

## **Executive Order on Licencing Alternative Investment Fund Managers to Market to Retail Investors<sup>1</sup>**

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Executive Order no. 797 of 26 June 2014

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The following provisions shall be laid down pursuant to section 5(7), section 5a and section 190(4) of Act no. 598 of 12 June 2013 on Alternative Investment Fund Managers, etc. as amended by Act no. 268 of 25 March 2013 and Act no. 403 of 28 April 2014.

### *Scope*

**1.-(1)** This Executive Order shall apply to:

1) Alternative investment fund managers from Denmark licensed to manage alternative investment funds pursuant to section 11 of the Alternative Investment Fund Managers etc. Act and intending to market the following alternative investment funds which they manage to retail investors in Denmark:

- a) Alternative investment funds with their registered office in Denmark.
- b) Alternative investment funds with their registered office in another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area which have been notified by the manager as being marketed to professional investors in Denmark.
- c) Alternative investment funds with their registered office in a third country which the manager has been granted a licence to market to professional investors in Denmark.

2) Alternative investment fund managers from another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area who are licensed to manage alternative investment funds pursuant to regulations implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers and who intend to market the following alternative investment funds which they manage to retail investors in Denmark:

- a) Alternative investment funds from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area which have been notified by the manager as being marketed to professional investors in Denmark.
- b) Alternative investment funds with registered office in a third country which the manager has been granted a licence to market to professional investors in Denmark.

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<sup>1</sup> This Executive Order implements parts of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC as well as Regulation (EC) no. 1060/2009 and (EU) no. 1095/2010, Official Journal 2011, no. L 174, p. 1.

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3) Alternative investment fund managers from a third country which meet the conditions of section 5a of the Alternative Investment Fund Managers etc. Act, and which intend to market the following alternative investment funds which they manage to retail investors in Denmark:

- a) Alternative investment funds from a third country which meet the conditions of section 5a of the Alternative Investment Fund Managers etc. Act and which the manager has been granted a licence to market to professional investors in Denmark.
- b) Alternative investment funds from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area which the manager has been granted a licence to market to professional investors in Denmark.

#### *Definitions*

**2.** For the purpose of this Executive Order:

- 1) "Alternative investment fund" shall mean An entity as defined in
  - a) section 3(1), no. 1 of the Alternative Investment Fund Managers etc. Act as well as regulations issued pursuant to section 3(9) of the Alternative Investment Fund Managers etc. Act, or
  - b) regulations implementing Article 4(1), point a) of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.
- 2) "The supreme management body" shall mean the management body as defined in section 3(2) and (3) of the Alternative Investment Fund Managers etc. Act.
- 3) "Retail investor" shall mean an investor as defined in section 3(1), no. 40 of the Alternative Investment Fund Managers etc. Act.
- 4) "Financial assets" shall mean mortgage deeds, foreign-exchange spot transactions for investment purposes in order to secure profits in connection with changes in currency exchange rates as well as prices of financial instruments as defined in the regulations implementing Annex 1, Section C of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.
- 5) "Alternative investment fund manager" shall mean an entity as defined in section 3(1), no. 3 of the Alternative Investment Fund Managers etc. Act.
- 6) "Marketing" shall mean marketing as defined in section 3(1), no. 29 of the Alternative Investment Fund Managers etc. Act.
- 7) "Professional investor" shall mean an investor as defined in section 3(1), no. 37 of the Alternative Investment Fund Managers etc. Act.
- 8) "Other assets" shall mean all assets which are not financial assets, cf. no. 4.

#### *Application*

**3.-(1)** An investment fund manager intending to market units in an alternative investment fund which it manages to retail investors in Denmark, shall apply for a licence from the Danish FSA.

