

## **Alternative Investment Fund Managers etc. Act<sup>1</sup>**

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Act no. 598 of 12 June 2013

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We Margrethe the Second, by the Grace of God Queen of Denmark hereby witness:

Folketinget (the Danish Parliament) has adopted and We with Our consent hereby enact the following Act:

### **I**

#### **General provisions**

##### **Part 1**

###### *Scope*

**1.-(1)** This Act shall apply to

- 1) alternative investment fund managers with their registered office in Denmark,
- 2) alternative investment fund managers with their registered office in a third country and for which Denmark is its member state of reference,
- 3) alternative investment funds established in Denmark and not covered by an agreement with a manager licensed or registered as a manager, on management of the fund, and
- 4) alternative investment funds from a third country and which are not covered by an agreement with a manager licensed or registered as a manager, on management of the fund, for which Denmark is its country of reference.

**(2)** Sections 18, 19 and 23, section 67(4), sections 155-157, 161, 162, 164, 170, 171, 173-176, 180, 182, 184 and 190-192 shall apply to alternative investment fund managers which have Denmark as their host country when a license has been issued to exercise the activities mentioned in section 11, in another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, if the manager manages or markets alternative investment funds in Denmark through a branch in Denmark.

**(3)** Sections 61-68, 70-75, 130, 155-157, 161, 162, 164, 170, 171, 173-176, 180, 182, 184 and 190-192 shall apply to alternative investment fund managers which have their registered office in a third country, and which do not have a member state of reference in the European Union or a country with which the Union has entered into an agreement for the financial area intending to market units in alternative investment funds in Denmark.

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<sup>1</sup> This Act implements 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.

**(4)** Sections 5, 9, 10, 161 and 190-192 shall apply to alternative investment fund managers which have their registered office in Denmark which are not covered by the obligation to apply for a licence as an alternative investment fund manager, cf. section 6(1), and which have not voluntarily chosen to apply for such licence to manage alternative investment funds (registered alternative investment fund managers).

**(5)** Section 18, section 67(4), sections 155-157, 161, 162, 164, 170, 171, 173-176, 180, 182, 184 and 190-192 shall apply to alternative investment fund managers which have 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, if the manager manages or markets alternative investment funds in Denmark without establishing a branch in Denmark.

**2.** Notwithstanding section 1 this Act shall not apply to:

1) Holding companies.

2) Alternative investment fund managers exclusively managing one or more alternative investment funds whose only investors are the manager, or the manager's parent companies or subsidiary undertakings or other subsidiary undertakings of such parent companies, provided that none of these investors themselves are an alternative investment fund.

3) Institutions for occupational retirement provision which are covered by the regulations implementing Directive 2003/41/EC of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, including, where applicable, the authorised entities responsible for managing such institutions and acting on their behalf, cf. the regulations implementing Article 2(1) of that Directive or the investment managers appointed pursuant to Article 19(1) of that Directive, in so far as they do not manage alternative investment funds.

4) Supranational institutions, similar international organisations and members of the European Development Finance Institutions, in the event that such institutions and organisations manage alternative investment funds and in so far as those alternative investment funds act in the public interest.

5) Vækstfonden (*growth fund*).

6) Danmarks Nationalbank (Denmark's central bank).

7) Governmental, regional and municipal bodies or other institutions which manage funds supporting social security and pension schemes.

8) Employee participation schemes or employee savings schemes.

9) Securitisation special purpose entities.

10) Family-owned investment entities.

## **Part 2**

### *Definitions*

**3.-(1)** For the purposes of this Act, the following definitions shall apply:

- 1) "Alternative investment fund" shall mean a collective investment entity or investment compartments thereof, which
  - a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and
  - b) do not require a licence pursuant to the regulations implementing Article 5 of Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).
- 2) "Unit" shall mean any equity interest in the assets of an alternative investment fund.
- 3) "Alternative investment fund manager" shall mean an undertaking the regular business of which is managing one or more alternative investment funds and which has assumed responsibility for the management of one or more alternative investment funds.
- 4) "Branch of an alternative investment fund manager" shall mean a place of business which as a part of a manager has no legal personality and which provides the services for which the manager has been licensed. All the places of business established in the same Member State of the European Union or a country with which the Union has entered into an agreement for the financial area by a manager with its registered office in another Member State, shall be regarded as a single branch.
- 5) "Carried interest" shall mean a share in the profits of the alternative investment fund accrued to the manager as compensation for the management of the alternative investment fund and excluding any share in the profits of the alternative investment fund accrued to the manager as a return on any investment by the manager into the alternative investment fund.
- 6) "Close links" shall mean
  - a) a situation in which two or more natural or legal persons are linked by participation, namely ownership, directly or indirectly, of 20% or more of the voting rights or capital of an undertaking.
  - b) a situation in which a natural or legal person has controlling influence over one or more other natural or legal persons, namely the relationship between a parent company and a subsidiary undertaking as mentioned in subsections (4)-(7) or a similar relationship between a natural or legal person and an undertaking. A subsidiary undertaking of a subsidiary undertaking shall be considered to be a subsidiary undertaking of the parent company of those subsidiary undertakings.
  - c) a situation in which the same natural or legal person is permanently linked to two or more natural or legal persons by a control relationship.
- 7) "Competent authorities" shall mean the national authorities of a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, which are empowered by law or regulation to supervise managers.

8) "Competent authorities in relation to a depositary" shall mean

a) the competent authorities as defined in Article 4, no. 4 of Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions provided that the depositary is a credit institution which has obtained a licence pursuant to the regulations implementing Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.

b) the competent authorities as defined in Article 4(1) no. 22 of Directive 2004/39/EC of 21 April on markets in financial instruments if the depositary is an investment company which has obtained a licence pursuant to the regulations implementing Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.

c) the national authorities in the home country of the depositary empowered by law or regulation to supervise such categories of business where the depositary falls under such category of business as are mentioned in the regulations implementing point (c) of the first subparagraph of Article 21(3) of Directive 2011/61/EC of 8 June 2011 on alternative investment fund managers.

d) the national authorities in the country in which that entity has its registered office and which are empowered by law or regulation to supervise such entity, or the official body competent to register or supervise such entity pursuant to the rules of conduct applicable hereto, if the depositary is an entity referred to in the third subparagraph of Article 21(3) of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

e) the national authorities in the third country in which the depositary has its registered office, if the depositary is depositary for an alternative investment fund from a third country pursuant to the regulations implementing point (b) of Article 21(5) of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers and not covered by points (a)-(d).

9) "Alternative investment fund from a third country" shall mean an alternative investment fund which

a) has not obtained a licence or is not registered in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area pursuant to applicable national legislation, and

b) does not have its registered office or head office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.

10) "Controlling influence" shall mean The power to control the financial and operating decisions of the subsidiary undertaking, cf. subsections (3)-(7).

11) "Capital association" shall mean an alternative investment fund established in pursuance of paragraph VIII as an association with one or more investors,

a) the purpose of which is to create a return for the investors of the association by investing in liquid funds, including currency, or in financial instruments covered by Annex 5 of the Financial Business Act,

b) if the articles of association specify that said association is a capital association, and

c) which has appointed a manager licensed to administrate alternative investment funds responsible for management of the capital association.

12) "Established for alternative investment funds" shall mean the country in which the alternative investment fund has obtained a licence or is registered, or if the fund has not obtained a licence or is registered, the country in which the fund has its registered office.

13) "Established for depositaries" shall mean the country in which the depositary has its registered office, or the country in which the depositary has a branch.

14) "Established for legal representatives, who are legal persons" shall mean the country in which the legal representative has its registered office or the country in which the legal representative has its branch.

15) "Established for legal representatives that are natural persons" shall mean the country in which the legal representative is domiciled.

16) "An alternative investment fund from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area" shall mean an alternative investment fund which

a) has obtained a licence or is registered in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area pursuant to applicable national legislation, or

b) has not obtained a licence or is not registered in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, but which has its registered office or head office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.

17) "A manager from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area" shall mean a manager with its registered office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.

18) "Feeder fund" shall mean an alternative investment fund which

a) invests at least 85% of its assets in units of another alternative investment fund (the master fund),

b) invests at least 85% of its assets in more than one master fund where those master funds have identical investment strategies, or

c) has otherwise an exposure of at least 85% of its assets to such a master fund.

19) "Financial instrument" shall mean an instrument as specified in section 2(1) and (2) of the Securities Trading etc. Act.

20) "Holding company" shall mean a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiary undertakings, group companies or participations in order to contribute to their long-term value, and which is either a company

a) operating on its own account and whose shareholdings are admitted to trading on a regulated market in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, or

b) not established for the main purpose of generating returns for its investors by means of selling its subsidiary undertakings or group companies, as evidenced in its annual report or other official documents.

21) "Home country of alternative investment funds" shall mean either

a) the Member State of the European Union or the country with which the Union has entered into an agreement for the financial area in which the alternative investment fund is licensed or registered under applicable national law, or in case of multiple licences or registrations, the Member State of the European Union or the country with which the Union has entered into an agreement for the financial area in which the alternative investment fund has obtained its licence or registered for the first time, or

b) the Member State of the European Union, or the country with which the Union has entered into an agreement for the financial area in which the alternative investment fund has its registered office or head office, if the alternative investment fund has neither obtained a licence or registered in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.

22) "Home country of the manager" shall mean the Member State of the European Union or the country with which the Union has entered into an agreement for the financial area in which the manager has its registered office. For managers which have their registered office in a third country all references in this Act to the home country of such manager shall be considered as member state of reference.

23) "Host country of the manager" shall mean A member State or Member States of the European Union or the country or countries with which the Union has entered into an agreement for the financial area other than the home country in which the manager

a) manages or markets units in an alternative investment fund from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, or

b) markets units in an alternative investment fund from a third country.

24) "Initial capital" shall mean the manager's capital base calculated at the time when the manager has obtained a licence to manage alternative investment funds, cf. section 11(3).

25) "Issuer" shall mean an issuer within the meaning of the regulations implementing point (d) of Article 2(1) of Directive 2004/109/EC of 15 December 2004 on the harmonisation of

transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market where that issuer has its registered office in the European Union or in a country with which the Union has entered into an agreement for the financial area, and where its units are admitted to trading on a regulated market within the meaning of the regulations implementing no. 14 of Article 4(1) of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.

26) "Legal representative" shall mean a natural person domiciled in a Member State of the European Union or a Member State of the European Union or a country with which the Union has entered an agreement for the financial area, or a legal person with its registered office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, and which, expressly designated by a manager with its registered office in a third country, acts on behalf of such manager vis-à-vis the authorities, clients, bodies and counterparties in the European Union or a country with which the Union has entered into an agreement for the financial area, with regard to the obligations of the manager pursuant to this Act.

27) "Gearing" shall mean a method by which the manager increases the exposure of an alternative investment fund it manages whether through borrowing of cash or securities, or gearing embedded in derivative positions or by any other means.

28) "Managing alternative investment funds" shall mean responsibility for performing at least the investment management functions referred to in Annex 1, no. 1 for one or more alternative investment funds.

29) "Marketing" shall mean a direct or indirect offering or placement at the initiative of the manager or on behalf of the manager of units of an alternative investment fund it manages to or with investors domiciled or with a registered office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.

30) "Master fund" shall mean an alternative investment fund in which another alternative investment fund invests or has an exposure in accordance with no. 18.

31) "Country of reference" shall mean a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, as laid down in accordance with Part 17.

32) "Third country" shall mean a country outside the European Union with which the Union has not entered into an agreement for the financial area.

33) "Non-listed company" shall mean a company which has its registered office in 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 shares of which are not admitted to trading on a regulated market within the meaning of the regulations implementing Article 4(1), no. 14 of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.

34) "Capital base" shall mean the capital base of the manager as mentioned in the regulations implementing Articles 56-67 of Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.

35) "Parent company" shall mean a parent company within the meaning of the regulations implementing Articles 1 and 2 of Directive 83/349/EEC of 13 June 1983 on consolidated accounts.

36) "Prime broker" shall mean a credit institution, a regulated investment company or another entity subject to prudential regulation and ongoing supervision, offering services to professional investors primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services such as clearing and settlement of trades, custodial services, securities lending, customised technology and operational support facilities.

37) "Professional investor" shall mean an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of the regulations implementing Annex II to Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.

38) "Qualifying interests" shall mean a direct or indirect holding in a manager which represents at least 10% of the capital or the voting rights, cf. the regulations implementing Articles 9 and 10 of Directive 2004/109/EC of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, taking into account the conditions regarding aggregation of the holding, cf. the regulations implementing Article 12(4) and (5) of the relevant directive, or which makes it possible to exercise a significant influence over the management of the manager in which that holding subsists.

39) "Employees' representatives" shall mean employees' representatives as defined in the regulations implementing point (e) of Article 2 of Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

40) "Retail investor" shall mean an investor who is not a professional investor, cf. no. 37.

41) "Subsidiary undertaking" shall mean a subsidiary undertaking as defined in the regulations implementing Articles 1 and 2 of Directive 83/349/EEC of 13 June 1983 on consolidated accounts.

42) "Supervisory authorities in relation to alternative investment funds from third countries" shall mean the national authorities of a third country which are empowered by law or regulation to supervise alternative investment funds.

43) "Supervisory authorities in relation to managers from third countries" shall mean the national authorities of a third country which are empowered by law or regulation to supervise managers.

44) "Securitisation special purpose entities" shall mean entities whose sole purpose is to carry on a securitisation or securitisations within the meaning of Article 1, no. 2 of Regulation (EC) no. 24/2009 and other activities which are appropriate to accomplish that purpose.



45) "UCITS" shall mean an undertaking for collective investment in transferable securities licensed in accordance with the regulations implementing Article 5 of Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

46) "Regulated market" shall mean a market covered by the regulations implementing Article 4(1) no. 14 of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.

47) "Variable components of the remuneration" shall mean remuneration schemes and other types of payment under which final value is unknown in advance, including bonus schemes, performance contracts, carried interests and other similar schemes.

**(2)** For the purposes of this Act, alternative investment fund managers which have their registered office in Denmark that are not self-managed shall mean:

1) The supreme management body:

- a) the board of directors of companies with a board of directors and a board of management.
- b) the supervisory board of companies with a supervisory board and a board of management.
- c) the board of management of companies which only has a board of management.

2) The central management body:

- a) the board of management of companies with a board of management and a supervisory board.
- b) the board of directors of companies with a board of directors and a board of management.
- c) the board of management of companies which only has a board of management.

3) The management: All the bodies mentioned in nos. 1 and 2. A member of the management may be a member of a company's supervisory board, board of directors or board of management.

**(3)** In relation to alternative investment fund managers which do not have their registered office in Denmark, and in relation to self-managed alternative investment funds, the provisions in subsections (1), (2) and (5), section 11(3), section 13, section 20(2)-(7) and (10), section 21(3) and (4), section 22, section 23(2), section 28(1) and (9), section 61(3), section 157(2) and (3), section 166, section 168(1)-(3), (5) and (7), section 173(2) and (3), section 190(7) and section 191(1) and (3) regarding the supreme management body, the central management body, the board of management and the management or members of such management bodies shall be applied with the changes necessary to the management bodies of such managers and members hereof.

**(4)** Controlling influence in relation to a subsidiary undertaking exists when the parent undertaking, directly or indirectly through a subsidiary undertaking, owns more than one-half of the voting rights in an undertaking, unless, in exceptional circumstances, it can be clearly demonstrated that such ownership does not constitute controlling influence.

**(5)** Where a parent undertaking holds no more than one-half of the voting rights in an undertaking, controlling influence exists if the parent undertaking has

- 1) right of disposal of more than 50% of the voting rights by virtue of an agreement with other investors,
- 2) authority to manage the financial and operational conditions in an undertaking pursuant to an article of association or an agreement,
- 3) authority to appoint or dismiss a majority of the members of the supreme management body or this body, and this body has controlling influence of the undertaking, or
- 4) the power to exercise the actual majority of votes at the general meeting or an equivalent body and thus hold actual controlling influence of the undertaking.

**(6)** The existence and effect of potential voting rights, including rights to subscribe for and purchase equity investments that are currently exercisable or convertible, shall be taken into account when assessing whether an undertaking has controlling influence.

**(7)** When calculating voting rights within a subsidiary undertaking, voting rights associated with equity investments owned by the subsidiary undertaking itself or by its subsidiary undertakings shall be excluded from the calculations.

**(8)** For the purposes of subsection (1), no. 34, the regulations implementing Articles 13-16 of Directive 2006/49/EC of 14 June 2006 on the capital adequacy of investment companies and credit institutions, the same shall apply correspondingly.

**(9)** The Danish FSA may lay down more detailed regulations on when such entity complies with the conditions mentioned in subsection (1), no. 1(a).

## **II**

### **Licence and area of activity**

#### **Part 3**

##### *Managing alternative investment funds*

**4.-(1)** If an alternative investment fund is not covered by an agreement on management by an alternative investment fund manager licensed or registered as a manager, the fund shall be considered self-managed. The provisions in this Alternative Investment Fund Managers etc. Act shall apply correspondingly to self-managed alternative investment funds with the changes necessary.

**(2)** In cases where a manager is unable to ensure compliance with the requirements of this Act for which an alternative investment fund or another entity on its behalf shall be responsible, the manager shall immediately inform the Danish FSA and the competent authorities of the Member State of the European Union or the country with which the Union has entered into an agreement for the financial area and which is the origin of the fund, if this

is not Denmark. The Danish FSA shall subsequently require the manager to take the necessary steps to remedy the situation.

**(3)** If, notwithstanding the steps referred to in subsection (2) being taken, the non-compliance persists, and in so far as it concerns a manager with its registered office in Denmark or an alternative investment fund from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Danish FSA shall require that the manager's licence is withdrawn or that the manager resigns as manager of that alternative investment fund. In that case, the fund can no longer be marketed in Member States of the European Union or countries with which the Union has entered into an agreement. To the extent it concerns a manager with its registered office in a third country or an alternative investment fund from a third country, the Danish FSA shall prohibit marketing by the fund in Member States of the European Union or countries with which the Union has entered into an agreement for the financial area. The Danish FSA shall immediately inform the competent authorities in any host countries of the manager.

**5.-(1)** Undertakings managing alternative investment funds shall obtain a licence to manage alternative investment funds, cf. section 11(3), or be registered with the Danish FSA, cf. section 9(1).

