

Executive Order on marketing carried out by foreign investment undertakings in Denmark¹⁾

Executive Order no. 746 of 28 June 2011

The following shall be laid down pursuant to section 18(2), section 19(3) and section 221(3) of the Insurance Mediation Act, cf. Act no. 456 of 18 May 2011:

Part 1

Scope

1.-(1) This Executive Order shall apply to foreign investment undertakings, cf. section 3(1), no. 4 of the Investment Associations etc. Act, which intend to market their units directly or indirectly in Denmark, and which

- 1) have been approved by a competent authority in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area pursuant to Council Directive 2009/65/EC (UCITS Directive), or
- 2) have been approved and are under public supervision by a competent authority in a country, which is not covered by the UCITS Directive and which have as their object to receive funds from the general public, a wide circle, a limited circle or from professional investors and which place the funds in liquid funds, including currency, or in instruments as mentioned in Annex 5 of the Financial Business Act, in accordance with the investment policy and risk profile of the investment undertaking, and redeem the unit-holder's share of the assets with funds derived therefrom.

(2) This Executive Order shall not apply to foreign closed-ended investment undertakings, which intend to market their units directly or indirectly in Denmark.

Part 2

Definitions

2. For the purpose of this Executive Order the following definitions shall apply:

- 1) *An authorised Danish translation:*
A translation completed by a state-authorised translator or a corresponding translation completed by a foreign translator with corresponding education and corresponding public authorisation, provided a corresponding authorisation exists.
- 2) *Foreign investment undertaking:*
Any foreign collective investment scheme, the activities of which correspond to the schemes mentioned in section 1(2)-(4) and (8) of the Investment Associations etc. Act.
- 3) *UCITS:*
An abbreviation of "Undertaking for Collective Investment in Transferable Securities" for an investment undertaking subject to Directive 2009/65/EC of the European Parliament and of the Council and which, pursuant to Article 1(3), may be constituted

¹⁾ This Executive Order contains provisions implementing parts of Commission Directive 2010/42/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure, Official Journal 2010, no. L176 p. 28.

- a) in accordance with contracts as investment funds managed by management companies,
 - b) as trusts (unit trusts), or
 - c) in accordance with articles of association as investment firms (for example investment associations).
- 4) *Non-UCITS:*
Foreign investment undertakings which are not covered by Council Directive 2009/65/EC, cf. section 1(1), no. 2.
- 5) *A professional investor:*
An investor who has the necessary experience, knowledge and expertise to make his own investment decisions and to perform a correct assessment of the risks involved.
- 6) *A retail investor:*
A retail investor is an investor who is not a professional investor.
- 7) *For the purpose of this Executive Order, direct marketing shall mean:*
Any form of announcement directed towards the Danish market in connection with performance of activities as an investment undertaking which has the purpose of promoting sales of units from an investment undertaking either through direct sales from the investment undertaking or through distributors.
- 8) *For the purpose of this Executive Order, indirect marketing shall mean:*
Any form of announcement directed towards the Danish market in connection with performance of activities as an investment undertaking which has the purpose of promoting sales of units from an investment undertaking through insurance contracts or promoting sales of other securities, including, but not limited to, bonds, the price and risk profile of which follow closely those of the investment undertaking, linearly or geared.

Part 3

Notification of marketing of UCITS

3.-(1) The notification procedure for UCITS is described in Commission Regulation no. 584/2010 on implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities. More detailed information on the notification procedure will also be available at the Danish FSA website: www.finanstilsynet.dk/UCITS

(2) A foreign UCITS, which intends to market its units directly or indirectly in Denmark, shall notify the types of investors to which the investment undertaking will refer, for example retail investors or professional investors etc.

(3) A foreign UCITS, which intends to market its units directly or indirectly in Denmark, shall, in the prospectus or possibly in a supplement to this, provide Danish investors with information on

- 1) the Danish representative of the investment undertaking, cf. section 8,
- 2) the taxation regulations applicable to Danish investors of the investment undertaking,
- 3) the extent to which tax is withheld on any distributions,
- 4) the taxation regulations applying to the investment undertaking in its home country,
- 5) the information the investment undertaking is required to provide for its investors according to the regulations in its home country, including the information the investment undertaking is required to provide if it ceases marketing in Denmark, and
- 6) the measures the investment undertaking intends to implement in Denmark with a view to securing the investors' rights to receive dividends and redeem units.