**(2)** The application shall contain the following:

- 1) Documentation stating that the manager has notified marketing or been licensed to market in Denmark pursuant to the regulations implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.
- 2) If the manager has its registered office in a third country, a declaration from the supervisory authority in the manager's home country, stating that the manager is subject to supervision by its home country and that the manager is licensed to manage the alternative investment fund.
- 3) If both the manager and the alternative investment fund have their registered office in a third country, a declaration from the supervisory authority of the home country of the alternative investment fund stating that the alternative investment fund is subject to supervision by the home country.
- 4) Fund rules, articles of association or other articles of establishment for the alternative investment fund, unless the alternative investment fund has not yet been established.
- 5) The information available to the investors about the alternative investment fund, cf. section 62 of the Alternative Investment Fund Managers etc. Act, for example a prospectus or a similar document.
- 6) Significant investor information in accordance with the Executive Order on the form and content of a document containing significant investor information for alternative investment funds.
- 7) The most recent annual report, unless the alternative investment fund has not yet carried out activities for a full accounting period, and any interim financial report.
- 8) A copy of the risk frameworks laid down by the supreme management body (fund instructions), cf. section 5.
- 9) Name and address of the depositary of the alternative investment fund designated pursuant to section 45(1) of the Alternative Investment Fund Managers etc. Act, or regulations implementing Article 21(1) of Directive 2011/61/EU on alternative investment fund managers.
- 10) The Danish FSA's application form for a licence to market units in alternative investment funds to retail investors in Denmark, including
  - a) the name and address of both the alternative investment fund and the manager,
  - b) description of the planned marketing activities in Denmark, including whether there is to be direct or indirect marketing,
  - c) if the alternative investment fund has no registered office in Denmark, information on the extent to which the alternative investment fund may approach the general public in the home country, including whether the alternative investment fund may approach retail investors,
  - d) if the alternative investment fund has no registered office in Denmark, information on the measures the manager intends to implement in Denmark to secure the investors' rights to receive dividends and redeem units,
  - e) if the alternative investment fund has no registered office in Denmark, information on the information the alternative investment fund is required to provide for its investors according to the regulations in its home country, including the information the alternative investment fund is required to provide if it ceases marketing activities in Denmark,

f) names of the sub-fundss and share classes covered by the application, and

g) information on where the master fund is established if one of the funds is a feeder fund.

11) Any other documents which the alternative investment fund is under an obligation to make public in its home country, if the fund has no registered office in Denmark.

**(3)** The documents mentioned in subsection (2), nos. 1-4, 7, and 11 shall be original documents or copies which have been certified by persons who have been authorised in writing to act on behalf of the alternative investment fund in this connection.

**(4)** The documents and information mentioned in subsection (2) shall be drafted in either Danish or English. This shall not apply, however, to significant investor information as mentioned in subsection (2), no. 6 as this shall always be drafted in Danish.

**(5)** Within three months after submission of a complete application for a licence to market units in an alternative investment fund or a sub-fund hereof to retail investors in Denmark, cf. subsection (2), the Danish FSA shall inform the manager whether or not a licence has been granted. The Danish FSA may prolong this period for up to three months, if the Danish FSA considers this necessary due to the specific circumstances of the case and after having notified the manager accordingly. The manager may begin marketing units in the alternative investment fund to retail investors in Denmark when the manager has received a licence from the Danish FSA.

**(6)** The licence granted by the Danish FSA shall state whether the manager is licensed to market the alternative investment fund to retail investors as an alternative investment fund which primarily invests in financial assets, or whether the manager is licensed to market the alternative investment fund to retail investors as an alternative investment fund which primarily invests in other assets.

*Requirements for the alternative investment fund intended to be marketed to retail investors*

**4.-(1)** An alternative investment fund shall have its investment policy and risk profile laid down in the articles of association, fund rules or other articles of establishment. The articles of association, the fund rules or other articles of establishment shall also include provisions regarding issuance and redemption by the alternative investment fund of members' units.

**(2)** An alternative investment fund which is open and which primarily invests in financial assets, shall, in its articles of association, fund rules or other articles of establishment have provisions laid down that the alternative investment fund shall publish the issuance and redemption price at least every two weeks, and that the alternative investment fund shall be open to redemption no less than once a month.

**5.-(1)** The supreme management body of the manager shall lay down risk frameworks for the alternative investment fund or its sub-funds which are within the investment policy and risk profile of the articles of association, the fund rules or other articles of establishment.

**(2)** The manager shall, no later than eight business days after a decision has been made on making changes in the risk framework of the fund or sub-fund, notify registered investors by name about the changes, as well as publish the changes. The changes shall not take effect before the investors in the fund or the sub-fund have had an opportunity to redeem their units.

**6.-(1)** An alternative investment fund manager shall ensure that the alternative investment fund complies with the risk frameworks laid down for the fund or sub-fund on the basis of the provisions on investment policy and risk profile of the articles of association, the fund rules or other articles of establishment, cf. section 5.

**(2)** If the alternative investment fund transgresses the investment policy, the risk profile or the risk frameworks laid down in the articles of association, the fund rules or other articles of establishment, or which have been laid down by the supreme management body of the manager, these transgressions shall be brought into compliance with the investment policy, the risk profile or the risk frameworks immediately.

**(3)** The supreme management body of the manager shall publish the transgression mentioned in subsection (2). The publication shall be made no later than eight business days after the transgression took place.

#### *Master-feeder*

**7.** If the alternative investment fund is a feeder fund, the master fund shall be from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, and the manager of the master fund shall also be from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.

#### *Information*

**8.** An alternative investment fund manager shall, on any subscription or redemption of units in an alternative investment fund, provide the investor with information about the issuance or redemption price.