**(2)** Undertakings licensed to manage alternative investment funds, and undertakings registered with the Danish FSA as alternative investment fund managers, shall have exclusive right to manage alternative investment funds and shall have exclusive right to use the words "forvalter af alternative investeringsfonde" (alternative investment fund manager) in their name.

**(3)** Alternative investment fund managers licensed to manage alternative investment funds may market units in alternative investment funds to professional investors in compliance with the regulations laid down in paragraph VI.

**(4)** Units in alternative investment funds may not be marketed to retail investors in Denmark. The Danish FSA may grant managers licensed to manage alternative investment funds a licence to market units in alternative investment funds to retail investors.

**(5)** Units in alternative investment funds may not be marketed in other Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area, unless these are marketed by alternative investment fund managers licensed to manage alternative investment funds or pursuant to delegation from such manager.

**(6)** Managers registered with the Danish FSA may market units in alternative investment funds established in Denmark or in a third country to professional investors in Denmark and in third countries.

**(7)** The Minister for Business and Growth may lay down more detailed regulations on the conditions to be satisfied in order for a licensed manager to be permitted to market units in alternative investment funds to retail investors in Denmark, as well as regulations on the licence and marketing of such.

**(8)** The Danish FSA may lay down more detailed regulations regarding the types of alternative investment fund managers.

*Alternative investment fund managers required to obtain a licence*

**6.-(1)** An undertaking which manages one or more alternative investment funds shall be required to obtain a licence from the Danish FSA, if the assets in the alternative investment funds managed by such undertaking, in total exceed a threshold corresponding to

1) EUR 100 mill. or

2) EUR 500 mill., where the undertaking exclusively manages alternative investment funds that are ungeared to its investments, and no investors in the funds shall have redemption rights exercisable during a period of at least five years following the date of initial investment in each fund.

**(2)** Assets acquired through gearing, cf. section 3(1), no. 27, shall be included in the calculation of the assets pursuant to subsection (1), no. 1.

**(3)** In the calculation of the total value of the assets in total managed by the undertaking, assets managed either directly or indirectly through a company with which the manager is linked by common management, exercises controlling influence or is linked by a substantive direct or indirect holding, shall be included.

**(4)** The thresholds in subsection (1) shall not apply to undertakings managing one or more capital associations, as such managers, regardless of the value of the assets, shall be required to obtain a licence from the Danish FSA in order to manage alternative investment funds.

**(5)** The Danish FSA may lay down regulations on calculation of the thresholds mentioned in subsection (1), as well as the procedure for granting a licence to manage alternative investment funds.

**(6)** The Danish FSA may lay down more detailed regulations specifying the gearing methods and calculation of such gearing.

**7.-(1)** Licensed alternative investment fund managers which have their registered office in Denmark shall be legal persons covered by the Danish Companies Act.

**(2)** Alternative investment fund managers which have their registered office in a third country which have Denmark as their member state of reference shall be limited liability companies.

**(3)** Subsections (1) and (2) shall not apply if the manager is a self-managed alternative investment fund.

**8.-(1)** Licensed alternative investment fund managers which are not self-managed shall not carry out other activities than those referred to in Annex 1, nos. 1 and 2, cf. however, subsections (2) and (3).

**(2)** Alternative investment fund managers which are not self-managed, may, however, also be licensed as an investment management company pursuant to section 10 of the Danish Financial Business Act and carry out the activities for which such licence is granted.

**(3)** In addition to the condition mentioned in subsection (1), managers which are not self-managed, may be licensed to provide the services mentioned in Annex 1, no. 3. A manager cannot be licensed to provide ancillary services according to Annex 1, no. 3(b) unless the manager is licensed to manage investment portfolios according to Annex 1, no. 3(a).

**(4)** A self-managed alternative investment fund may exclusively carry out the activities mentioned in Annex 1, nos. 1 and 2, and only for the fund itself.

**(5)** If a manager is licensed to carry out the activities mentioned in Annex 1, no. 3, section 10(4) and sections 43, 72 and 125 of the Financial Business Act shall apply correspondingly to the manager's performance of such services.

*Alternative investment fund managers subject to registration*

**9.-(1)** Alternative investment fund managers which have their registered office in Denmark which are not required to apply for a licence as an alternative investment fund manager, cf. section 6(1), and which have not voluntarily chosen to apply for such licence to manage alternative investment funds, cf. section 10(2), shall be registered with the Danish FSA.

**(2)** Upon registration with the Danish FSA as a manager, an undertaking shall state

- 1) the name of the undertaking,
- 2) the business registration number (CVR number) of the undertaking,
- 3) clear identification of the alternative investment funds managed by the undertaking, and
- 4) a description of the investment strategies of each of the alternative investment fund managed by the undertaking.

**(3)** A registered manager shall regularly provide the Danish FSA with information about

- 1) the alternative investment funds managed by such manager, the investment strategies of such, and the principal exposures and concentrations of the funds,
- 2) any significantly changed investment strategies for each alternative investment fund since the most recently provided information, and
- 3) the most important instruments traded by the manager.

**(4)** The Danish FSA may lay down more detailed regulations on the duty to register, and the information to be provided by the manager at the time of registration, and may regularly provide information, as well as regulations on the issuance of such information.

**10.-(1)** A registered alternative investment fund manager shall, within 30 calendar days, apply for a licence from the Danish FSA if the assets managed by the manager in total exceed the thresholds mentioned in section 6(1).

**(2)** A registered manager or an undertaking may, at their own initiative, apply for a licence to manage alternative investment funds even if the value of the managed assets does not exceed the thresholds mentioned in section 6(1).

**(3)** The Danish FSA may lay down more detailed regulations on

1) breaches, which an alternative investment fund manager expects to be temporary, of the thresholds mentioned in section 6(1) and

2) the procedure for undertakings applying for a licence.

*Application for a licence as an alternative investment fund manager*

**11.-(1)** Undertakings exceeding the thresholds laid down in section 6(1) shall apply for a licence from the Danish FSA to manage alternative investment funds.

**(2)** The licence obtained from the Danish FSA shall comprise the activities included in Annex 1, nos. 1 and 2. In addition, the Danish FSA may grant a manager a licence to carry out one or more of the activities mentioned in Annex 1, no. 3 unless the manager is a self-managed fund. A licence to carry out the activities mentioned in Annex 1, no. 3 shall be conditional upon the manager joining a guarantee fund, cf. the Guarantee Fund for Depositors and Investors Act, in respect of such activities. The Danish FSA may also restrict the scope of the licence, in particular as regards the investment strategies of the alternative investment funds, for which the undertaking is applying.

**(3)** The Danish FSA shall grant an undertaking a licence to manage alternative investment funds where the undertaking is able to comply with the conditions in this Act, and where

1) the undertaking has sufficient initial capital and an adequate capital base in accordance with the requirements in section 16,

2) the members of the management of the undertaking are of sufficiently good repute and are sufficiently experienced in exercising their duties and responsibilities or carrying out their position, cf. section 13,

3) the conduct of the business of the manager is being decided by at least two persons from the management of the manager,

4) the owners of qualifying interests in the undertaking are suitable taking into account the need to ensure the sound and prudent management of the undertaking,

5) the head office and the registered office of the undertaking are located in Denmark, unless the undertaking is covered by section 1(1), nos. 2 or 4,

6) the undertaking complies with the requirements in section 7,

7) the conditions in section 116 are met, if the undertaking is covered by section 1(1), nos. 2 or 4,

8) the Danish FSA is not prevented from carrying out its supervisory functions as a consequence of close links between the undertaking and other natural or legal persons and

9) the Danish FSA is not prevented from carrying out its supervisory functions as a consequence of laws and administrative provisions in a third country applicable to natural or legal persons with which the undertaking has close links, or as a consequence of difficulties in enforcing such laws and administrative provisions.

**(4)** An application for a licence to manage alternative investment funds shall contain

1) information on the persons effectively conducting the business of the manager,

2) information on the identities of the natural or legal persons who are capital owners in the undertaking, and who directly or indirectly own a qualifying interest in the undertaking, as well as the size of this interest,

3) a programme of activity setting out the organisational structure of the undertaking, including information on how the undertaking intends to comply with its obligations under this Act,

4) information on the remuneration policies and practices pursuant to section 20 and

5) information on agreements pertaining to delegation and sub-delegation to a third party pursuant to sections 40 and 43.

**(5)** For each alternative investment fund which the undertaking intends to manage, the application shall contain

1) information about the investment strategies, including the types of underlying funds, if the alternative investment fund is a fund of funds, and the undertakings' policy as regards the use of gearing, the risk profiles and other data about the alternative investment funds it manages or intends to manage, including information about the Member States of the European Union or the countries with which the Union has entered into an agreement for the financial area, or third countries in which such alternative investment funds are established or are expected to be established,

2) information about the master fund, including where it is established if the alternative investment fund is a feeder fund,

3) the rules or articles of association of each alternative investment fund the undertaking intends to manage,

4) information on the arrangements made for the appointment of the depositary in accordance with Part 8 for each alternative investment fund the undertaking intends to manage, and

5) any additional information, cf. section 62, for each alternative investment fund the undertaking intends to manage.

**(6)** Any natural or legal person or natural or legal persons acting in understanding with each other, planning directly or indirectly to acquire a qualifying interest, cf. section 3(1), no. 38, in

a manager, shall apply to the Danish FSA in advance for approval of the intended acquisition. The same shall apply to an increase in the qualifying interest which, after the acquisition, results in the interest equalling or exceeding a limit of 20%, 33% or 50% respectively of the capital or voting rights, or results in the manager becoming a subsidiary undertaking.

**(7)** The Danish FSA may lay down more detailed regulations on the following:

- 1) The information to be provided by an undertaking when the undertaking applies for a licence as a manager.
- 2) The requirements for the application of the undertaking.
- 3) The requirements in subsection (3), no. 3.
- 4) The procedure, requirements, time limits, etc. in connection with notification of acquisition of qualifying interests, cf. subsection (6).
- 5) The requirements in subsection (3), nos. 8 and 9, and further regulations on the obstacles which may prevent the effective exercise of the supervisory functions of the Danish FSA.

**12.-(1)** The Danish FSA shall request a statement from the supervisory authorities of the home country before granting a licence to manage alternative investment funds, cf. section 11(3), for

- 1) a subsidiary undertaking of another manager, of a UCITS management company, of an investment firm, of a credit institution or of an insurance company approved in another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area,
- 2) a subsidiary undertaking of the parent company of another manager, of a UCITS management company, of an investment firm, of a credit institution or of an insurance company approved in another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, or
- 3) an undertaking controlled by the same natural or legal persons as those that control another manager, a UCITS management company, an investment firm, a credit institution or an insurance company approved in another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.

**13.-(1)** A member of the management of a manager licensed to manage alternative investment funds shall be sufficiently experienced in carrying out the duties and responsibilities of his or her position.

**(2)** A member of the management shall meet the following requirements:

- 1) Shall not, at present or in the future, be held criminally liable for violation of the Criminal Code, financial legislation, or other relevant legislation, if such violation entails a risk that the person in question may fail to carry out his duties and responsibilities adequately.



2) Shall not have filed for financial reconstruction, have filed for bankruptcy or debt restructuring, or be under financial reconstruction, bankruptcy proceedings or debt restructuring.

3) Shall not, because of his or her financial situation or via an undertaking which the person in question owns, participates in the operation of, or has a significant influence on, have caused or cause losses or risks of losses for the manager or the funds managed by the manager.

4) Shall not have behaved or behave such that there is reason to assume that the person in question will not perform his duties or responsibilities adequately. In the assessment of whether a member of the management complies with the requirements, emphasis shall be on maintaining confidence in the financial sector.

**(3)** Members of the management of a manager licensed to manage alternative investment funds shall submit information to the Danish FSA on the circumstances mentioned in subsections (1) and (2) in connection with their appointment to the undertaking of the manager and the circumstances mentioned in subsection (2), if the circumstances subsequently change.

**14.-(1)** The Danish FSA shall inform the applicant in writing within three months of the submission of a complete application, whether or not a licence as alternative investment fund manager has been granted. The Danish FSA may prolong this period for up to three months, where the Danish FSA considers it necessary due to the specific circumstances of the case and after having notified the applicant accordingly.

**(2)** For the purpose of subsection (1) an application is deemed complete if the Danish FSA has at least received the information mentioned in section 11(4), nos. 1-4, and subsection (5), nos. 1 and 2. For managers covered by section 1(1), nos. 2 or 4, the Danish FSA shall also have received the information mentioned in section 119(1).

**(3)** A manager may start managing alternative investment funds with investment strategies described in the application as soon as the licence is granted, cf. section 11, but not earlier than one month after having submitted any missing information according to section 11(4), no. 5 and subsection (5), nos. 3-5.

**(4)** Where the Danish FSA receives an application from an undertaking with its registered office in a third country, the time limits laid down in subsection (1) shall be suspended during the European Securities and Markets Authority review mentioned in section 115(2), and, if relevant, section 120(3).

#### *Notification obligation*

**15.-(1)** Alternative investment fund managers shall, before implementation, notify the Danish FSA of any planned changes to the information received by the Danish FSA in connection with granting a licence to manage alternative investment funds. Unplanned changes shall be notified to the Danish FSA immediately after the change has taken place.

**(2)** If the Danish FSA is unable to approve the changes referred to in subsection (1), the Danish FSA shall, within one month of receipt of that notification, inform the manager. The

Danish FSA may prolong that period for 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 postponement 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.

#### *Capital position*

**16.-(1)** An alternative investment fund manager shall have an initial capital corresponding to no less than EUR 125,000. A self-managed alternative investment fund manager shall have an initial capital corresponding to no less than EUR 300,000.

**(2)** A manager shall provide a capital base equal to 0.02% of the amount by which the value of the portfolios of the alternative investment fund exceeds EUR 250 mill. Portfolios of the alternative investment fund shall include the assets of the alternative investment funds managed by the alternative investment fund manager, including alternative investment funds for which the manager has delegated management functions in accordance with Part 7. The portfolios of the manager's alternative investment fund shall not include assets in alternative investment funds which the manager is managing upon delegation.

**(3)** The required total of the capital pursuant to subsections (1) and (2) shall not exceed EUR 10 mill.

**(4)** Irrespective of subsections (1)-(3), the total capital base of the manager shall correspond to at least a quarter of the fixed costs of the previous year. The Danish FSA may adapt this requirement in the event of a significant change in the manager's activities since the previous year. If a manager has not been operating for one year, it shall have a capital base corresponding to no less than a quarter of the fixed costs appearing from its operating plan for the first year of operation unless the Danish FSA requires this plan to be amended.

**(5)** A manager shall

1) in addition to the requirements in subsections (1)-(4) have additional capital base which is appropriate to cover potential liability risks arising from professional negligence, or

2) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

**(6)** The Danish FSA may authorise that up to 50% of the additional amount under subsection (2) be provided by means of a guarantee from a credit institution or an insurance company. The credit institution or insurance company shall have its registered office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, or in a third country which has supervisory regulations, which, according to an assessment by the Danish FSA, correspond to the regulations in the European Union.

**(7)** A manager may place its capital base, including additional capital base as mentioned in subsection (4) in equity investments and bonds admitted to trading on a regulated market, or in units in UCITS and capital associations complying with the conditions in section 162(1), no. 8 of the Financial Business Act. The assets in which the capital base is invested shall be liquid and readily convertible to cash and may not comprise speculative positions.

**(8)** The Danish FSA may lay down more detailed regulations on calculation of the capital base, including the coverage of risks through professional indemnity insurance.

**(9)** The Danish FSA may lay down more detailed regulations on reporting of the capital base.

**(10)** If a manager is also licensed as an investment management company, cf. section 10 of the Financial Business Act, only the requirements in subsections (5) and (7) and regulations issued on the authority of subsections (8) and (9) shall apply.

*Intervention in or cessation of the activities of a manager*

**17.-(1)** The Danish FSA may wholly or partly withdraw the licences granted under this Act to an alternative investment fund manager, and prohibit marketing of the alternative investment funds managed by the manager, where that manager

- 1) so requests,
- 2) has obtained the licence by making false statements or by any other irregular means,
- 3) no longer meets the conditions under which the licence was granted,
- 4) commits gross or repeated violation of the regulations of this Act or of regulations issued pursuant to this Act,
- 5) does not make use of the licence within 12 months from the issuance of the licence,
- 6) fails to carry out the activities covered by the licence to manage alternative investment funds for a period of more than six months,
- 7) no longer complies with the conditions for exercising discretionary portfolio management, cf. Annex 1, no. 3a, if the manager is licensed hereto, or
- 8) is no longer able to maintain the licence due to other legislation.

**III**

**Operating conditions for managers**

**Part 4**

*General provisions*

**18.-(1)** The alternative investment fund manager shall at all times

- 1) carry out its activities in accordance with honest business principles and good practice within the field of its activity,

- 2) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities,
- 3) take all reasonable steps to avoid conflicts of interest, and, when they cannot be avoided, to identify, manage and monitor those conflicts of interests,
- 4) inform managed alternative investment funds, their investors and any other relevant parties, about any conflicts of interests, in order to prevent them from adversely affecting the interest of the managed funds or investors and to ensure that the funds are fairly treated,
- 5) comply with all regulations applicable, in order to promote the best interests of the managed funds, the investors of the funds and the integrity of the market, and
- 6) treat all the investors of the managed alternative investment funds fairly.

**(2)** No investor in an alternative investment fund may obtain preferential treatment compared with other investors, unless such preferential treatment is clearly stated in the fund's rules or articles of association.

**(3)** The Minister for Business and Growth may lay down more detailed regulations on the conditions mentioned in subsections (1) and (2).

#### *Discretionary portfolio management*

**19.** An alternative investment fund manager licensed to carry out discretionary portfolio management, cf. Annex 1, no. 3a may not invest all or part of the client's portfolio in the alternative investment funds of managed by the manager, unless it receives prior general approval from the client.

#### *Remuneration*

**20.-(1)** An alternative investment fund manager shall have remuneration policies and practices that are consistent with and promote sound and effective risk management.