Part 4

Application for approval of marketing of non-UCITS

4.-(1) A foreign non-UCITS, which intends to market its units directly or indirectly in Denmark, shall submit the following to the Danish FSA:

- 1) A statement from the supervisory authorities in the home country of the investment undertaking to the effect that said investment undertaking has been approved in accordance with the legislation of the home country and falls within the scope of the supervisory authority of said country, including as regards said investment undertaking's activities in Denmark, and information on the scope of the approval.
- 2) A statement from the supervisory authorities of the investment undertaking to the effect that the home country is prepared to grant similar Danish associations access to market their units in the country in question.
- 3) Fund regulations or articles of association.
- 4) Prospectus including any supplements and including information on
 - a) the Danish representative of the investment undertaking, cf. section 8,
 - b) the taxation regulations applicable to Danish investors of the investment undertaking,
 - c) the extent to which tax is withheld on any distributions,
 - d) the taxation regulations applying to the investment undertaking in its home country, and
 - e) the measures the investment undertaking intends to implement in Denmark with a view to securing the investors' rights to receive dividends and redeem units.
- 5) The most recent annual report, unless the investment undertaking has not yet operated for a full accounting period, and any interim report.
- 6) The letter of notification to the Danish FSA requesting marketing of non-UCITS, including:
 - a) the name and address of the investment undertaking and, if relevant, its management company,
 - b) description of the planned marketing activities in Denmark, including the types of investors to which the investment undertaking intends to refer, for example retail investors or professional investors etc. and whether there is to be direct or indirect marketing,
 - c) information on the measures the investment undertaking intends to implement in Denmark with a view to securing the investors' rights to receive dividends and redeem units,
 - d) information on the information the investment undertaking is required to provide for its investors according to the regulations in its home country, including the information the investment undertaking is required to provide if it ceases marketing activities in Denmark,
 - e) information on name, address, duties and obligations of the Danish representative of the investment undertaking, cf. section 8, if the undertaking has such a representative, and
 - f) names and ISIN codes of the compartments and unit classes covered by the application.
- 7) Any other documents which the investment undertaking is under an obligation to make public in its home country.

(2) For subsequent application for approval to carry out marketing activities for compartments of a foreign investment undertaking covered by section 1(1), no. 2, the investment undertaking shall submit the information and documents mentioned in subsection (1), no. 1 and nos. 3-6.

(3) The documents mentioned in subsection (1), nos. 1, 3, 4, 6 and 7 shall be original documents or copies which have been certified by persons who have been authorised in writing to

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act on behalf of the investment undertaking in this connection. The document dealt with in subsection (1), no. 2 shall always be the original document.

(4) For subsequent application for approval to carry out marketing activities for unit classes in compartments, the marketing of which has already been approved, the investment undertaking shall submit a digital document stating to which compartments the unit classes belong as well as the names and ISIN codes of the compartments and unit classes covered by the application.

(5) The documents mentioned in subsection (1) shall be drawn up in Danish as an authorised Danish translation or in English, Norwegian or Swedish. Alternatively it may be an authorised translation into English, Norwegian or Swedish. The prospectus, cf. subsection (1), no. 4, and any supplements to this, shall, however, always be drawn up in Danish as an authorised Danish translation.

Approval by the Danish FSA of direct or indirect marketing of non-UCITS

5. There shall be a condition that, before the Danish FSA can approve marketing by a foreign non-UCITS, the Danish FSA shall have authority to cooperate with the supervisory authority in the home country of the investment undertaking pursuant to a cooperation agreement for the financial area.

6.-(1) The Danish FSA may approve direct or indirect marketing when a foreign non-UCITS has submitted the documents and information mentioned in section 4(1) to the Danish FSA. The Danish FSA may, however, request further information which the Danish FSA deems necessary to determine whether the interests of Danish investors are adequately secured.

(2) Units in foreign non-UCITS may be marketed when the Danish FSA has approved the marketing activities, cf. subsection (1).

Part 5

Common provisions

Name

7.-(1) Foreign investment undertakings shall be entitled to use the same name or the same designation for their activities as they use in their home country.

(2) In the event that such name or designation entails a risk of confusion, the Danish FSA may require that the undertaking add an explanatory note to the name or designation.

Representatives

8.-(1) Foreign investment undertakings, the units of which are marketed to retail investors in Denmark, shall have a representative with an office in Denmark in order to secure Danish retail investors access to information and redemption of units.