**9.** If the alternative investment fund has share classes on its internet website, an alternative investment fund manager shall provide information regarding the characteristics applicable for each share class and regarding the principles for allocating costs.

**10.** Within three business days, the alternative investment fund manager shall publish information about suspension or postponement of redemption of units, change of depositary or manager, changes to fee rates in relation to the investors, and about changes to other significant matters.

**11.-(1)** If the alternative investment fund has no registered office in Denmark, the manager shall ensure publication in Denmark of documents and information which the alternative investment fund shall publish regularly in the home country of the fund. Publication shall be made in the same manner as in the home country. The manager shall ensure publication in Denmark in the event that the supervisory authority of the home country is to publish certain information in the home country.

**(2)** The documents and information dealt with in subsection (1) shall be drafted in Danish or English.

#### *Changes in information*

**12.-(1)** An alternative investment fund manager shall notify the Danish FSA of any planned significant changes to the conditions which formed the basis for granting the licence to market units to retail investors, including significant changes in the information received by the Danish FSA in connection with the application. The notification shall take place prior to implementation of the changes. Unplanned changes shall be notified to the Danish FSA immediately after the change has taken place.

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(2) If the Danish FSA is unable to approve the changes referred to in subsection (1), the Danish FSA shall inform the manager within one month of receipt of the notification. The Danish FSA may prolong this period by up to one month where this is deemed necessary because of the specific circumstances of the case. In such case, the Danish FSA shall, within one month after the Danish FSA has received notification according to subsection (1), notify the manager about any extension of the period.

(3) Further to notification of the manager according to subsection (2), the Danish FSA may decide to impose restrictions or reject the changes planned by the manager. Furthermore, the Danish FSA may order the manager to rectify the changes if these have already been made. The manager may establish and maintain the changes, if the Danish FSA does not oppose the changes within the relevant period.

#### *Representatives*

**13.-(1)** For alternative investment funds which have no registered office in Denmark, the manager shall ensure that the alternative investment fund has a representative with an office in Denmark to ensure Danish investors have 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 alternative investment fund manager, cf. section 11 of the Alternative Investment Fund Managers etc. Act

(3) At the request of an investor, the representative shall assist the investor on redemption, payment of dividends and conversion of units etc. as well as assist the investor in contacting the alternative investment fund. The representative may also perform these tasks himself. The representative shall also supply the documents which the alternative investment fund makes public in its home country and provide information about the alternative investment fund at the request of an investor.

(4) Enquiries from an investor to the representative shall have the same legal effect as enquiries to the alternative investment fund manager.

#### *Significant investor information*

**14.** When offering units in an alternative investment fund or a sub-fund hereof, an alternative investment fund manager shall supply a document with significant investor information to interested retail investors. The form and contents of this document shall be prepared in compliance with the Executive Order on the form and contents of a document containing significant investor information for alternative investment funds.

#### *Cessation of marketing to retail investors*

**15.** The Danish FSA may require that the manager ceases to market the alternative investment fund to retail investors, in the following circumstances:

- 1) Where measures by the manager to secure the rights of investors to receive dividends and redeem units fail to secure adequately the rights of the investors.
- 2) Where marketing of the alternative investment fund is not carried out in accordance with the marketing materials,
- 3) Where the manager is guilty of gross or repeated violation of the provisions laid down in this Executive Order or in other relevant Danish legislation.

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4) Where the licence of the manager to manage alternative investment funds is withdrawn or otherwise ceases to be valid.

5) Where the manager has not paid fees to the Danish FSA in due time.

**16.-(1)** When an alternative investment fund manager decides to cease to market the alternative investment fund or sub-fund thereof to retail investors in Denmark, said manager shall, no later than 14 days after the decision was made, notify all Danish investors and notify the Danish FSA about the date of cessation. The same shall apply correspondingly if the Danish FSA requires the manager to cease to market the alternative investment fund, cf. section 15.

**(2)** At the same time the alternative investment fund manager shall notify how the manager initiates the measures to secure the rights of Danish investors mentioned in section 3(2), no. 10d.

#### *Penalties*

**17.-(1)** Any person violating sections 3(4)-(6), sections 8-14 and 16 shall be liable to a fine.

**(2)** Companies, etc. (legal persons) may incur criminal liability under the rules of Part 5 of the Criminal Code.

#### *Entry into force*

**18.-(1)** This Executive Order shall enter into force on 15 July 2014.

**(2)** Executive Order no. 866 of 28 June 2013 on Licencing Alternative Investment Fund Managers to Market to Retail Investors shall be repealed.

*Ministry of Business and Growth, 26 June 2014*

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/ Hans Høj