**(2)** In connection with remuneration of members of management and other employees whose activities significantly influence the risk profile of the manager or the risk profile of the managed alternative investment funds, the manager shall ensure compliance with the following:

- 1) The variable components of the remuneration of a member of management may not exceed more than 50% of the remuneration or the fixed basic salary, including pension.
- 2) An appropriate ceiling for variable components of the remuneration for other employees whose activities significantly influence the risk profile of the manager or the risk profile of the managed alternative investment funds shall be set.
- 3) Subject to the legal structure of the alternative investment fund and its fund rules and articles of association, a significant part, and under all circumstances, at least 50% of a variable component of the remuneration to a member of management and other employees whose activities significantly influence the risk profile of the manager or the risk profile of the

managed alternative investment funds, at the time of calculation hereof, shall consist of units, equity investments or instruments linked to equity investments in the alternative investment funds or the parent undertaking of such, which fully own the alternative investment funds, or of similar instruments reflecting the value of the alternative investment funds. The minimum requirement of 50% laid down in the 1st clause shall not apply if management of alternative investment funds represents less than 50% of the total portfolio managed by the manager.

4) Payment by the manager of at least 40% of a variable component of the remuneration and in higher amounts, of at least than 60%, shall be over a period of at least three years, however, for a member of management, no less than four years, starting one year after the time of calculation with an equal distribution, over the years, or with a growing share at the end of the period. If the lifecycle of an alternative investment fund is shorter than three and four years, respectively, the period referred to in the first clause shall be adjusted to the lifecycle and redemption policy of the fund.

5) The manager may wholly or partly omit paying a variable component of the remuneration, if the manager at the time of payment of the variable component of the remuneration is not in compliance with the capital requirement in section 16, or if the Danish FSA assesses that there is immediate risk of this.

6) The manager shall not pay out variable remuneration to a member of management if, in the period for which the variable remuneration concerns, and until the time for calculation hereof, the manager is given a time limit from the Danish FSA according to section 16 on compliance with the requirements for capital base.

**(3)** For a member of management in managers, options concerning equity investments or similar instruments, may represent no more than 12.5% of the fee or fixed basic salary, including pension at the time of calculation hereof.

**(4)** The manager shall ensure that shareholdings and instruments, etc. transferred to a member of management or other employees whose activities significantly influence the risk profile of the manager or the risk profile of the managed alternative investment funds, as part of the variable remuneration mentioned in subsection (2), no. 3, may not be disposed of by such persons for an appropriate period. The manager shall also ensure that such persons may not hedge the risk linked to such shareholdings and instruments, etc.

**(5)** The manager shall ensure that payment or transfer of the deferred variable component of the remuneration under subsection (2) no. 4 to a member of management and other employees whose activities significantly influence the risk profile of the manager or the risk profile of the managed alternative investment funds, is conditioned by the criteria which have formed the basis for calculating the variable component of the remuneration, continues to be complied with at the time of payment, and is on the condition that the financial situation of the manager or the alternative investment funds is not significantly worse in relation to the time of calculation of the variable component of the remuneration.

**(6)** The manager shall ensure that members of management and other employees whose activities significantly influence the risk profile of the manager or the risk profile of the managed alternative investment funds receiving variable remuneration, be obligated to repay

the variable remuneration wholly or partly, if the variable remuneration has been paid on the basis of information about results which can be documented as incorrect, and if the recipient was in bad faith.

**(7)** The manager shall ensure that if a member of management or other employees whose activities significantly influence the risk profile of the manager or the risk profile of the managed alternative investment funds, is allocated a pension benefit which is wholly or partly comparable with variable components of the remuneration, the manager shall, if the recipient leaves the manager before the time of pension, keep this part of the pension benefit for five years in the form of instruments mentioned in subsection (2), no. 3. Subsections (5) and (6) shall apply correspondingly to the cases mentioned in the 1st clause. If the recipient is a member of the supreme management body or is an employee of the manager at the time of retirement, the manager shall pay the variable component of the pension benefit to the recipient in the form of the instruments mentioned in subsection (2), no. 3 without the option of sale or utilisation for a period of five years. Subsection (6) shall apply correspondingly to the cases mentioned in the 3rd clause.

**(8)** A variable component of remuneration which is performance-based, shall be fixed on the basis of an assessment of the results of the recipient concerned or the results of the compartment or the managed alternative investment fund and the total results of the manager.

**(9)** Subsections (2)-(8) shall only apply to employment relationships not covered by collective agreements, however, subsections (2)-(8) shall apply to agreements on variable components of the remuneration for persons in employment relationships covered by a collective agreement, if the agreement on variable remuneration is not laid down in the collective agreement.

**(10)** Subsection (2), nos. 1-4, subsection (4), 1st clause and subsection (5) shall not apply to carried interest in the following situations:

1) If the alternative investment fund has repaid investments to the investors and an amount corresponding to a return on the investment determined before a carried interest is paid to the members of management or other employees whose activities significantly influence the risk profile or the risk profile of the managed alternative investment funds, and if the carried interest paid is subject to a requirement of repossession, cf. subsection (6) until the relevant alternative investment fund is wound up.

2) For alternative investment funds investing in assets characterised by a long investment horizon and unpredictable cash flows from the invested assets, and where carried interest is paid to members of management or other employees whose activities significantly influence the risk profile of the manager or the risk profile of the managed alternative investment funds, before the alternative investment fund has repaid all investments to the investors as well as amounts corresponding to the entire return on the investment fixed in advance. In this connection, there is a requirement that, at the time of payment of the carried interest, it can be determined with great certainty that the investment enables repayment of investment as well as the return to investors determined in advance within an agreed time horizon, and that

the carried interest paid, is subject to a requirement of repossession, cf. subsection (6) until the relevant alternative investment fund is wound up.

**(11)** The Danish FSA may lay down more detailed regulations on the steps to be taken by a manager to have remuneration policies and practices which comply with and promote sound and effective risk management, including further regulations concerning payment of variable remuneration, cf. the conditions mentioned in subsections (1)-(8).

**21.-(1)** An alternative investment fund manager which is significant in terms of its size and or the size of the alternative investment fund it manages, its internal organisation and the nature, scope, purpose and complexity of its activities, shall establish a remuneration committee, cf. however, subsection (2).

**(2)** Groups with several undertakings which pursuant to subsection (1) or section 77c(1) of the Financial Business Act are obligated to set up a remuneration committee, may set up a joint remuneration committee for such undertakings in the group or part thereof. In terms of organisation, the remuneration committee shall be placed in an undertaking supervised by the Danish FSA and shall be set up in an undertaking which is a parent undertaking for the other undertakings for which the committee has been set up.

**(3)** The chairman and the members of the remuneration committee shall be members of the supreme management body of the undertaking which sets up the remuneration committee, or the supreme management bodies of undertakings which under subsection (2) have a joint remuneration committee. The remuneration committee shall be composed such that the members are capable of making a qualified and independent assessment of whether remuneration by the undertaking, including wage policy and associated procedures and internal controls, is in compliance with section 20.

**(4)** The remuneration committee shall be responsible for the preparatory work on decisions by the supreme management body concerning remuneration, including wage policy and other decisions in this respect, which may influence risk management by the manager. The committee may perform other functions concerning remuneration. The committee shall, in the preparatory work, manage the long-term interests of the undertaking, including in relation to capital owners and other investors.

**22.-(1)** Before an alternative investment fund manager enters into an agreement on variable remuneration or redundancy pay with a member of the manager's management, the supreme body of the manager shall have approved the wage policy of the manager, cf. section 20(1), including guidelines for distribution of variable remuneration as well as guidelines for redundancy pay.

**(2)** In a manager, the chairman of the supreme management body shall account for the remuneration of the management of the manager in their report to the supreme management body of the manager. The account shall contain information about remuneration in the preceding financial year and about the expected remuneration in the current and next financial years.

**(3)** The manager shall, in its annual report, publish total emoluments for each member of the management, received from the manager as part of their duties and responsibilities for the financial year concerned, and received in the same financial year in their capacity as members of an undertaking within the same group.

**(4)** The Danish FSA shall lay down regulations on the duty of the manager to disclose information about remuneration of the members of the management and other employees whose activities significantly influence the risk profile of the manager or the risk profile of the managed alternative investment funds.

#### *Conflicts of interest*

**23.-(1)** An alternative investment fund manager shall, in terms of organisation of its activities as well as administratively, take all reasonable steps to identify, prevent, manage and monitor conflicts of interest in order to prevent inflicting damage to the interests of managed alternative investment funds or the interests of their investors.

**(2)** A manager shall be able to identify conflicts of interest that arise in the course of managing alternative investment funds between the following:

- 1) The manager, including its management, employees or any person directly or indirectly linked to the manager by control, and the managed alternative investment funds or the investors in that alternative investment funds.
- 2) Various managed alternative investment funds or UCITS mutually or between investors in such funds or UCITS.
- 3) Managed alternative investment funds or investors in such funds and one or more of the other clients of the manager.
- 4) Two clients of the manager.

**(3)** Where the requirements in subsections (1) and (2) are not sufficient to ensure, with reasonable confidence, that the risks of damage to the investors' interests will be prevented, the manager shall clearly disclose the general nature or sources of the conflicts of interest to the investors, before undertaking business on their behalf.

**(4)** The manager shall develop appropriate policies and procedures for management of conflicts of interest to be applied when organisational arrangements and steps under subsection (1) do not suffice.

**(5)** Where the manager on behalf of an alternative investment fund uses the services of a prime broker, the conditions for such services shall be set out in a written contract. In particular any possibility of securities loans or other transfer of the assets of the alternative investment fund, including assets set as collateral, shall be provided for in that contract and shall comply with the articles of association of the alternative investment fund or fund rules. The contract shall provide that the depositary of the alternative investment fund be informed of the contract. The manager shall exercise due skill in the selection of prime brokers with whom a contract is to be concluded.



**(6)** The Danish FSA may lay down more detailed regulations on the steps which the manager, according to subsections (1) and (3)-(5) may be reasonably expected to take, on the different types of conflicts of interest mentioned in subsection (2) and on prevention of conflicts of interest.

#### *Risk management*

**24.-(1)** An alternative investment fund manager shall, in order to prevent conflicts of interest, establish a risk management function which shall functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management, and which shall be consistently and effectively able to identify, measure, manage and monitor all risks relevant to the investment strategies, objectives and risk profiles followed by each alternative investment fund.

**(2)** A manager shall conduct relevant stress tests as part of its risk management.

**(3)** A manager shall ensure that the risk profile of each of the managed alternative investment funds corresponds to their size, portfolio structure, investment strategy and investment target laid down in the fund's rules or articles of association, prospectus and other offering documents.

**(4)** An alternative investment fund manager shall, when investing on behalf of the managed alternative investment funds, carry out the relevant due diligence procedures.

**(5)** A manager shall set a written maximum level of gearing for each of the managed alternative investment funds, including the possibilities of reuse of the assets of the alternative investment fund set as collateral or guarantee that could be granted under the gearing arrangement. In setting the limits, the manager shall take into account the type, strategy, method of gearing of the alternative investment fund, any linkage or other relation to other institutions providing financial services, which could pose a systemic risk, counterparty risk, and agreements on collateral, the relation between assets and equity and liabilities and the extent, nature and dissemination of the manager's activities on the relevant market.

**(6)** A manager shall review the risk management systems with appropriate frequency at least once a year and adapt them whenever necessary.

**(7)** The Danish FSA may lay down more detailed regulations on the risk management function and systems, including the requirements in subsections (1)-(6).

#### *Liquidity management*

**25.-(1)** An alternative investment fund manager shall, for each alternative investment fund, except for close-ended alternative investment funds not using gearing, maintain and operate an appropriate liquidity management system and appropriate procedures enabling the manager to monitor the fund's liquidity risk and ensure compliance of the liquidity profile of the investments with the underlying liquidity obligations of the fund.

**(2)** The manager shall, for alternative investment funds of the open-ended type and for funds using gearing, regularly conduct stress tests under normal and exceptional liquidity conditions.

The results shall be included in the risk assessment of the funds and also in the assessment of which liquidity management system and procedure for monitoring of the funds' liquidity risk are appropriate.

**(3)** The manager shall ensure that, for each of the managed alternative investment funds the investment strategy, the liquidity profile and the redemption policy are consistent.

**(4)** The Danish FSA shall lay down more detailed regulations on liquidity management systems and procedures, as well as the obligations incumbent on the manager pursuant to subsection (3).

#### *Investment in securitisation vehicles*

**26.** The Danish FSA may lay down regulations on the securitisation positions in which alternative investment fund managers may invest on behalf of alternative investment funds, including the following:

1) the requirements that need to be met by the originator, the sponsor or the original lender, in order for an alternative investment fund manager to be allowed to invest in securities or other financial instruments of this type issued after 1 January 2011, as well as requirements that ensure that the originator, the sponsor or the original lender retains a net economic interest of not less than 5%.

2) qualitative requirements that must be met by managers which invest in these securities or other financial instruments on behalf of one or more alternative investment funds.

### **IV**

#### **Organisational requirements**

##### **Part 5**

#### *General provisions*

**27.-(1)** Alternative investment fund managers shall at all times use adequate and qualified human resources necessary for the proper management of managed alternative investment funds.

**(2)** Having regard to the nature of the managed alternative investment funds, the manager shall have effective forms of corporate management, including

1) a clear organisational structure with a well-defined, transparent and consistent division of responsibilities,

2) good administrative and accounting procedures,

3) written procedures for all significant areas of activity,

4) regulations governing employees' personal transactions, possessions and management of own funds ensuring, at least, that each transaction involving the alternative investment funds

may be reconstructed according to its origin, the parties involved, its nature, and the time and place at which it was effected,

5) full internal control procedures, including control procedures for employees' personal transactions, possessions and management of own funds,

6) adequate IT control and security measures, and

7) control procedures ensuring that assets are invested in compliance with the managed fund's rules or articles of association or fund rules and applicable legislation.

**(3)** The Danish FSA may lay down more detailed regulations on the measures which a manager is to take in order to have effective forms of corporate management pursuant to subsections (1) and (2).

*Gender-related composition in the supreme management body etc.*

**28.-(1)** In alternative investment fund managers which have their registered office in Denmark with securities admitted to trading on a regulated market in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, or with a balance sheet total of DKK 500 mill. or more for a period of two consecutive financial years,

1) the supreme management body shall set targets for the percentage of the under-represented gender in the manager's supreme management body, and

2) the central management body shall prepare a policy to increase the percentage of the under-represented gender in the manager's management levels in general, cf., however subsections (5)-(8).

**(2)** An alternative investment fund manager shall, for each alternative investment fund for which the manager is responsible, ensure that

1) the supreme management body of the fund has set targets for the percentage of the under-represented gender in the fund's supreme management body, and

2) the fund's central management body has prepared a policy to increase the percentage of the under-represented gender in the fund's management levels in general, cf., however, subsections (5)-(8).

**(3)** Subsection (2) shall only apply to alternative investment funds which have their registered office in Denmark with total assets worth DKK 500 mill. or more for a period of two consecutive financial years.

**(4)** Assets which the alternative investment fund has acquired through gearing, cf. section 3(1), no. 27 shall be included in the calculation of the fund's assets pursuant to subsection (3).

**(5)** If an alternative investment fund is managed by a manager which has prepared a policy to increase the percentage of the under-represented gender in the manager's management levels

in general, subsection (2), no. 2 shall not apply if the fund's operations are carried out by the management level of the manager.

**(6)** For parent companies which prepare consolidated financial statements providing the targets and preparing a policy, cf. subsection (1), no. 2, and subsection (2), no. 2 for the group as a whole will suffice.

**(7)** A subsidiary undertaking, which is part of a group, may omit to set targets and prepare a policy, cf. subsection (1), no. 2 and subsection (2), no. 2, if the parent company sets targets and prepares a policy for the group as a whole.

**(8)** Alternative investment fund managers or the funds managed by the manager which in the most recent financial year have employed fewer than 50 employees may omit to prepare a policy to increase the percentage of the under-represented gender in their other management levels, cf. subsection (1), no. 2 and subsection (2), no. 2.

**(9)** Where a manager or alternative investment fund is covered both by this provision and provisions for gender-related composition in the supreme management body, etc. under the Danish Companies Act, the Financial Business Act, the Corporate Funds Act or the Certain Commercial Undertakings Act, this provision shall take precedence.

## **Part 6**

### *Valuation*

**29.-(1)** An alternative investment fund manager shall, for each alternative investment fund it manages, have procedures for valuation of the fund's assets and liabilities, which ensure that valuation of the assets and the calculation of the fund's net asset value per unit is correct, independent and consistent in accordance with this Act and applicable national law. The regulations for valuation of assets and calculation of net asset value per unit shall be laid down in the articles of association or fund rules of the individual fund.

**(2)** If an alternative investment fund regularly issues and redeems units, the manager shall ensure that valuation of the fund's assets and calculation of the net asset value per unit takes place at a frequency which is appropriate in relation to the fund's assets and the frequency of issuances and redemptions.

**(3)** In an alternative investment fund without regular issuance and redemption of units, the manager shall ensure that valuation and calculation of the net asset value per unit takes place in connection with capital increases or reductions.

**(4)** The manager shall ensure that the assets of each managed alternative investment fund's assets are valued and the net asset value per unit in the fund is calculated at least once a year.

**(5)** The manager shall ensure that the valuation is carried out impartially and with due skill and diligence.

**30.-(1)** An alternative investment fund manager shall ensure that the managed alternative investment funds, regularly and at least once a year, inform the investors of the fund about

the net asset value per unit in accordance with this Act, applicable national law and the fund's rules or articles of association.

**(2)** The manager shall ensure that the fund's rules or articles of association include provisions about how investors receive information on valuation and the net asset value per unit.

**31.-(1)** The valuation of an alternative investment fund may be carried out by the manager of the alternative investment fund or an external valuer.

**(2)** An external valuer can be a natural or legal person. The external valuer shall be independent from the manager, the alternative investment fund and persons with close links to the fund or the manager.

**(3)** Where a manager performs the valuation itself of one or more alternative investment funds, this shall be performed by a function which is separate from the portfolio management function at the manager. The manager shall also organise its activities, including remuneration policy, such that conflicts of interest and undue influence are minimised as much as possible.

**(4)** If the depositary of an alternative investment fund performs valuation of the fund's assets as external valuer, this shall be performed by a separate function which is separated functionally and hierarchically from the depositary function. The depositary shall ensure that potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the fund.