(2) The representative shall have a licence as a securities dealer, cf. section 9 of the Financial Business Act, or as an investment management company, cf. section 10 of the Financial Business Act. The representative may also be a branch, cf. section 5(1), no. 19 of the Financial Business Act.

(3) At the request of an investor, the representative shall assist the retail investor in redemption, payment of dividends and conversion of units etc. and help the investor in contact with

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the investment undertaking. The representative may also carry out these tasks. The representative shall also supply the documents which the undertaking makes public in its home country and provide information about the investment undertaking at the request of an investor.

(4) Enquiries from an investor to the representative shall have the same legal effect as enquiries to the foreign investment undertaking.

(5) Foreign investment undertakings, which only intend to market units to professional investors, may omit to have a representative, provided

- 1) the investment undertaking only markets its units indirectly to retail investors through unit-linked schemes established by undertakings which are under supervision by the Danish FSA, cf. section 1 of the Financial Business Act, or through a branch, cf. section 5(1), no. 19 of the Financial Business Act, or
- 2) through agreements with Danish professional investors, the foreign investment undertaking ensures that the units cannot be resold to retail investors, and
- 3) declares that the foreign investment undertaking will not itself sell units to Danish retail investors.

Changes in information etc.

9.-(1) A foreign investment undertaking shall notify the Danish FSA of changes in the name and address of the investment undertaking no later than 14 days after the decision to make the change has been made. A foreign non-UCITS investment undertaking shall also notify the Danish FSA of changes in the marketing plan, cf. section 4(1), no. 6, no later than 14 days after the decision to make the change has been made.

(2) A foreign investment undertaking shall notify the Danish FSA without delay if it suspends redemption of units.

Publication of information

10.-(1) The documents and information which foreign investment undertakings are under an obligation to make public regularly in their home country shall also be made public in Denmark. Publication shall be in the same way as in the home country. Investment undertakings themselves, however, shall be responsible for publication in Denmark if it is the supervisory authority of the home country that publishes certain information in the home country. The prospectus or a supplement to this shall state where publication is to take place.

(2) The documents and information dealt with in subsection (1) shall be drawn up in Danish as an authorised Danish translation or in English, Norwegian or Swedish. Alternatively it may be an authorised translation into English, Norwegian or Swedish. The information in the prospectus, cf. section 4(1), no. 4 and in the document with key investor information pursuant to Commission Regulation no. 583/2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website shall always be drawn up in Danish as an authorised Danish translation.

Cessation of marketing of units

11. The Danish FSA may demand that a foreign investment undertaking cease marketing its units in Denmark, if

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- 1) the measures of the investment undertaking to secure the rights of investors to receive dividends and redeem units fail to secure adequately the rights of the Danish investors,
- 2) the investment undertaking fails to market in accordance with the marketing materials,
- 3) the investment undertaking's approval or supervision from the competent authority of the investment undertaking's home country ceases to apply,
- 4) the access of Danish associations to marketing activities in the country in question, cf. section 4(1), no. 2, is changed or ceases to apply,
- 5) the Danish FSA's authority or an agreement to cooperate with the supervisory authority in the home country of the investment undertaking, cf. section 5, ceases to apply, or
- 6) the investment undertaking is guilty of gross or repeated violation of the provisions laid down in this Executive Order or in other Danish legislation.

12. When a foreign investment undertaking or a compartment of such ceases to market its units in Denmark, said investment undertaking shall immediately notify the Danish FSA hereof, stating the date of cessation. At the same time the investment undertaking shall notify how it will implement the measures to secure the rights of Danish investors mentioned in section 3(3), nos. 5 or 6, or section 4(1), no. 6, c and d.

Fee

13. Foreign investment undertakings, which are notified or have been authorised pursuant to this Executive Order, shall pay a fee to the Danish FSA. The fee shall be set pursuant to part 22 of the Financial Business Act.

Part 6

Penalties

14. Violation of section 3(2) and (3), section 7(2), section 8(1)-(4) and sections 9 to 12 shall be liable to a fine, when the violation is intentional or grossly negligent.

Part 7

Entry into force

15.-(1) This Executive Order shall enter into force on 1 July 2011.

(2) At the same time, Executive Order no. 505 of 12 May 2010 on Marketing Carried out by Certain Foreign Investment Undertakings in Denmark shall be repealed.

Danish Financial Supervisory Authority 28 June 2011

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