternative market or a regulated market in Denmark or in other countries within the European Union or countries with which the Community has entered into an agreement for the financial area.

*Definition*

*Securities dealers*

**2.** For the purposes of this Executive Order, securities dealers shall be considered as undertakings covered by section 1(1).

*Conditions for best execution etc. by securities dealers.*

*Best execution of orders*

**3.-(1)** When executing orders received a securities dealer shall take all reasonable steps to obtain the best possible result, under the circumstances, for his customers taking into account

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price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order (best execution).

**(2)** When a securities dealer executes an order on behalf of a retail customer, cf. section 4(1), no. 3 of the Executive Order on Investor Protection in connection with Securities Trading, best execution shall be determined on the basis of the total outlay, unless the objective of execution of the order dictates that the other elements mentioned in subsection (1) are relevant. The total outlay shall mean the price of the financial instrument and all costs directly linked to execution of the order, including charges in connection with the venue, clearing and settlement, other charges payable to third parties involved in the execution of the order, as well as the securities dealer's own commissions and costs for executing the order through the trading system.

**(3)** When the securities dealer is to determine what best execution is, the securities dealer shall emphasise the following criteria:

- 1) The characteristics of the customer, including whether the customer is a retail customer or a professional customer. cf. section 4(1) of the Executive Order on Investor Protection in connection with Securities Trading.
- 2) The characteristics of the customer order.
- 3) The characteristics of the financial instruments included in the order.
- 4) The characteristics of the venues to which the order may be directed.

**(4)** A securities dealer may not structure or impose commission in such a way that unreasonably discriminates against or favours different venues.

**(5)** If there are specific instructions from a customer, the securities dealer shall execute the order in accordance with said instructions.

*Order execution policy etc.*

*Order execution policy*

**4.-(1)** A securities dealer shall establish and implement effective procedures and systems to comply with his best-execution obligation, cf. section 3(1), including establishing and implementing an order execution policy.

**(2)** The order execution policy shall include, for each class of instruments, information on the different venues where the securities dealer executes his customer orders and the factors affecting the choice of execution venue. He shall at least include those venues that enable the securities dealer to obtain on a consistent basis the best possible result for the execution of customer orders.

**(3)** A securities dealer shall obtain the prior consent of his customers to the execution policy, including providing retail customers with the following information:

- 1) A statement of the relative importance attributed by the securities dealer to the different factors in section 3(1) pursuant to the criteria of section 3(3) or the procedures by which the securities dealer sets the relative importance of these factors.
- 2) A list of the venues included in the order execution policy.
- 3) Clear information that specific instructions from a customer may prevent the securities dealer from satisfying his best-execution obligation, cf. section 3(1).

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**(4)** The information, cf. subsection (3), shall be provided on paper, some other durable medium or via a website.

**(5)** If the information is provided on some other durable medium than paper, the following conditions shall be met:

- 1) The customer has chosen to receive the information on some other durable medium than paper.
- 2) The use of some other medium is appropriate in relation to the manner in which business between the securities dealer and customer takes place.

**(6)** If the information is provided via a website,

- 1) the use of a website shall be appropriate in relation to the manner in which business between the securities dealer and customer takes place,
- 2) the customer shall have consented to this,
- 3) the customer shall be informed of the address of the website as well as where on the website the information can be found,
- 4) the information shall be kept up to date,
- 5) the information shall be available on the website for the period in which the customer may reasonably be expected to have a requirement to read the information.

**(7)** If the order execution policy provides for the possibility that customer orders may be executed outside a regulated market or a multilateral trading facility, the securities dealer shall inform his customers about this possibility. The securities dealer shall obtain prior express consent of customers before proceeding to execute orders outside a regulated market or multilateral trading facility. The securities dealer may obtain this consent either in the form of a general agreement or in respect of individual transactions.

**(8)** The securities dealer shall, as part of the order execution policy, lay down procedures with a view to preventing allocation of transactions for own account, which are executed together with customer orders, to the detriment of the customer.

#### *Supervision and penalties*

##### *Supervision*

**5.-(1)** The Danish FSA shall supervise compliance with this Executive Order.

**(2)** The Danish FSA may, cf. section 3(1), 2nd clause of the Securities Trading, etc. Act order that matters which are contrary to section 3 and section 4 be rectified.

##### *Penalties*

**6.-(1)** Any person failing to comply with an order pursuant to section 5(2) shall be liable to a fine.

**(2)** Companies, etc. (legal persons) may incur criminal liability according to the regulations in chapter 5 of the Criminal Code.

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*Entry into force and transitional provisions*

**7.** This Executive Order shall enter into force on 1 November 2007. At the same time Executive Order no. 72 of 31 January 2003 on good securities trading practices shall be repealed.

*Ministry of Economic and Business Affairs, 5 March 2007*

Bendt Bendtsen

/Pernille Gram Christensen

Official notes

<sup>11</sup> This Executive Order implements parts of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (Official Journal 2004 L 145, p. 1) and parts of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (Official Journal 2006 no. L 241, p. 26).

Links to EC Directives, cf. note 1

[Directive 2004/39/EC](#) Celex no. 32004L0039

[Directive 2006/73/EC](#) Celex no. 32006L0073