**32.-(1)** Where an external valuer performs the valuation, the manager of an alternative investment fund shall demonstrate that

1) the external valuer is subject to mandatory professional registration recognised by law, including regulatory provisions or rules of professional conduct, or is included in the Danish FSA register of experts, cf. subsection (2),

2) the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance with the requirements in sections 29 and 30, and

3) the appointment of the expert complies with the requirements for delegation in sections 38-41 and the provisions stipulated in accordance with section 44.

**(2)** The Danish FSA may set up a register of external valuers for which an application can be made for admission.

**(3)** The Danish FSA may lay down more detailed regulations on the requirements in subsection (1), no. 1. Furthermore, the Danish FSA may lay down more detailed regulations on admission to the register, cf. subsection (2) and on the organisation and management of the register.

**33.** An appointed external valuer may not delegate the valuation function to a third party.

**34.-(1)** An alternative investment fund manager shall notify the Danish FSA about the use of an external valuer before the agreement with the external valuer enters into force.

**(2)** If, in the assessment of the Danish FSA, the requirements in section 32 have not been met, the Danish FSA may order the manager to appoint another expert.

**35.** If the valuation of an alternative investment fund is not performed by an independent external valuer, the Danish FSA may require that the valuation process of the manager or the valuation itself, or both, be verified by an independent external valuer, or, where relevant, by an auditor.

**36.-(1)** An alternative investment fund manager shall be responsible for the valuation of the assets and liabilities of alternative investment funds as well as correct calculation of the net asset value per unit, irrespective of whether the manager itself performs the valuation and calculation or whether such tasks are delegated to an external valuer.

**(2)** The manager shall be responsible for publication of the net asset value per unit, irrespective of whether the manager itself performs the calculations or whether the task is delegated to an external valuer.

**(3)** If the valuation of the assets and liabilities of an alternative investment fund, the calculation of the net asset value per unit or both tasks are delegated to an external valuer, the external valuer shall be responsible to the manager for any loss suffered as a result of the external valuer's negligence or intentional failure to perform his duties.

**37.** The Danish FSA may lay down regulations on the following:

- 1) Procedures for the valuation of the net assets and the calculation of the net asset value per unit.
- 2) The professional guarantees the external valuer must be able to provide to effectively perform the valuation function.
- 3) The frequency of valuation carried out by alternative investment funds with regular issuance and redemption which is appropriate to the assets held by the fund and its issuance and redemptions.

## **Part 7**

### *Delegation*

**38.** An alternative investment fund manager which intends to delegate to a third party the task of carrying out significant functions shall notify the Danish FSA.

**39.** An alternative investment fund manager or the person, who, according to the regulations in this Act, delegates or sub-delegates tasks, shall review the services provided by the each delegate on an ongoing basis.

**40.** Delegation shall be subject to the following:

- 1) The manager shall be able to justify its entire delegation structure on objective reasons.

- 2) The manager shall ensure and be able to demonstrate that the delegate disposes of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate shall be of sufficiently good repute and sufficiently experienced.
- 3) Where the delegation concerns portfolio management or risk management, the delegation must be conferred only on undertakings which are licensed or registered for the purpose of asset management and subject to supervision. Where that condition cannot be met, delegation shall be subject to prior approval by the Danish FSA.
- 4) Where the delegation concerns portfolio management or risk management to an undertaking in a third country, the delegation may only take place if the requirements in no. 3 have been met and collaboration between the Danish FSA and the supervisory authority of the undertaking has been established.
- 5) The delegation must not prevent the effectiveness of supervision of the manager, and must not prevent the manager from acting, or the alternative investment fund from being managed, in the best interests of its investors.
- 6) The manager shall be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question and that it was selected with all due care.
- 7) The manager shall be able to demonstrate that the manager is in a position to monitor effectively the delegated activity.
- 8) The manager shall be able to demonstrate that the manager is able at any time to give further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors.

**41.** No delegation or sub-delegation of portfolio management or risk management shall be conferred on

- 1) the depositary of the alternative investment fund, or a delegate of the depositary, or
- 2) any other entity whose interests may conflict with those of the alternative investment fund manager or the investors of the alternative investment fund, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the fund.

**42.-(1)** The alternative investment fund manager's liability towards the alternative investment funds and their investors shall not be affected by the fact that the manager has delegated functions to a third party.

**(2)** A manager may not delegate its functions to the extent that, in essence, it can no longer be considered to be the manager and to the extent that it becomes a letter-box entity.

**43.-(1)** The third party may not sub-delegate any of the functions delegated to unless the following conditions are met:

- 1) The alternative investment fund manager consented prior to the sub-delegation.

2) The manager notified the Danish FSA before the sub-delegation arrangements become effective.

3) The sub-delegation shall comply with the requirements set out in sections 38-40 for the delegation by the manager.

**(2)** If the delegate which has been delegated significant tasks from a third party, sub-delegates the tasks, such delegation shall comply with the same requirements as those applicable to sub-delegation by a third party.

**44.** The Danish FSA may lay down more detailed regulations on

1) the conditions for fulfilling the requirements set out in sections 38-41 and 43,

2) the conditions under which the alternative investment fund manager shall be deemed to have delegated its functions to the extent that it becomes a letter-box entity pursuant to section 42(2) and can no longer be considered to be the manager of the alternative investment fund, and

3) the tasks considered significant in relation to delegation.

## **Part 8**

### *Depository*

**45.-(1)** For each alternative investment fund it manages, the alternative investment fund manager shall ensure that a single depository is appointed in accordance with this part.

**(2)** There shall be written contract between the alternative investment fund and its appointed depository.

**(3)** The contract shall regulate the flow of information deemed necessary to allow the depository to perform its functions in accordance with the regulations applicable.

**46.-(1)** A depository shall be one of the following, cf., however also subsections (2) and (3):

1) A credit institution having its registered office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, and licensed in accordance with the regulations implementing Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.

2) An investment firm having its registered office in a Member State of the European Union or a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, subject to capital adequacy requirements in accordance with the regulations implementing Article 20 of Directive 2006/49/EC of 14 June 2006 on the capital adequacy of investment firms and credit institutions, including capital requirements for operational risks licensed in accordance with the regulations implementing Directive 2004/39/EC of 21 April 2004 on markets in financial instruments, which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of



clients, cf. the regulations implementing point (1) of Section B of Annex I to Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.

3) Another category of institution that is subject to prudential regulation and ongoing supervision and which, on 21 July 2011, falls within the categories of institutions determined by Member States of the European Union to be eligible as a depositary for a UCITS under the regulations implementing Article 23(3) of Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

**(2)** For alternative investment funds from a third country and without prejudice to the requirements in section 48(2) and section 49, no. 3, the depositary may also be a credit institution or any other entity of the same nature as the entities referred to in subsection (1), nos. 1 and 2.

**(3)** For alternative investment funds which comply with the requirements in the 2nd clause, the Danish FSA may allow the depositary to be an entity performing the depositary functions as part of its professional or commercial activities in respect of which the relevant entity is subject to mandatory professional registration recognised by law, including regulatory provisions or rules of professional conduct and which can provide sufficient financial and professional guarantees to enable it to perform effectively the relevant depositary functions and meet the commitments inherent in those functions. The Danish FSA may grant a licence pursuant to the 1st clause if the matter relates to an alternative investment fund which during a period of five years from the date of the initial investment has no redemption rights exercisable and if its core investment policy generally is to invest in issuers or non-listed companies in order to potentially acquire controlling influence over such companies in accordance with section 71, or if the core investment policy of the alternative investment fund is generally to invest in assets that must be held in custody in accordance with the regulations in section 51(1), no. 1.

**(4)** An investment firm appointed as depositary shall have a capital base corresponding to no less than EUR 730,000.

**47.-(1)** An alternative investment fund manager cannot be appointed as depositary.

**(2)** A prime broker acting as counterparty to alternative investment fund, cannot be appointed as depositary for the same alternative investment fund, unless the prime broker has functionally and hierarchically separated the performance of its depositary functions from its tasks as prime broker and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the fund. A depositary may, however, delegate its custody tasks to a prime broker in accordance with section 54, if the conditions in section 54(2)-(4) are met.

**48.-(1)** The depositary shall be established in the home country of the alternative investment fund, if the depositary is appointed by an alternative investment fund from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.

**(2)** With regard to alternative investment funds from a third country, the depositary shall be established in the third country where the alternative investment fund is established, in the home country of the manager managing the alternative investment fund, or in the Member State of reference of the manager managing the alternative investment fund.

**49.** Without prejudice to the requirements set out in section 46, the appointment of a depositary established in a third country shall be subject to the following conditions:

- 1) If an alternative investment fund from a third country is managed by a manager with its home country in Denmark or marketed in Denmark, the Danish FSA shall have signed cooperation and exchange of information arrangements with the competent authorities of the depositary.
- 2) If an alternative investment fund from a third country is intended to be marketed in other Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area, cooperation and exchange of information arrangements shall have been concluded between the competent authorities of the depositary and the competent authorities in each of these countries.
- 3) the depositary shall be subject to effective prudential regulation, including minimum capital requirements and effective supervision corresponding to the regulation and supervision carried out in the European Union and that are effectively enforced.
- 4) The third country where the depositary is established must not be listed as a Non-Cooperative Country and Territory by the Financial Action Task Force.
- 5) If an alternative investment fund from a third country is managed by a manager with its home country in Denmark or marketed in Denmark, Denmark shall have signed an agreement with the competent authorities of the depositary, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements.
- 6) If an alternative investment fund from a third country is intended to be marketed in other Member States of the European Union or in a country with which the Union has entered into an agreement for the financial area than Denmark, an agreement shall have been made between the competent authorities of the depositary and the competent authorities of each of these countries, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.
- 7) The depositary shall by contract be liable to the alternative investment fund or to the investors of the fund consistently with sections 55 and 56, and shall expressly agree to comply with section 54.

**50.-(1)** The depositary shall monitor the cash flows of the alternative investment fund.

**(2)** The depositary shall in particular ensure that all payments made by or on behalf of the investors upon the subscription of units in the fund have been received, and that all cash of

the alternative investment fund has been booked in cash accounts opened in the name of the fund or in the name of the manager or the depositary acting on behalf of the fund

1) at an entity referred to in points (a), (b) and (c) of Article 18(1) of 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, or

2) another entity of the same nature as mentioned in no. 1, in the relevant market where cash accounts are required provided that such entity is subject to effective prudential regulation and supervision which have the same effect as Union law and are effectively enforced and in accordance with the principles set out in Article 16 of 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.

**(3)** Where cash accounts are opened in the name of the depositary acting on behalf of the alternative investment fund pursuant to subsection (2), no cash from the account-holding entity or the depositary shall be booked in such accounts.

**51.-(1)** The assets of the alternative investment fund or the manager acting on behalf of the fund shall be entrusted to the depositary for safe-keeping according to the following regulations:

1) For financial instruments that can be held in custody the following shall apply:

a) The depositary shall hold in custody all financial instruments that can be registered in an account opened in the depositary's books.

b) The depositary shall hold all financial instruments that can be physically delivered to the depositary.

c) The depositary shall ensure that the financial instruments are registered in accounts or deposits separate from those of the depositary, and that they are set up in the name of the alternative investment fund or the manager of the fund to ensure that these can, at all times, be clearly identified as belonging to the alternative investment fund.

d) The registrations shall comply with the regulations in section 72 of the Financial Business Act and regulations issued pursuant to this provision.

2) For other assets:

a) The depositary shall verify that the alternative investment fund or its manager owns the assets on behalf of the fund.

b) The assessment of ownership shall be based on documentation presented by the alternative investment fund or its manager and on any existing external documentation.

c) The depositary shall keep a register of the assets verified by the depositary to be owned by the alternative investment fund or its manager on behalf of the fund. The depositary shall keep its register up-to-date.

**(2)** The depositary may not sell, mortgage or in any other way dispose of the assets of the alternative investment fund or the assets managed by the manager on behalf of the fund without prior consent from the fund or its manager.

**52.-(1)** The depositary shall ensure that

1) the sale, issue, re-purchase, redemption and cancellation of units in the alternative investment fund are carried out in accordance with applicable national law and the fund's rules or articles of association,

2) the net asset value per unit is calculated in accordance with applicable law, the fund's rules or articles of association and the procedures laid down in Part 6,

3) in transactions involving the alternative investment fund consideration is remitted to the fund within the usual time limits and

4) the income of an alternative investment fund is applied in accordance with applicable law and the alternative investment fund's rules or articles of association.

**(2)** The depositary shall carry out the instructions of the manager, unless these contravene applicable law or the fund's rules or articles of association.

**53.-(1)** The depositary shall act honestly, fairly, professionally, independently and in the interest of the alternative investment fund and its investors.

**(2)** The depositary shall not carry out activities that may create conflicts of interest between the alternative investment fund, the investors of the alternative investment fund, the manager and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the alternative investment fund.

**54.-(1)** The depositary shall not delegate tasks covered by sections 50-53 to a third party, cf., however, subsections (2)-(4).

**(2)** Notwithstanding subsection (1), tasks covered by section 51(1) may be delegated subject to the following conditions:

1) The tasks are not delegated with the intention of avoiding the requirements in this Act.

2) The depositary can demonstrate that there is an objective reason for the delegation.

3) The depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate its tasks.

4) The depositary shall exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated its tasks and of the arrangements of the third party in respect of the matters delegated to it.

5) The depositary shall ensure that the third party meets the following conditions at all times during the performance of the tasks delegated to it:

a) The third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the alternative investment fund or the manager acting on behalf of the fund which have been entrusted to it.

b) For custody tasks covered by section 51(1), no. 1, the third party shall be subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial instruments are in its possession, cf. however, subsection (3).

c) The third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary.

d) The third party may not sell, mortgage or in any other way dispose of the assets without prior consent of the alternative investment fund or its manager and prior notification to the depositary.

e) The third party shall comply with the duties and prohibitions laid down in sections 51 and 53.

**(3)** The depositary may delegate to a third party, irrespective of whether the requirements in subsection (2), no. 5b have been met subject to the following conditions:

1) Delegation shall apply to financial instruments where the law of a third country requires that such financial instruments be held in custody by a local entity.

2) Functions shall not be delegated to a greater extent than required pursuant to the law of a third country.

3) No local entity complies with the requirements in subsection (2), no. 5b for delegation.

4) The investors of the alternative investment fund shall, prior to investment in the fund, be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation.

5) The alternative investment fund or its manager shall have instructed the depositary to delegate safe-keeping of such financial instruments to the local entity.

**(4)** Delegation under the exemption in subsection (3) may only be maintained so long as the conditions in subsection (3), nos. 1-3 are met.

**(5)** The third party may sub-delegate the tasks delegated by the depositary provided that the sub-delegation complies with the same requirements as applicable to the delegation of the depositary. Section 56 shall apply to the relevant parties in the event of sub-delegation.

**(6)** The provision of services by securities settlement systems covered by the regulations implementing Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems, and the provision of services by securities settlement systems of third countries shall not be considered delegation of depositary functions.

**55.-(1)** The depositary shall be liable to the alternative investment fund or to the investors of the fund, for any loss of financial instruments by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with section 51(1), no. 1 has been delegated.

**(2)** In the case of such a loss of financial instruments held in custody, the depositary shall return a financial instrument of identical type or the corresponding amount to the alternative investment fund or the manager acting on behalf of the alternative investment fund without undue delay.

**(3)** The depositary shall not, however, be liable if it can prove that the loss under subsections (1) and (2) has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts by the depositary to the contrary.

**(4)** The depositary shall also be liable to the alternative investment fund, or to its investors, for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to this Act.

**56.-(1)** The depositary's liability shall not be affected by any delegation referred to in section 54, cf. however, subsection (2) and section 57.

**(2)** Notwithstanding subsection (1), in cases of a loss of financial instruments held in custody by a third party pursuant to the regulations on delegation in section 54, the depositary may discharge itself of liability if it can prove that:

- 1) all requirements for the delegation of its custody tasks set out in section 54 are met,
- 2) a written contract between the depositary and the third party expressly transfers the liability of the depositary to that third party and makes it possible for the alternative investment fund or the manager acting on behalf of the alternative investment fund to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on behalf of the alternative investment fund, and
- 3) a written contract between the depositary and the alternative investment fund or the manager acting on behalf of the alternative investment fund, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge.

**57.-(1)** Where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation

requirements laid down in section 54(2), no. 5b, the depositary may discharge itself of liability provided that the following conditions are met:

- 1) The rules or articles of association of the alternative investment fund concerned expressly allow for such a discharge under the conditions set out in this paragraph.
- 2) The investors of the relevant alternative investment fund have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment.
- 3) The alternative investment fund or its manager shall have instructed the depositary to delegate the custody of such financial instruments to a local entity.
- 4) There is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that third party and makes it possible for the alternative investment fund or the manager acting on behalf of the alternative investment fund to make a claim against that third party in respect of the loss of financial instruments or for the depositary to make such a claim on behalf of the alternative investment fund.
- 5) There is a written contract between the depositary and the alternative investment fund or the manager acting on behalf of the alternative investment fund, which expressly allows such a discharge from liability.

**58.** If a depositary or a third party is liable to the investors of the alternative investment fund, the investors of the fund may invoke this liability directly or indirectly through the manager of the fund, depending on the legal nature of the relationship between the depositary, the alternative investment fund and the investors.

**59.** A depositary shall make available to its competent authorities, on request, all information which it has obtained while performing its duties and that may be necessary for the competent authorities of the alternative investment fund or its manager. If the competent authorities of the alternative investment fund or its manager are different from those of the depositary, the competent authorities of the depositary shall share the information received without delay with the competent authorities of the alternative investment fund and its manager.

**60.-(1)** The Danish FSA may lay down more detailed regulations on

- 1) The particulars of the depositary contract, cf. section 45(2) and (3).
- 2) Assessing whether the prudential regulation and supervision of third countries have the same effect as Union law and are effectively enforced, cf. section 49, no. 3.
- 3) The conditions for performance of the depositary functions in section 50(1) and sections 51 and 52, including
  - a) the type of financial instruments to be included in the scope of the depositary's custody duties, cf. section 51(1), no. 1,
  - b) the conditions subject to which the depositary is able to exercise its custody duties over financial instruments registered with a central depositary, and

- c) the conditions subject to which the depositary is able to exercise its custody duties over financial instruments issued in a nominative form and registered with an issuer or a registrar, in accordance with section 51(1), no. 2.
- 4) The duties of the depositary in connection with selection and supervision of a third party in delegation of depositary tasks, cf. section 54(2), nos. 3 and 4.
- 5) The requirements for a third party's segregation of the depositary's own assets from the assets of its clients, cf. section 54(2), no. 5c.
- 6) The conditions subject to which and circumstances in which financial assets held in custody are to be considered as lost, cf. section 55(1).
- 7) What is to be understood by external events beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary, cf. section 55(3).
- 8) the conditions subject to which and circumstances in which there is an objective reason to contract a discharge for the depositary, cf. section 56(2), no. 3.

## **V**

### **Transparency etc.**

#### **Part 9**

##### *Annual report for alternative investment funds*

**61.-(1)** An alternative investment fund manager shall, for each of the 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, or for each of the alternative investment funds it markets in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, make available an annual report for each financial year no later than six months after the end of each financial year.

**(2)** On request, the annual report shall be provided to:

- 1) The investors of the relevant alternative investment fund.
- 2) The Danish FSA.
- 3) The competent authorities of the home country the alternative investment fund.

**(3)** The annual report shall at least contain the following:

- 1) A balance sheet or a statement of assets and liabilities.
- 2) An income and expenditure account for the financial year.
- 3) A report on the activities of the financial year.



4) Any material changes in the information listed in sections 62, 64 and 65 during the financial year covered by the report.

5) The total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the manager to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the alternative investment fund.

6) The aggregate amount of remuneration broken down by senior management and members of staff of the alternative investment fund managers whose actions have a material impact on the risk profile of the alternative investment funds.

**(4)** The accounting information given in the annual report shall be prepared in accordance with the accounting standards of the home country or in accordance with the accounting standards of the third country where the alternative investment fund is established and with the accounting rules laid down in the alternative investment fund's rules or articles of association.

**(5)** The accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts in accordance with the regulations implementing Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts. The auditors' report, including any qualifications, shall be reproduced in full in the annual report. For managers marketing alternative investment funds from a third country, the annual reports of those funds shall be audited in accordance with applicable international auditing standards in force in the country where the fund has its registered office.

**(6)** If the alternative investment fund according to national regulation is required to publish an annual report no later than six months after the expiry of the financial year, the manager is solely obligated to make available or submit the information mentioned in subsection (3) and which is not already included in the audited and published annual report pursuant to subsections (1) and (2). This may be disclosed separately or as an addition of the annual report. If some of the information mentioned in subsection (3) is disclosed separately or as an addition of an annual report published as mentioned in the 1st clause, the manager shall also provide information that other information is available in the published annual report and refer to the location of the published annual report.

**(7)** The Danish FSA may lay down more detailed regulations on the content and form of the annual report. The regulations shall be adapted to the type of alternative investment fund to which they apply.

## **Part 10**

### *The manager's disclosure obligations to investors*

**62.-(1)** Alternative investment fund managers from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area shall for each of the alternative investment funds that they manage, and for each of the alternative investment funds that they market in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, make available to the funds' investors, in accordance with the alternative investment fund's rules or articles of

association, the following information before they invest in the alternative investment fund, as well as any material changes thereof:

- 1) A description of the investment strategy and objectives of the alternative investment fund.
- 2) On where any master fund is established.
- 3) Where the underlying funds are established if the alternative investment fund is a fund of funds.
- 4) A description of the types of assets in which the alternative investment fund may invest.
- 5) A description of the techniques the alternative investment fund may employ when investing and all associated risks.
- 6) A description of all applicable investment restrictions.
- 7) A description of the circumstances in which the alternative investment fund may use gearing, the types and sources of gearing permitted, any restrictions on the use of gearing and the risks associated with the fund's use of gearing.
- 8) The maximum gearing level.
- 9) A description of any collateral and asset reuse arrangements by the alternative investment fund.
- 10) A description of the procedures by which the alternative investment fund may change its investment strategy or investment policy, or both.
- 11) A description of the main legal implications of the contractual relationship entered into for the purpose of investment in the alternative investment fund. This includes information on jurisdiction and applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the jurisdiction where the alternative investment fund is established.
- 12) Identification of the alternative investment fund's manager, depositary, auditor and any other service providers and a description of their duties and the investors' rights towards those.
- 13) A description of how the alternative investment fund manager is complying with the requirements of section 16(5).
- 14) A description of any management task delegated by the alternative investment fund manager, cf. Annex 1, nos. 1 and 2, and any task delegated by the depositary. The descriptions shall identify the delegate and any conflicts of interest that may arise from such delegations.
- 15) A description of the methods and procedures laid down by the alternative investment fund pursuant to section 29(1) for valuation and pricing of the assets and liabilities of the fund, including the methods used in valuing hard-to-value assets and liabilities.

16) A description of the liquidity risk of the alternative investment fund, including the redemption rights both in normal and in exceptional circumstances, as well as the existing redemption arrangements with investors.

17) A description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors.

18) A description of how the manager ensures a fair treatment of investors.

19) Whenever one or more investors obtain preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the alternative investment fund or manager shall be described.

20) The latest annual report referred to in section 61.

21) The procedure and conditions for the issue and sale of units.

22) The latest net asset value or market price per unit of the alternative investment fund.

23) Where available, the historical performance of the alternative investment fund.

24) Where the alternative investment fund uses a prime broker, the identity of the prime broker shall be disclosed, and any material arrangements with the prime broker shall be described, including the way the conflicts of interest in relation hereto are managed, and the provision in the contract with the depositary on the possibility of transfer and reuse of the assets of the fund, and information about any transfer of liability to the prime broker that may exist.

25) A description of how and when the information covered by sections 64 and 65 will be disclosed.

**(2)** The manager shall inform the investors of the alternative investment fund about any arrangement made by the depositary to contractually discharge itself of liability, cf. section 56(2). The manager shall inform the investors of the alternative investment fund of any changes with respect to depositary's liability.

**(3)** The Minister for Business and Growth may lay down more detailed regulations on the information provided to retail investors and the form in which this information is to be provided to the extent that marketing to retail investors is permitted.

**63.** Where the alternative investment fund is required to publish a prospectus in accordance with the regulations implementing Directive 2003/71/EC of 4 November 2007 on the prospectus to be published when securities are offered to the public or admitted to trading, only such information referred to in section 62(1) and (2) which is not already contained in the prospect shall be disclosed. Publication may be separate or as additional information in the prospectus.

**64.** An alternative investment fund manager shall, for each of the 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 that they manage and for each of the alternative investment funds that they market in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, periodically disclose to investors:

- 1) The percentage of the assets in the alternative investment fund which are subject to special arrangements arising from their illiquid nature.
- 2) Any new arrangements for managing the liquidity of the alternative investment fund.
- 3) The current risk profile of the alternative investment fund and the risk management systems employed by the manager to manage those risks.

**65.** A manager shall, for each of the 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 that it manages and for each of the alternative investment funds that it markets in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, where the fund is employing gearing, on a regular basis disclose to investors:

- 1) Any changes to the maximum level of gearing which the manager may employ on behalf of the alternative investment fund as well as any right of the reuse of collateral or any guarantee granted under the gearing arrangement.
- 2) The total amount of gearing employed by that alternative investment fund.

**66.** The Danish FSA may lay down more detailed regulations on the disclosure obligations mentioned in sections 64 and 65, including the frequency of disclosure covered by section 65. The regulations shall be adapted to the type of manager to which they apply.

## **Part 11**

### *The manager's reporting obligations to the Danish FSA*

**67.-(1)** Alternative investment fund managers shall regularly report the following to the Danish FSA:

- 1) The principal markets in which the manager trades as part of its portfolio management of the alternative investment funds it manages.
- 2) The main instruments in which the manager is trading as part of its portfolio management of the alternative investment funds it manages.
- 3) The main instruments in which the manager is trading.
- 4) The markets of which the manager is a member or where it trades.
- 5) The principal risk exposures and most important concentrations of each of the alternative investment funds the manager manages.

**(2)** At the end of each quarter, the manager shall, on request, provide the Danish FSA with a list of the alternative investment funds it manages.

**(3)** The manager shall, for each alternative investment fund from the European Union or a country with which the Union has entered into an agreement for the financial area, provide the Danish FSA with the following information:

1) the percentage of the assets of the alternative investment fund assets which are covered by special arrangements arising from their illiquid nature.

2) Any new arrangements for managing the liquidity of the alternative investment fund.

3) The current risk profile and the risk management systems of the alternative investment fund employed by the manager to manage the market risks, liquidity risks, counterparty risks and other risks, including operational risks.

4) Information on the main categories of assets in which the alternative investment fund has invested.

5) The results of the stress tests performed in accordance with section 24(2) and section 25(2).

**(4)** The Danish FSA may require managers for which Denmark is the host country and which manage or market alternative investment funds in Denmark, to provide the Danish FSA with the information necessary for the Danish FSA's supervision of compliance with the applicable regulations for which Denmark is responsible, including sections 18, 19 and 23. The requirements of the Danish FSA may, however, not be more stringent than those which the Danish FSA imposes on managers licensed to manage alternative investment funds pursuant to section 11 for the monitoring of their compliance with the same regulations.

**(5)** Where necessary for the effective monitoring of systemic risk, the Danish FSA may require managers to report other information to the Danish FSA than that which is described in this part. The Danish FSA may require information on a periodic as well as an ad-hoc basis. The Danish FSA shall notify the European Securities and Markets Authority about the reporting requirements of the Danish FSA. In exceptional circumstances and where required in order to ensure the stability and integrity of the financial system, or to promote long-term sustainable growth, the European Securities and Markets Authority may request the Danish FSA to impose additional reporting requirements.

**(6)** The Danish FSA may lay down more detailed regulations on the reporting and disclosure obligations applicable to managers pursuant to subsections (1)-(5).

**68.-(1)** A manager shall, for each of the alternative investment funds it manages, and which employs gearing on a substantial basis, make the following information available to the Danish FSA:

1) The level of gearing employed by the alternative investment fund.

2) A breakdown between gearing arising from borrowing cash or securities and gearing embedded in financial derivatives.

3) Information about the extent to which the fund's assets have been reused under gearing arrangements.

4) The five largest sources of borrowed cash or securities for each of the alternative investment funds and the amounts of gearing received from each of those sources for the alternative investment fund.

**(2)** For managers the registered office of which is in a third country, the obligation to disclose information to the Danish FSA pursuant to subsection (1) shall cover only the alternative investment funds it manages which are from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, or which are marketed by the manager in the European Union or a country with which the Union has entered into an agreement for the financial area.

**(3)** The manager shall demonstrate to the Danish FSA that the gearing limits set for each alternative investment fund it manages are reasonable and that it complies with those limits at all times.

**(4)** The Danish FSA may lay down more detailed regulations on when gearing pursuant to subsection (1) is to be considered employed on a substantial basis by a manager on behalf of an alternative investment fund.

*Use of information by the Danish FSA*

**69.-(1)** The Danish FSA shall use the information submitted by the manager in pursuance of section 61(1), and sections 67 and 68, for the purposes of assessing the extent to which geared investments used as part of investments made by alternative investment funds contribute to the build-up of systemic risk in the financial system, risks of disorderly markets or risks to the long-term growth of the economy.

**(2)** The Danish FSA shall ensure that all information gathered under section 68(1) and (3) in respect of all managers and the information gathered under section 11 is made available to competent authorities of Member States of the European Union and countries with which the Union has entered into an agreement for the financial area, cf. section 160(1), the European Securities and Markets Authority and the European Systemic Risk Board. The Danish FSA shall, without delay and bilaterally, also provide information to the other competent authorities directly concerned in the Member States of the European Union or countries with which the Union has entered into an agreement for the financial area, if a manager covered by their supervision, or an alternative investment fund is managed by such manager could constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions in these Member States.

**(3)** The Danish FSA shall assess the risks that the use of gearing by a manager with respect to the alternative investment funds it manages could entail.

**(4)** Where deemed necessary in order to ensure the financial stability, the Danish FSA, after having notified the European Securities and Markets Authority, the European Systemic Risk Board and the competent authorities of the relevant alternative investment fund, shall impose limits to the level of gearing that a manager is entitled to employ on the individual funds it

manages. The Danish FSA may also set restriction on the management of an alternative investment fund to limit the extent to which the use of the gearing contributes to the build up of systemic risk in the financial system or risk of disorderly markets.

**(5)** Where the Danish FSA intends to make a decision as mentioned in subsection (4) which contradicts any advice given in this respect from the European Securities and Markets Authority, the Danish FSA shall notify the European Securities and Markets Authority stating the reasons for this.

**(6)** Where the Danish FSA has imposed limits on the manager's use of gearing in an alternative investment fund, or other limits in the manager's management of an alternative investment fund, the Danish FSA shall inform the European Securities and Markets Authority, the European Systemic Risk Board and the competent authorities of the alternative investment fund.

**(7)** Without prejudice to any special circumstances, the Danish FSA shall make the notification mentioned in subsection (4) no less than ten business days before the limits take effect or are prolonged.

**(8)** The Danish FSA may lay down more detailed regulations on the circumstances in which and how the Danish FSA may set limits for the manager's use of gearing as well as other restrictions in the manager's management of an alternative investment fund.

## **Part 12**

### *Obligations of managers if an alternative investment fund acquires controlling influence over a non-listed company*

**70.-(1)** The regulations in this part shall apply to

1) Alternative investment fund managers managing one or more alternative investment funds which either individually or jointly on the basis of an agreement, acquire control of a non-listed company, and

2) Alternative investment fund managers cooperating with one or more other managers on the basis of an agreement pursuant to which the alternative investment funds managed by those managers jointly, acquire control of a non-listed company.

**(2)** An alternative investment fund manager managing alternative investment funds that acquire a non-controlling participation in a non-listed company, shall also provide the information mentioned in section 72(1).

**(3)** Section 73(1)-(3) and section 75 shall also apply to managers managing alternative investment funds that acquire control of issuers. In such cases, subsection (4) shall apply with the changes necessary.

**(4)** The regulations in this part shall not apply where the non-listed companies are:

1) Small and medium-sized enterprises within the meaning of Article 2(1) of the Annex to Commission Recommendation 2003/361/EC.

2) Special purpose companies with the purpose of purchasing, holding or administrating real property.

**(5)** The regulations in this part shall not apply in so far as they contradict the regulations laid down in the Employee Information and Consultation Act (*"lov om information og høring af lønmodtagere"*)

**(6)** The regulations in this part shall apply without prejudice to any stricter regulations with respect to the acquisition of shares in issuers and non-listed companies.

**71.-(1)** For the purpose of this part, for non-listed companies, control shall mean more than 50% of the voting rights in the company. The percentage of voting rights shall be calculated on the basis of all the holdings to which voting rights are attached even if the exercise thereof is suspended.

**(2)** When calculating the percentage of voting rights held by the relevant alternative investment fund, in addition to the voting rights held directly by the relevant alternative investment fund, the voting rights of the following shall be taken into account:

1) Any undertaking that is subject to controlling influence by the alternative investment fund.

2) Any natural and legal person acting in its own name but on behalf of the alternative investment fund or on behalf of an undertaking controlled by the alternative investment fund.

**(3)** The percentage of voting rights whereby controlling influence over an issuer is acquired as well as the method of calculation in this respect, shall, subject to the regulations in section 72(1)-(3) and section 75, be laid down according to the regulations of the country where the company has its registered office.

**72.-(1)** When an alternative investment fund acquires, disposes of or holds shares in a non-listed company, the manager of the fund shall notify the Danish FSA of the proportion of voting rights of the non-listed company held by the fund when that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

**(2)** An alternative investment fund manager managing an alternative investment fund that individually or jointly acquires control over a non-listed company shall notify the following of the acquisition of control by the fund:

1) The non-listed company.

2) The other shareholders of which the identities and addresses are available to the manager or can be made available by the non-listed company or through a register to which the manager has or can obtain access.

3) The Danish FSA.

**(3)** The notification required under subsection (2) shall contain the following additional information:



1) The resulting situation in terms of voting rights following from the alternative investment fund's acquisition of controlling influence.

2) The conditions subject to which control was acquired, including information about the identity of the other shareholders involved, any natural or legal person or entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held.

3) The date on which control was acquired.

**(4)** In its notification to the non-listed company, the manager shall request the supreme management body of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the managed alternative investment fund and of the information referred to in subsection (3). The manager shall use its best efforts to ensure that employees' representatives or, where there are none, the employees themselves, are duly informed by the supreme management body.

**(5)** The notifications referred to in subsections (1)-(3) shall be made as soon as possible, but no later than ten business days after the date on which the alternative investment fund has reached, exceeded or fallen below the relevant threshold or has acquired controlling influence over the non-listed company.

*Disclosure on acquisition of controlling influence*

**73.-(1)** An alternative investment fund manager managing an alternative investment fund which individually or jointly, control a non-listed company or an issuer, shall make available the following information mentioned in subsection (2):

1) The non-listed company.

2) The non-listed company's capital owners whose identities and addresses are available to the manager or can be made available by the non-listed company or through a register to which the manager has or can obtain access.

3) The Danish FSA.

**(2)** The manager shall make available the following information:

1) The identity of the manager or managers which either individually or jointly with other managers manage the alternative investment funds that have acquired control.

2) The policy for preventing and managing conflicts of interest, in particular between the manager, the alternative investment fund or alternative investment funds and the non-listed company, including information about the specific safeguards established to ensure that any agreement between the manager or the alternative investment fund and the company is concluded at arm's length.

3) The policy for external and internal communication relating to the non-listed company in particular as regards employees.

**(3)** In its notification to the non-listed company, the manager shall request the supreme management body of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the information referred to in subsection (2). The manager shall use its best efforts to ensure that employees' representatives or, where there are none, the employees themselves, are duly informed by the supreme management body pursuant to the regulations in this provision.

**(4)** An alternative investment fund manager managing an alternative investment fund which individually or jointly acquires control over a non-listed company, shall, either itself or through the managed alternative investment fund disclose information about the intentions of the alternative investment fund with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment, to:

1) The non-listed company.

2) The non-listed company's capital owners whose identities and addresses are available to the manager or can be made available by the non-listed company or through a register to which the manager has or can obtain access.

**(5)** The managers shall use its best efforts to ensure that the supreme management body of the non-listed company makes available the information set out in subsection (4) to the employee's representatives, or where there are none, the employees themselves, of the non-listed company.

**(6)** An alternative investment fund manager managing an alternative investment fund which alone or jointly with others, achieves controlling influence over a non-listed company, shall inform the Danish FSA and the investors of the alternative investment fund about how said acquisition was financed.

*Specific provisions regarding the annual report of alternative investment funds exercising controlling influence over non-listed companies*

**74.-(1)** Alternative investment fund managers managing an alternative investment fund which individually or jointly achieves controlling influence over a non-listed company, shall

1) request and use its best efforts to ensure that the annual report of the non-listed company drawn up in accordance with subsection (2) is made available by the management of the company to the employees' representatives or, where there are none, to the employees themselves within the period such annual report has to be drawn up in accordance with the national applicable law, or

2) for each alternative investment fund include the information mentioned in subsection (2) concerning the relevant non-listed company or non-listed companies in the annual report referred to in section 61.

**(2)** The additional information to be included in the annual report of the company or the alternative investment fund, in accordance with subsection (1), shall include at least a fair review of the development of the company's business representing the situation at the end of

the period covered by the annual report. The annual report shall also give an indication of the following:

- 1) Any important events that have occurred since the end of the financial year.
- 2) The company's likely future development.
- 3) Information concerning acquisition of own shareholdings, cf. the regulations implementing Article 22(2) of Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of the company and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

**(3)** Alternative investment fund managers managing an alternative investment fund which individually or jointly achieves controlling influence over a non-listed company, shall

- 1) request and use its best efforts to ensure that the management of the non-listed company makes available the information referred to in subsection (1), no. 2 relating to the company concerned to the employees' representatives of the company concerned or, where there are none, to the employees themselves no later than at expiry of the limit set in section 61(1), or
- 2) make available the information referred to in subsection (1), no. 1 to the investors of the alternative investment fund, in so far as already available, within the limit mentioned in section 61(1) and, in any event, no later than the date on which the annual report of the non-listed company is drawn up in accordance with the national applicable law.

*Restrictions on distribution, etc.*

**75.-(1)** An alternative investment fund manager which individually or jointly achieves control over a non-listed company or an issuer, shall for a period of 24 months following the acquisition of control of the company by the alternative investment fund be subject to the following duties and prohibitions, cf., however subsections (3)-(5):

- 1) The manager may not be allowed to facilitate, support or instruct any distribution to capital owners, capital reduction, share redemption or acquisition of own shares by the company.
- 2) The manager shall use its best efforts to prevent distributions, capital reductions, share redemptions or acquisition of own shares by the company.

**(2)** On acquisition of own shares by the company in accordance with subsection (1), equity investments acquired by a person acting in his own name but on behalf of the company shall also be included.

**(3)** The provision in subsection (1) shall not prevent the manager from participating in distributions for capital owners if only free reserves are applied for the distribution, meaning amounts registered as profits brought forward in the company's most recently approved financial statements, as well as reserves non-distributable in pursuance of legislation or articles of association, less any losses brought forward.

**(4)** The provision in subsection (1) shall not prevent the manager from participating in the company's acquisition of own shares if the company's net assets after the acquisition corresponds at least to the amount of the subscribed capital plus the reserves which cannot be distributed according to law or articles of association.

**(5)** The provision in subsection (1) shall not prevent the manager from participating in a capital reduction in the company if the purpose of the capital reduction is to cover losses or include sums of money in a special non-distributable reserve provided that the amount of such reserve is not more than 10% of the reduced subscribed capital.

## **VI**

### **Cross-border marketing and management**

#### **Part 13**

*Marketing in Denmark of units in 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, by managers with a registered office in Denmark*

**76.-(1)** Managers of alternative investment funds which have their registered office in Denmark managing 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, may market the units of such funds to professional investors in Denmark if the conditions in sections 77-80 are satisfied.

**(2)** Where the alternative investment fund, which the manager intends to market in Denmark, is a feeder fund, the right to market the fund within the European Union or in a country with which the Union has entered into an agreement for the financial area shall be subject to the condition that the master fund is also 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 that the master fund is managed by a manager 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 is licensed to manage alternative investment funds.

**77.-(1)** Alternative investment fund managers with a registered office in Denmark intending to market alternative investment funds in Denmark from the European Union or a country with which the Union has entered into an agreement for the financial area, shall submit a notification to the Danish FSA in respect of each fund prior to marketing.

**(2)** The notification pursuant to subsection (1) shall be in writing and comprise the following documentation and information:

- 1) A programme of operations clearly identifying the alternative investment funds the manager intends to market and information on where the funds are established.
- 2) The fund rules or articles of association.
- 3) Identification of the depositary of each fund.

- 4) A description of the funds available to investors.
- 5) Information on where the master fund is established if one of the funds is a feeder fund.
- 6) Any additional information referred to in section 62(1) for each fund the manager intends to market.
- 7) Where relevant, information on the arrangements established to prevent units of the fund from being marketed to retail investors, including in the case where the manager relies on activities of independent entities to provide investment services in respect of the fund.

**78.-(1)** Within 20 business days after receipt of a complete notification file pursuant to section 77(2), the Danish FSA shall inform the manager whether it may start marketing the alternative investment fund in Denmark. Marketing shall only be prevented if the manager's management of the alternative investment fund fails to comply with this Act and regulations issued in pursuance hereof or the manager otherwise fails to comply with this Act and regulations issued in pursuance hereof.

**(2)** The manager may start marketing the alternative investment fund in Denmark from the date of the notification by the Danish FSA to that effect.

**(3)** If Denmark is not the home country of the alternative investment fund, the Danish FSA shall, immediately after having decided that the alternative investment fund may market in Denmark, also notify the competent authorities in the home country of the alternative investment fund that the manager may start marketing of units in the fund in Denmark.

**79.-(1)** The manager shall notify the Danish FSA in writing of a material change to the information provided pursuant to section 77(2). Planned changes shall be notified at least one month before implementing the changes. Unplanned changes shall be notified to the Danish FSA immediately after the change has occurred.

**(2)** If, pursuant to a planned change, the manager's management of the alternative investment fund would no longer comply with this Act or regulations issued in pursuance hereof, or the manager would otherwise no longer comply with this Act or regulations issued in pursuance hereof, the Danish FSA may order the manager not to implement the change. The Danish FSA shall notify the manager without delay after receipt of the notification in subsection (1).

**(3)** If a planned change is implemented notwithstanding the notification by the Danish FSA pursuant to subsection (2), or if an unplanned change has taken place pursuant to which the manager's management of the alternative investment fund no longer complies with this Act or regulations issued in pursuance hereof, or if the manager otherwise no longer complies with this Act or regulations issued in pursuance hereof, the Danish FSA shall take all due measures, including, if necessary, the express prohibition of marketing of the alternative investment fund or withdraw the manager's licence to manage alternative investment funds, cf. section 17.

**80.** The Danish FSA may lay down more detailed regulations on

- 1) the form and content of the notification to be submitted by the manager to the Danish FSA prior to marketing pursuant to section 77, and
- 2) the form of the written notice to be submitted by the manager to the Danish FSA, cf. section 79(1) on planned changes or changes which have occurred in the information submitted pursuant to section 77(2).

*Marketing in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area of units in 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 by a manager with a registered office in Denmark*

**81.-(1)** An alternative investment fund manager with a registered office in Denmark which intends to market units in 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 to professional investors in another country within the European Union or a country with which the Union has entered into an agreement for the financial area, shall notify the Danish FSA to this effect.

**(2)** The notification pursuant to subsection (1) shall be in writing and comprise the following documentation and information:

- 1) A programme of operations uniquely identifying the alternative investment funds the manager intends to market and information on where the funds are established.
- 2) The fund rules or articles of association.
- 3) Identification of the depositary of each fund.
- 4) A description of the funds available to investors.
- 5) Information on where the master fund is established if one of the funds is a feeder fund.
- 6) Any additional information referred to in section 62(1) for each fund the manager intends to market.
- 7) Information about the Member State or Member States in which the manager intends to market the units to professional investors for each fund.
- 8) Information about arrangements made for the marketing of funds, and, where relevant, information on the arrangements established to prevent units of each fund from being marketed to retail investors, including in the case where the manager relies on activities of independent entities to provide investment services in respect of the fund.

**82.** The notification mentioned in section 81 shall be completed in a language customary in the sphere of international finance.

**83.** Where the alternative investment fund, which the manager intends to market, is a feeder fund pursuant to section 81, the right to market the fund in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area

shall be subject to the condition that the master fund is also from a Member State of the European Union or a country with which the Union has entered an agreement for the financial area, and that the master fund is managed by a manager which is licensed to manage alternative investment fund.

**84.-(1)** The Danish FSA shall, no later than 20 business days after the date of receipt of the complete notification file referred to in sections 81 and 82, transmit the notification to the competent authorities of the country where it is intended that the alternative investment fund be marketed. The Danish FSA will only transmit the notification if the manager's management of the alternative investment fund complies with this Act and regulations issued in pursuance hereof and the manager otherwise complies with this Act and regulations issued in pursuance hereof.

**(2)** The Danish FSA shall enclose a statement to the effect that the manager concerned is licensed to manage alternative investment funds with an investment strategy followed by the alternative investment fund concerned.

**85.-(1)** Upon transmission of the notification to the competent authorities of the host country, cf. section 84, the Danish FSA shall, without delay, notify the manager about the transmission. The manager may start marketing the alternative investment fund in the host country as of the date of that notification.

**(2)** In so far as the alternative investment fund has its home country in another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area than the host country, the Danish FSA shall also inform the competent authorities of the alternative investment fund in the home country that the manager may start marketing the units of the fund in the host Member State.

**86.-(1)** The manager shall notify the Danish FSA in writing of a material change to the information provided pursuant to section 81(2). Planned changes shall be notified at least one month before implementing the changes. Unplanned changes shall be notified to the Danish FSA immediately after the change has occurred.

**(2)** If, pursuant to a planned change, the manager's management of the alternative investment fund would no longer comply with this Act or regulations issued in pursuance hereof, or the manager would otherwise no longer comply with this Act or regulations issued in pursuance hereof, the Danish FSA may order the manager not to implement the change. The Danish FSA shall notify the manager without delay after receipt of the notification in subsection (1).

**(3)** If a planned change is implemented notwithstanding the notification by the Danish FSA pursuant to subsection (2), or if an unplanned change has taken place pursuant to which the manager's management of the alternative investment fund no longer complies with this Act or regulations issued in pursuance hereof, or if the manager otherwise no longer complies with this Act or regulations issued in pursuance hereof, the Danish FSA shall take all due measures, including, if necessary, the express prohibition of marketing of the alternative investment fund or withdraw the manager's licence to manage alternative investment funds, cf. section 17.

**(4)** If the changes notified do not conflict with the regulations in this Act or regulations issued in pursuance of this Act, the Danish FSA shall, without delay, inform the competent authorities of the host country of the manager of those changes.

**87.** The Danish FSA may lay down more detailed regulations on

1) the form and content of the notification to be submitted by the manager to the Danish FSA prior to marketing pursuant to sections 81 and 82, and

2) the form of the written notice to be submitted by the manager to the Danish FSA, cf. section 86(1) on planned changes or changes which have occurred in the information submitted pursuant to section 81.

*Marketing in Denmark of units in 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 by a manager with its registered office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area*

**88.-(1)** An alternative investment fund manager with its registered office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, which has been licensed to manage alternative investment funds in pursuance of the regulations implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers and intending to market units in 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, to professional investors in Denmark, may start this marketing from the date when the competent authorities of the home country of the manager have notified the manager that they have transmitted a notification and declaration to this effect to the Danish FSA pursuant to the regulations in Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

**(2)** The Danish FSA may lay down more detailed regulations on the marketing mentioned in subsection (1).

## **Part 14**

*Managing alternative investment funds from another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, by alternative investment fund managers which have their registered office in Denmark*

**89.** An alternative investment fund manager which has its registered office in Denmark may manage alternative investment funds which are established in another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, either directly, or through establishment of a branch, provided that the manager is licensed to manage alternative investment funds with the type of investment strategy concerned.

**90.-(1)** An alternative investment fund manager which has its registered office in Denmark and which intends to manage alternative investment funds established in another Member State of the European Union or a country with which the Union has entered into an agreement



for the financial area for the first time shall communicate the following information to the Danish FSA:

1) The Member State of the European Union or country with which the Union has entered into an agreement for the financial area in which it intends to manage the alternative investment funds directly or establish a branch.

2) A programme of operations stating in particular the services which it intends to perform and identifying the alternative investment funds it intends to manage.

**(2)** If the alternative investment fund manager intends to establish a branch in the host country, the manager shall provide the Danish FSA with the following information in addition to that referred to in subsection (1):

1) The organisational structure of the branch.

2) The address in the home country of the alternative investment fund from which documents may be obtained.

3) The names and contact details of the persons responsible for the management of the branch.

**(3)** The information provided pursuant to subsections (1) and (2) shall be provided in a language customary in the sphere of international finance.

**91.-(1)** The Danish FSA shall, within one month of receiving the documentation in accordance with section 90(1) or within two months of receiving the documentation in accordance with section 90(2), transmit this complete documentation to the competent authorities of the host country of the manager. The Danish FSA shall only transmit the notification, if the manager's management of the alternative investment fund is in compliance with this Act and regulations issued in pursuance hereof and if the manager otherwise complies with this Act and regulations issued in pursuance hereof.

**(2)** The Danish FSA shall enclose a statement to the effect that the manager concerned is licensed to manage alternative investment funds with the investment strategy followed by the alternative investment fund concerned.

**92.** Upon transmission of the information to the competent authorities in the host country, cf. section 91, the Danish FSA shall immediately notify the manager about the transmission. Upon receipt of the transmission notification, the manager may start to provide its services in its host country.

**93.-(1)** The manager shall notify the Danish FSA in writing of a material change to the information provided pursuant to section 90. Planned changes shall be notified at least one month before implementing the changes. Unplanned changes shall be notified to the Danish FSA immediately after the change has occurred.

**(2)** If, pursuant to a planned change, the manager's management of the alternative investment fund would no longer comply with this Act or regulations issued in pursuance hereof, or the manager would otherwise no longer comply with this Act or regulations issued in

pursuance hereof, the Danish FSA may order the manager not to implement the change. The Danish FSA shall notify the manager without delay after receipt of the notification in subsection (1).

**(3)** If a planned change is implemented notwithstanding the notification by the Danish FSA pursuant to subsection (2), or if an unplanned change has taken place pursuant to which the manager's management of the alternative investment fund no longer complies with this Act or regulations issued in pursuance hereof, or if the manager otherwise no longer complies with this Act or regulations issued in pursuance hereof, the Danish FSA shall take all due measures, including, if necessary, the express prohibition of marketing of the alternative investment fund or withdraw the manager's licence to manage alternative investment funds, cf. section 17.

**(4)** If the changes notified do not conflict with the regulations in this Act or regulations issued in pursuance of this Act, the Danish FSA shall, without delay, inform the competent authorities of the host country of the manager of those changes.

**94.** The Danish FSA may lay down more detailed regulations on

1) the information to be provided according to section 90, and

2) the form of the written notice to be submitted by the manager to the Danish FSA, cf. section 93(1) on planned changes or changes which have occurred in the information submitted pursuant to section 90.

*Managing alternative investment funds established in Denmark by alternative investment fund managers with a 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*

**95.** An alternative investment fund manager with its 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, licensed to manage alternative investment funds according to the rules implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, may start management of alternative investment funds established in Denmark from the date when the competent authorities in the home country of the manager have notified the manager that they have submitted the information mentioned in section 90(1) to the Danish FSA if management is to take place directly, and the information mentioned in section 90(2) if the management is to take place through a branch in Denmark, as well as a declaration that the manager is licensed to manage alternative investment funds with the relevant type of investment strategy.

*Managing alternative investment funds which are from a third country and which are not marketed in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, by alternative investment fund managers with a registered office in Denmark*

**96.-(1)** An alternative investment fund manager which has its registered office in Denmark, licensed according to section 11, may manage alternative investment funds which are from a third country and which are not marketed within a Member State of the European Union or a

country with which the Union has entered into an agreement for the financial area provided that the following conditions are satisfied:

- 1) The manager complies with all the requirements established in this Act and regulations issued in pursuance hereof except for Parts 8 and 9, in respect of those funds.
  - 2) The Danish FSA shall have appropriate cooperation arrangements in place between the competent authorities of the third country where the alternative investment fund is established which complies with international standards and allows the Danish FSA to supervise the manager pursuant to this Act, including monitoring systemic risks.
- (2)** The Danish FSA may lay down more detailed regulations on the form and content of the cooperation arrangements mentioned in subsection (1), no. 2.

## **Part 15**

*Marketing by means of a passport in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, of alternative investment funds which are from a third country managed by a manager from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area*

**97.** This part shall apply to marketing of units in the following alternative investment funds:

- 1) Alternative investment funds which are from a third country and managed by a licensed manager.
- 2) 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 are feeder funds not complying with the requirement in section 76(2).

**98.** An alternative investment fund manager which has its registered office in Denmark intending to market units in the funds mentioned in section 97 to professional investors in Denmark, a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, shall comply with all the requirements laid down by this Act and regulations issued in pursuance hereof with the exception of the regulations in Parts 13 and 14. In addition the following conditions shall be met:

- 1) Appropriate cooperation arrangements must be in place between the Danish FSA and the competent authorities of the country in which the alternative investment fund, cf. section 97, no. 1, or the master fund of the feeder fund, cf. section 97, no. 2 has its registered office which complies with international standards and which allows the Danish FSA to supervise the manager pursuant to this Act, including monitoring systemic risks.
- 2) The third country where the alternative investment fund has its registered office may not be registered as a Non-Cooperative Country and Territory by the Financial Action Task Force.
- 3) The third country where the alternative investment fund is established shall have signed an agreement with Denmark and all the Member States of the European Union or countries with which the Union has entered into an agreement for the financial area, where the alternative

investment fund is intended to be marketed, which complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including information on multilateral tax agreements.

*Marketing in Denmark of alternative investment funds which are from a third country and managed by a manager with a registered office in Denmark*

**99.-(1)** An alternative investment fund manager which has its registered office in Denmark intending to market units in the funds mentioned in section 97 to professional investors in Denmark shall submit notification to the Danish FSA for each fund prior to the marketing.

**(2)** The notification pursuant to subsection (1) shall be in writing and comprise the following documentation and information:

- 1) A programme of operations uniquely identifying the alternative investment funds the manager intends to market and information on where the funds are established.
- 2) The fund rules or articles of association.
- 3) Identification of the depositary of each fund.
- 4) A description of the funds available to investors.
- 5) Information on where the master fund is established if one of the funds is a feeder fund.
- 6) Any additional information referred to in section 62(1) for each fund the manager intends to market.
- 7) Where relevant, information on the arrangements established to prevent units of the fund from being marketed to retail investors, including in the case where the manager relies on activities of independent entities to provide investment services in respect of the fund.

**100.-(1)** Within 20 business days after receipt of a complete notification file pursuant to section 99, the Danish FSA shall inform the manager whether it may start marketing the alternative investment fund in Denmark. Marketing shall only be prevented if the manager's management of the alternative investment fund fails to comply with this Act and regulations issued in pursuance hereof or the manager otherwise fails to comply with this Act and regulations issued in pursuance hereof.

**(2)** The manager may start marketing the alternative investment fund in Denmark from the date of the notification by the Danish FSA to that effect.

**(3)** The Danish FSA shall notify the European Securities and Markets Authority that the manager has been licensed to market units in the alternative investment fund in Denmark.

**101.-(1)** The manager shall notify the Danish FSA in writing of a material change to the information provided pursuant to section 99(2). Planned changes shall be notified at least one month before implementing the changes. Unplanned changes shall be notified to the Danish FSA immediately after the change has occurred.

**(2)** If, pursuant to a planned change, the manager's management of the alternative investment fund would no longer comply with this Act or regulations issued in pursuance hereof, or the manager would otherwise no longer comply with this Act or regulations issued in pursuance hereof, the Danish FSA may order the manager not to implement the change. The Danish FSA shall notify the manager without delay after receipt of the notification in subsection (1).

**(3)** If a planned change is implemented notwithstanding the notification by the Danish FSA pursuant to subsection (2), or if an unplanned change has taken place pursuant to which the manager's management of the alternative investment fund no longer complies with this Act or regulations issued in pursuance hereof, or if the manager otherwise no longer complies with this Act or regulations issued in pursuance hereof, the Danish FSA shall take all due measures, including, if necessary, the express prohibition of marketing of the alternative investment fund or withdraw the manager's licence to manage alternative investment funds, cf. section 17.

**(4)** If the changes notified do not conflict with the regulations in this Act or regulations issued in pursuance of this Act, the Danish FSA shall immediately notify the European Securities and Markets Authority in so far as the changes concern the termination of marketing of certain alternative investment funds or additional funds. The Danish FSA shall, if applicable, also inform the competent authorities of the host country of the manager about the changes.

*Marketing in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, of alternative investment funds which are established in a third country and which are managed by a manager which has its registered office in Denmark*

**102.-(1)** An alternative investment fund manager which has its registered office in Denmark intending to market units in the alternative investment funds mentioned in section 97 to professional investors in another Member State than Denmark within the European Union or a country with which the Union has entered into an agreement for the financial area, shall submit notification to the Danish FSA in respect of each such fund.

**(2)** The notification pursuant to subsection (1) shall be in writing and comprise the following documentation and information:

- 1) A programme of operations uniquely identifying the alternative investment funds the manager intends to market and information on where the funds are established.
- 2) The fund rules or articles of association.
- 3) Identification of the depositary of each fund.
- 4) A description of the funds available to investors.
- 5) Information on where the master fund is established if one of the funds is a feeder fund.
- 6) Any additional information referred to in section 62(1) for each fund the manager intends to market.

7) Information about the Member State or Member States in which the manager intends to market the units to professional investors for each fund.

8) Information about arrangements made for the marketing of funds, and, where relevant, information on the arrangements established to prevent units of each fund from being marketed to retail investors, including in the case where the manager relies on activities of independent entities to provide investment services in respect of the fund.

**103.** The notification mentioned in section 102 shall be completed in a language customary in the sphere of international finance.

**104.-(1)** No later than 20 business days after receipt of the complete notification file complying with the conditions referred to in section 102, the Danish FSA shall transmit that notification file to the competent authorities of the Member State where the alternative investment fund is intended to be marketed. The Danish FSA will only transmit the notification if the manager's management of the alternative investment fund complies with this Act and regulations issued in pursuance hereof and the manager otherwise complies with this Act and regulations issued in pursuance hereof.

**(2)** The Danish FSA shall enclose a statement to the effect that the manager concerned is licensed to manage alternative investment funds with an investment strategy followed by the alternative investment fund concerned.

**105.-(1)** Upon transmission of the notification file to the competent authorities of the host country, cf. section 104, the Danish FSA shall, without delay, notify the manager about the transmission. The manager may start marketing the alternative investment fund in the host country as of the date of that notification.

**(2)** The Danish FSA shall inform the European Securities and Markets Authority that the manager may start marketing the units of the alternative investment fund in the host country.

**106.-(1)** The manager shall notify the Danish FSA in writing of a material change to the information provided pursuant to section 102(2). Planned changes shall be notified at least one month before implementing the changes. Unplanned changes shall be notified to the Danish FSA immediately after the change has occurred.

**(2)** If, pursuant to a planned change, the manager's management of the alternative investment fund would no longer comply with this Act or regulations issued in pursuance hereof, or the manager would otherwise no longer comply with this Act or regulations issued in pursuance hereof, the Danish FSA may order the manager not to implement the change. The Danish FSA shall notify the manager without delay after receipt of the notification in subsection (1).

**(3)** If a planned change is implemented notwithstanding the notification by the Danish FSA pursuant to subsection (2), or if an unplanned change has taken place pursuant to which the manager's management of the alternative investment fund no longer complies with this Act or regulations issued in pursuance hereof, or if the manager otherwise no longer complies with this Act or regulations issued in pursuance hereof, the Danish FSA shall take all due measures,

including, if necessary, the express prohibition of marketing of the alternative investment fund or withdraw the manager's licence to manage alternative investment funds, cf. section 17.

**(4)** If the changes notified do not conflict with the regulations in this Act or regulations issued in pursuance of this Act, the Danish FSA shall immediately notify the European Securities and Markets Authority in so far as the changes concern the termination of marketing of certain alternative investment funds or additional funds marketed. The Danish FSA shall, if applicable, also inform the competent authorities of the host country of the manager of the changes.

**107.** The Danish FSA may lay down more detailed regulations on:

- 1) The form and content of the notification to be submitted by the manager to the Danish FSA prior to marketing pursuant to section 99.
- 2) The form and content of the notification to be submitted by the manager to the Danish FSA prior to marketing pursuant to section 102.
- 3) The form of the written notice mentioned in sections 101 and 106.

*Marketing by means of a passport in Denmark of alternative investment funds which are from a third country, by a manager from another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area*

**108.-(1)** An alternative investment fund manager which has its 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, licensed to market the funds mentioned in section 97 pursuant to the rules implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, and intending to market those funds to professional investors in Denmark, may start this marketing from the date when the competent authorities of the manager's home country have notified the manager that they have transmitted a complete notification file and a statement that the manager is licensed to manage alternative investment funds with the investment strategy concerned to the Danish FSA pursuant to the rules in Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

**(2)** The Danish FSA may lay down more detailed regulations on the marketing mentioned in subsection (1).

## **Part 16**

*Marketing without a passport in Denmark of alternative investment funds from a third country by a manager from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area*

**109.** An alternative investment fund manager which has its registered office in Denmark, another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, licensed to manage alternative investment funds pursuant to the rules implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, and intending to market alternative investment funds from a third country or 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 are feeder funds not complying with the requirement in section 76(2), to professional investors in Denmark, may be licensed hereto by the Danish FSA provided that:

- 1) The manager complies with all requirements established in this Act and regulations issued in pursuance hereof except for Part 8.
- 2) The manager ensures that one or more entities, which shall differ from the manager itself, are appointed to carry out the duties covered by section 50, section 51(1) and section 52. The manager shall notify the Danish FSA about the identity of those entities responsible for carrying out the duties covered by section 50, section 51(1) and section 52.
- 3) The Danish FSA shall have appropriate cooperation arrangements in place between the competent authorities of the third country where the alternative investment fund is established which comply with international standards and allow the Danish FSA to supervise the manager pursuant to this Act, including monitoring systemic risks.
- 4) The third country where the alternative investment fund is established may not be registered as a Non-Cooperative Country and Territory by the Financial Action Task Force.

**110.** The Danish FSA may lay down more detailed regulations on the marketing mentioned in section 109.

## **Part 17**

*Regulations on licensing and marketing for alternative investment fund managers which have their registered office in a third country*

*Requirements on licensing in a Member state of reference prior to management or marketing*

**111.-(1)** An alternative investment fund manager which has its registered office in a third country shall have a Member State of reference in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, before the manager

- 1) starts managing 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, or
- 2) starts marketing alternative investment funds which the manager manages itself, in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.

**(2)** If Denmark is the Member State of reference of the manager, cf. sections 112-115, the manager shall comply with this Act and regulations issued in pursuance hereof, and obtain a licence pursuant to section 11, cf. section 116, before starting management or marketing of alternative investment funds.

*Determination of Member State of reference*



**112.-(1)** If an alternative investment fund manager which has its registered office in a third country intends to manage one or more alternative investment funds established in the same Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, but is not intending to market any of the funds in a Member State of the European Union or a country with which the Union has entered an agreement for the financial area, this country shall be deemed to be the Member State of reference of the manager.

**(2)** If an alternative investment fund manager which has its registered office in a third country intends to manage alternative investment funds established in different Member States of the European Union or countries with which the Union has entered into an agreement for the financial area, but does not intend to market any of the funds in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Member State of reference shall be either

- 1) the Member State of the European Union or the country with which the Union has entered into an agreement for the financial area, where most of the funds are established, or
- 2) the Member State of the European Union or the country with which the Union has entered into an agreement for the financial area, where the largest amount of assets is being managed.

**113.-(1)** If an alternative investment fund manager which has its registered office in a third country intends to only market one alternative investment fund from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Member State of reference shall be determined as follows:

- 1) if the fund is licensed or registered in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Member State of reference of the manager shall be

- a) the home country of the alternative investment fund, or
- b) the Member State where the manager intends to market the fund.

- 2) If the fund is not licensed or registered in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Member State of reference of the manager shall be the Member State where the manager intends to market the fund.

**(2)** If an alternative investment fund manager which has its registered office in a third country only intends to market an alternative investment fund which is from a third country, in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Member State of reference of the manager shall be the Member State concerned where the fund is intended to be marketed.

**(3)** If an alternative investment fund manager which has its registered office in a third country only intends to market one alternative investment fund from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, but in different Member States of the European Union or countries with which the Union has entered into an agreement for the financial area, the Member State of reference shall be determined as follows:

1) if the fund is licensed or registered in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Member State of reference of the manager shall be

a) the home country of the alternative investment fund, or

b) one of the countries where the manager intends to develop effective marketing.

2) If the fund is not licensed or registered in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Member State of reference of the manager shall be one of the countries where the manager intends to develop effective marketing.

**(4)** If an alternative investment fund manager which has its registered office in a third country only intends to market one alternative investment fund which is from a third country, but in different Member States of the European Union or countries with which the Union has entered into an agreement for the financial area, the Member State of reference shall be one of these countries.

**(5)** If an alternative investment fund manager which has its registered office in a third country intends to market several alternative investment funds which all have their home country in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, in one or more Member States of the European Union or a country with which the Union has entered into an agreement for the financial area, the country of reference shall be determined as follows:

1) if all the funds have obtained a licence or are registered in the same Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Member State of reference shall be

a) the home country of such alternative investment funds, or

b) the country where the manager intends to develop effective marketing for most of such funds.

2) If all the funds are not licensed or registered in the same Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Member State of reference of the manager shall be the country where the manager intends to develop effective marketing for most of the funds.

**(6)** If an alternative investment fund manager with its registered office in a third country intends to market several alternative investment funds in a Member State of the European

Union or a country with which the Union has entered into an agreement for the financial area, of which one or more of the funds are from a third country, the Member State of reference of the manager shall be the Member State of the European Union or the country with which the Union has entered into an agreement for the financial area, where the manager intends to develop effective marketing for most of these funds.

**114.-(1)** If Denmark, pursuant to sections 112 or 113, is the only possible Member State of reference of the manager, an alternative investment fund manager with its registered office in a third country shall apply to the Danish FSA for a licence pursuant to section 11, cf. section 119. If, in accordance with the criteria in section 112(2), section 113(1), no. 1, subsections (3) and (4), and subsection (5), no. 1, more than one Member State of reference is possible, of which one is Denmark, the manager shall submit an application on having a Member State of reference assigned, to the competent authorities in all the countries which may be Member States of reference. The manager shall also inform the Danish FSA about other countries to which the manager is to submit notification.

**(2)** Upon receipt of a request pursuant to subsection (1) by the Danish FSA where the manager has several possible Member States of reference, the Danish FSA shall, within one month after receipt by all the competent authorities of a notification from the manager on having a Member State of reference assigned, jointly with the other countries decide, pursuant to national laws, which country the manager shall have assigned as its Member State of reference.

**(3)** If Denmark is the Member State of reference of the manager pursuant to subsection (2), the Danish FSA shall notify the manager that Denmark has been assigned as Member State of reference of the manager.

**(4)** If a decision is made pursuant to subsection (2), and the manager is not informed within seven days of the decision, or if a decision is not made within one month after all requests pursuant to subsection (1) have been received by the competent authorities, the manager itself may select a Member State of reference based on the criteria applicable in pursuance of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers. If the manager selects Denmark as its Member State of reference, the manager shall immediately notify the Danish FSA in this respect.

**(5)** A manager which intends to develop effective marketing in a specific Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, shall, upon request from the Danish FSA, be in a position to document this by providing information about its marketing strategy.

**115.-(1)** After receiving an application pursuant to section 114(1) as a consequence of the manager deeming Denmark to be its only possible country of reference, the Danish FSA shall assess whether the determination by the manager as regards its Member State of reference complies with sections 112 and 113. If the Danish FSA considers that Denmark is not the Member State of reference of the manager or the manager has other possible Member States of reference, the Danish FSA shall reject the application. If the Danish FSA considers that Denmark is the manager's only possible Member State of reference, the Danish FSA shall notify the European Securities and Markets Authority about the assessment of the Member

State of reference together with the manager's reasons for choosing Denmark as its country of reference, and, if applicable, provide information about the manager's marketing strategy.

**(2)** Within one month of having received the notification pursuant to subsection (1), the European Securities and Markets Authority shall issue advice to the Danish FSA about their assessment on the Member State of reference.

**(3)** If the Danish FSA proposes to issue a licence to manage alternative investment funds contrary to the advice from the European Securities and Markets Authority, the Danish FSA shall inform the European Securities and Markets Authority, stating its reasons. If the manager intends to market units in alternative investment funds which it manages, in other Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Danish FSA shall also notify the competent authorities of the countries concerned, stating its reasons. In so far as applicable, the Danish FSA shall also inform the competent authorities of the home countries of the alternative investment funds managed by the manager thereof, stating its reasons.

*Supplementary conditions in connection with licensing for management etc.*

**116.** The conditions and requirements laid down in section 117 and section 118(1)-(3) shall be satisfied in order for an alternative investment fund manager with its registered office in a third country which have been assigned Denmark as its Member State of reference to obtain a licence to manage alternative investment funds, cf. section 11(3), no. 7.

**117.** The following conditions shall be met in order for the Danish FSA to issue a licence to manage alternative investment funds for managers with their registered office in a third country:

1) Appropriate cooperation arrangements shall be in place between the Danish FSA, the competent authorities of the home countries of the alternative investment funds concerned and the supervisory authorities of the country in order to ensure an efficient exchange of information that allows the Danish FSA to supervise the manager in accordance with this Act, including monitoring systemic risks.

2) The third country where the manager has its registered office may not be registered as a Non-Cooperative Country and Territory by the Financial Action Task Force.

3) The third country where the manager has its registered office shall have an arrangement in place with Denmark, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including information in relation to multilateral tax agreements.

4) The supervisory functions of the Danish FSA according to this Act shall not be prevented by the laws, regulations or administrative provisions of a third country governing the manager, or by limitations in the supervisory authority and investigatory powers of that third country's supervisory authorities.

*Legal representative*

**118.-(1)** An alternative investment fund manager with its registered office in a third country applying for a licence to manage alternative investment funds pursuant to section 11, cf. section 116, shall have a legal representative established in Denmark.

**(2)** With respect to the activities which the manager applies for a licence to perform, the legal representative shall together with the manager be the contact point of the manager for:

- 1) The Danish FSA.
- 2) Other competent authorities from Member States of the European Union or countries with which the Union has entered into an agreement for the financial area.
- 3) Investors from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, in the funds managed by the manager.
- 4) The European Securities and Markets Authority.

**(3)** All correspondence from the manager as mentioned in this Act and regulations issued in pursuance hereof shall take place through the legal representative, if the correspondence is directed at the following persons, companies and authorities:

- 1) The Danish FSA.
- 2) Other competent authorities from Member States of the European Union or countries with which the Union has entered into an agreement for the financial area.
- 3) Investors from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, investing in the funds managed by the manager.

**(4)** The legal representative shall have the competences and resources necessary in order to ensure that the manager complies with the requirements in this Act and regulations issued in pursuance hereof concerning the activities for which the manager is applying.

*Application for a licence to manage alternative investment funds*

**119.-(1)** An alternative investment fund manager with its registered office in a third country applying for a licence to manage alternative investment funds shall submit an application pursuant to section 11 supplemented by the following information:

- 1) The manager's reasons for choosing Denmark as its Member State of reference in conformity with the criteria in sections 112 and 113 together with information about the manager's marketing strategy.
- 2) A list of any provisions in this Act or regulations issued in pursuance hereof to which compliance is impossible by the manager as, in accordance with the conditions in section 120(1), nos. 1-3, this would be incompatible with compliance with a mandatory provision in the law to which the manager or an alternative investment fund from a third country marketed in the European Union is subject.

3) Any written evidence according to the regulatory technical standards developed by the European Securities and Markets Authority that the relevant third country law provides for a rule equivalent to the provision for which compliance by the manager, cf. section 120, is impossible, and which has the same regulatory purpose and offers the same level of protection to the investors in the relevant funds. Such written evidence shall be supported by a legal opinion on the existence of the relevant incompatible mandatory provision in the law of the third country, including a description of the regulatory purpose and the nature of the investor protection pursued by it.

4) Information about the name of the legal representative of the manager and where it is established.

**(2)** Upon application by a manager with its registered office in a third country for a licence to manage alternative investment funds according to section 11, cf. section 116, the information mentioned in section 11(5) may be limited to only comprise the alternative investment funds from Member States of the European Union or countries with which Community has entered into an agreement for financial area which the manager intends to manage, and the other alternative investment funds which the manager manages and intends to market in Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area.

**(3)** The Danish FSA may lay down more detailed regulations on how a manager with its registered office in a third country may comply with the requirements of this Act, including the requirements pursuant to sections 61-68 in particular.

**120.-(1)** If compliance with a provision in this Act or regulations issued in pursuance hereof contradicts compliance with mandatory law to which an alternative investment fund manager with its registered office in a third country or an alternative investment fund from a third country which the manager intends to market in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, is subject, the manager shall not be obligated to comply with the provision. The manager may, however, only omit to comply with the provision if the manager can demonstrate to the Danish FSA that

1) it is impossible to combine legislation with compliance with the law to which the manager or fund is subject,

2) the law to which the manager or fund is subject provides for an equivalent rule having the same regulatory purpose and offering the same level of protection to the investors of the fund as in this Act, annexes to this Act or provisions issued in pursuance of this Act, and

3) the manager or fund complies with this law.

**(2)** If the Danish FSA assesses that the manager may use the provision in subsection (1) the Danish FSA shall, without undue delay, inform the European Securities and Markets Authority to this effect and enclose the information notified to the Danish FSA by the manager pursuant to section 119(1), nos. 2 and 3.

**(3)** The European Securities and Markets Authority shall issue a statement to the Danish FSA as to whether it agrees that the manager may omit to comply with a provision in this Act or

regulations issued in pursuance of this Act, no later than one month after having received notification in this respect from the Danish FSA.

**(4)** If the Danish FSA proposes to notify a licence contrary to advice from the European Securities and Markets Authority, the Danish FSA shall inform the European Securities and Markets Authority thereof, stating its reasons. Where the manager intends to market units in alternative investment funds managed by the manager in other Member States of the European Union and countries with which the Union has entered into an agreement for the financial area, the Danish FSA shall also inform the competent authorities of the countries concerned thereof, stating its reasons. If applicable, the Danish FSA shall also inform the competent authorities of the home countries of the alternative investment fund manager, stating its reasons.

**(5)** The Danish FSA may lay down more detailed regulations on when the law to which a manager is subject is to be considered to provide for an equivalent rule having the same regulatory purpose and offering the same level of protection to the relevant investors as this Act. The Danish FSA may similarly lay down more detailed regulations regarding this for an alternative investment fund from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area managed by the manager, or a fund from a third country marketed by a manager in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.

## **Part 18**

### *Change of Member State of reference*

**121.-(1)** An alternative investment fund manager with its registered office in a third country which have been assigned Denmark as its Member State of reference may not change Member State of reference without authorisation from the Danish FSA.

**(2)** Where the manager changes its marketing strategy within the first two years after the Danish FSA has granted the manager a licence to manage alternative investment funds pursuant to section 11, cf. section 116, and that change would have affected the determination of the Member State of reference if the modified marketing strategy had been presented on the initial application made by the manager, the manager shall notify the Danish FSA in this respect.

**(3)** The manager may not launch a changed marketing strategy until the manager has notified the Danish FSA pursuant to subsection (2). At the same time as the notification, the manager shall state which Member State of reference it assesses to be correct on the basis of the changed marketing strategy in accordance with the criteria set in sections 112-115. The manager shall also indicate its new marketing strategy to the Danish FSA. The manager shall further state the name of the manager's legal representative in the new Member State of reference indicated and the place where this legal representative is established.

**(4)** The Danish FSA shall test whether the assessment of the manager of the new Member State of reference complies with the regulations issued in pursuance of Article 37(4) of

Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, and shall notify the European Securities and Markets Authority thereof, stating its reasons for selecting the new Member State of reference and information on the manager's changed marketing strategy.

**(5)** The European Securities and Markets Authority shall issue an opinion to the Danish FSA of its assessment of whether the change of Member State of reference complies with the regulations issued in pursuance of Article 37(4) of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

**(6)** The Danish FSA shall decide whether authorisation can be granted for the manager to change its Member State of reference after the European Securities and Markets Authority has issued its opinion pursuant to subsection (5).

**(7)** When the Danish FSA makes a decision as to whether the manager may change its Member State of reference, the Danish FSA shall notify the manager's legal representative in Denmark and the European Securities and Markets Authority thereof. To the extent that the manager markets alternative investment funds in other Member States of the European Union and countries with which the Union has entered into an agreement for the financial area, the Danish FSA shall also notify the competent authorities of the countries where the funds are marketed. If the Danish FSA approves the change, the Danish FSA shall notify the new Member State of reference thereof.

**(8)** On change of Member State of reference, the Danish FSA shall transfer a copy of the authorisation of the manager to manage alternative investment funds and the case files linked to the authorisation of the manager to the new Member State of reference.

**(9)** Denmark shall no longer be the Member State of reference of the manager when the new Member State of reference has received notification of the authorisation and a copy of the case files from the Danish FSA.

**(10)** If the decision by the Danish FSA contradicts the assessment of the European Securities and Markets Authority, the Danish FSA shall at the same time as notifying the European Securities and Markets Authority on the decision account for the reasons. The Danish FSA shall also notify the competent authorities in the Member States of the European Union or countries with which Community has entered into an agreement for financial area where the manager markets alternative investment funds about the decision. If applicable, the Danish FSA shall also notify the competent authorities of the home country of the alternative investment funds for which the manager is responsible.

**122.-(1)** The Danish FSA shall order an alternative investment fund manager with its registered office in a third country to indicate its correct country of reference if, within two years after the manager has obtained its licence, it appears from the actual course of the business development of the manager in Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area that

1) the marketing strategy as presented by the manager at the time of its authorisation was not followed,



2) the manager made false statements in relation to the marketing strategy presented by the manager at the time of its authorisation, or

3) the manager has changed its marketing strategy without notifying the Danish FSA thereof, cf. section 121(2) and (3).

**(2)** If the manager fails to comply with an order made by the Danish FSA according to subsection (1), the Danish FSA shall withdraw the manager's licence to manage alternative investment funds.

**123.-(1)** If an alternative investment fund manager changes its marketing strategy more than two years after the Danish FSA has licensed the manager to manage alternative investment funds, and the manager intends to change its Member State of reference on the basis of a new marketing strategy, the manager shall submit a request to the Danish FSA for authorisation. In such cases section 121 shall apply with the changes necessary.

**(2)** The Danish FSA may lay down more detailed regulations on the form and content of the request submitted pursuant to subsection (1).

## **Part 19**

### *Legal venue and applicable law*

**124.-(1)** Cases relating to circumstances covered by this Act, between the Danish FSA and an alternative investment fund manager with its registered office in a third country which has Denmark as its Member State of reference shall be filed in Denmark according to the regulations laid down in Part 22 of the Administration of Justice Act on territorial jurisdiction.

**(2)** If cases covered by subsection (1) are not subject to the regulations in Part 22 of the Administration of Justice Act on territorial jurisdiction, cases shall be filed in Copenhagen.

**(3)** Cases covered by subsection (1) shall be processed according to Danish law.

**125.-(1)** Cases relating to circumstances covered by this Act, between investors residing in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, and a manager of alternative investment funds with its registered office in a third country, which has been licensed to manage alternative investment funds in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, or an alternative investment fund managed by the manager or marketed in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, may be filed in Denmark pursuant to the regulations in Part 22 of the Administration of Justice Act on territorial jurisdiction.

**(2)** Cases covered by subsection (1) shall be processed in accordance with the law of a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.

## **Part 20**

*Management of alternative investment funds from another Member State of the European Union or countries with which the Union has entered into an agreement for the financial area, by alternative investment funds with its registered office in a third country*

**126.-(1)** An alternative investment fund manager with its registered office in a third country licensed to manage alternative investment funds pursuant to section 11, cf. section 116, may manage alternative investment funds established in another Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area, either directly or through establishment of a branch, provided that the manager is licensed to manage alternative investment funds with the type of investment strategy concerned.

**(2)** The first time a manager intends to manage an alternative investment fund established in another Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area, the manager shall communicate the following information to the Danish FSA:

- 1) The Member State of the European Union or country with which the Union has entered into an agreement for the financial area in which it intends to manage the alternative investment funds directly or establish a branch.
- 2) A programme of operations stating in particular the services which it intends to perform and identifying the alternative investment funds it intends to manage.

**(3)** If a manager intends to establish a branch in the host country, the manager shall provide the Danish FSA with the following information in addition to that referred to in subsection (2):

- 1) The organisational structure of the branch.
- 2) The address in the home country of the alternative investment fund from which documents may be obtained.
- 3) The names and contact details of the persons responsible for the management of the branch.

**(4)** The information provided pursuant to subsections (2) and (3) shall be provided in a language customary in the sphere of international finance.

**(5)** The Danish FSA shall, within one month of receiving the complete documentation in accordance with subsection (2) or within two months of receiving the complete documentation in accordance with subsection (3), transmit the complete documentation to the competent authorities of the host countries. The Danish FSA will only transmit the notification if the manager's management of the alternative investment fund complies with this Act and regulations issued in pursuance hereof and the manager otherwise complies with this Act and regulations issued in pursuance hereof.

**(6)** The Danish FSA shall enclose a statement to the effect that the manager concerned is licensed to manage alternative investment funds with the investment strategy followed by the alternative investment fund concerned.

**(7)** When the Danish FSA has submitted the information to the competent authorities of the host country, cf. subsections (5) and (6), the Danish FSA shall, without delay, inform the manager thereof. Upon receipt of the transmission notification, the manager may start to provide its services in the host country. The Danish FSA shall notify the European Securities and Markets Authority that the manager may start provision of services in the host countries.

**(8)** The manager shall notify the Danish FSA in writing of a material change to the information provided pursuant to subsections (2) and (3). Planned changes shall be notified at least one month before implementing the changes. Unplanned changes shall be notified to the Danish FSA immediately after the change has occurred.

**(9)** If, pursuant to a planned change, the manager's management of the alternative investment fund would no longer comply with this Act or regulations issued in pursuance hereof, or the manager would otherwise no longer comply with this Act or regulations issued in pursuance hereof, the Danish FSA may order the manager not to implement the changes. The Danish FSA shall notify the manager immediately following receipt of the notification in subsection (8).

**(10)** If a planned change is implemented notwithstanding the notification by the Danish FSA pursuant to subsection (9), or if an unplanned change has taken place pursuant to which the manager's management of the alternative investment fund no longer complies with this Act or regulations issued in pursuance hereof, or if the manager otherwise no longer complies with this Act or regulations issued in pursuance hereof, the Danish FSA shall take all due measures, including, if necessary, the express prohibition of marketing of the alternative investment fund or withdraw the manager's licence to manage alternative investment funds, cf. section 17.

**(11)** If the changes notified do not conflict with the regulations in this Act or regulations issued in pursuance of this Act, the Danish FSA shall, without delay, inform the competent authorities of the host country of the manager about those changes.

**(12)** The Danish FSA may lay down more detailed regulations on:

- 1) the form and content of the information pursuant to subsections (2) and (3) and
- 2) the form of the written notification transmitted by the manager to the Danish FSA, cf. subsection (8).

*Management of alternative investment funds established in Denmark by managers of alternative investment funds which have their registered office in a third country and which have been assigned another Member State of the European Union or countries with which the Union has entered into an agreement for the financial area as their Member State of reference*

**127.** An alternative investment fund manager with its registered office in a third country which has been assigned another Member State of the European Union or countries with which the Union has entered into an agreement for the financial area as its Member State of reference, and which has been licensed to manage alternative investment funds pursuant to the regulations implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers may commence management of alternative investment funds established in Denmark, from the date when the competent authorities in the home country of the manager

have notified the manager that they have submitted the information mentioned in section 126(2) to the Danish FSA if management is to take place directly, and the information mentioned in section 126(3) if the management is to take place through a branch in Denmark, as well as a declaration that the manager is licensed to manage alternative investment funds with the relevant type of investment strategy.

## **Part 21**

*Marketing by means of a passport in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, of alternative investment funds managed by a manager with its registered office in a third country which has been assigned Denmark as its Member State of reference*

**128.-(1)** An alternative investment fund manager with its registered office in a third country which has been assigned Denmark as its country of reference, and which has been licensed to manage alternative investment funds pursuant to section 11, cf. section 116 intending to market units in an alternative investment fund managed by the manager, to professional investors in Denmark or another Member State of the European Union or countries with which the Union has entered into an agreement for the financial area, shall submit written notification thereof to the Danish FSA for each alternative investment fund which the manager intends to market. The notification shall be completed in a language customary in the sphere of international finance.

**(2)** If the alternative investment fund which the manager intends to market pursuant to subsection (1) is from a third country the following requirements shall be met:

1) Appropriate cooperation arrangements shall be in place between the Danish FSA and the competent authorities of the country where the alternative investment fund is established which meet international standards and ensure that the Danish FSA is in a position to supervise the manager in accordance with this Act, including monitoring systemic risks.

2) The third country where the alternative investment fund is established may not be registered as a Non-Cooperative Country and Territory by the Financial Action Task Force.

3) The third country where the alternative investment fund is established shall have signed an agreement with Denmark and all the Member States of the European Union or countries with which the Union has entered into an agreement for the financial area, where the alternative investment fund is intended to be marketed, which complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including information on multilateral tax agreements.

**(3)** If a manager intends to market an alternative investment fund in Denmark pursuant to subsection (1), the manager shall enclose the following documentation and information:

1) A notification with a programme of operation uniquely identifying the alternative investment funds the manager intends to market, and information on where the funds are established.

2) The fund rules or articles of association for each fund.

- 3) Identification of the depositary of each fund.
  - 4) A description of the funds available to investors.
  - 5) Information on where the master fund is established if one of the funds is a feeder fund.
  - 6) Any additional information referred to in section 62(1) for each fund the manager intends to market.
  - 7) Where relevant, information on the arrangements established to prevent units of the fund from being marketed to retail investors, including in cases where the manager relies on activities of independent entities to provide investment services in respect of the fund.
- (4)** No later than 20 business days following receipt of a complete notification file pursuant to subsection (1), cf. subsection (3) on marketing in Denmark, the Danish FSA shall notify the manager whether it may start marketing the alternative investment fund or alternative investment funds in Denmark. Marketing shall only be prevented if the manager's management of the alternative investment fund fails to comply with this Act and regulations issued in pursuance hereof or the manager otherwise fails to comply with this Act and regulations issued in pursuance hereof. The manager may start marketing the alternative investment fund in Denmark from the date of the notification by the Danish FSA to that effect.
- (5)** The Danish FSA shall notify the European Securities and Markets Authority that the manager has been licensed to market units in the alternative investment fund in Denmark. If the fund is from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area the Danish FSA shall also notify the competent authorities of the alternative investment fund.
- (6)** If the alternative investment fund is intended to be marketed in other Member States of the European Union and countries with which the Union has entered into an agreement for the financial area, the notification pursuant to subsection (1) shall have the following documentation and information enclosed:
- 1) A notification with a programme of operation uniquely identifying the alternative investment funds the manager intends to market and information on where the funds are established.
  - 2) The fund rules or articles of association of each fund.
  - 3) Identification of the depositary of each fund.
  - 4) A description of the funds available to investors.
  - 5) Information on where the master fund is established if one of the funds is a feeder fund.
  - 6) Any additional information referred to in section 62(1) for each fund the manager intends to market.
  - 7) Information about the Member State or Member States in which the manager intends to market the units to professional investors for each fund.

8) Information about arrangements made for the marketing of funds, and, where relevant, information on the arrangements established to prevent units of each fund from being marketed to retail investors, including in cases where the manager relies on activities of independent entities to provide investment services in respect of the fund.

**(7)** No later than 20 business days following receipt of a complete notification which complies with the conditions of subsection (6) on marketing in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Danish FSA shall transmit the notification to the competent authorities of the country in which the alternative investment fund is intended to be marketed. The Danish FSA will only transmit the notification if the manager's management of the alternative investment fund complies with this Act and regulations issued in pursuance hereof and the manager otherwise complies with this Act and regulations issued in pursuance hereof. The Danish FSA shall enclose a statement to the effect that the manager concerned is licensed to manage alternative investment funds with an investment strategy followed by the alternative investment fund concerned.

**(8)** When the Danish FSA has submitted the notification to the competent authorities of the host country, cf. subsection (7), the Danish FSA shall, without delay, inform the manager about the submission. The manager may start marketing of the alternative investment fund in the host country following receipt of this notification.

**(9)** The Danish FSA shall notify the European Securities and Markets Authority that the manager may start marketing the units of the alternative investment fund in the host country, cf. subsection (8). If the fund is from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area the Danish FSA shall also notify the competent authorities of the alternative investment fund.

**(10)** The manager shall notify the Danish FSA in writing of a material change to the information provided pursuant to subsection (3) or subsection (6). Planned changes shall be notified at least one month before implementing the changes. Unplanned changes shall be notified to the Danish FSA immediately after the change has occurred.

**(11)** If, pursuant to a planned change, the manager's management of the alternative investment fund would no longer comply with this Act or regulations issued in pursuance hereof, or the manager would otherwise no longer comply with this Act or regulations issued in pursuance hereof, the Danish FSA may order the manager not to implement the change. The Danish FSA shall notify the manager immediately following receipt of the notification in subsection (10).

**(12)** If a planned change is implemented notwithstanding the notification by the Danish FSA pursuant to subsection (11), or if an unplanned change has taken place pursuant to which the manager's management of the alternative investment fund no longer complies with this Act or regulations issued in pursuance hereof, or if the manager otherwise no longer complies with this Act or regulations issued in pursuance hereof, the Danish FSA shall take all due measures, including, if necessary, the express prohibition of marketing of the alternative investment fund, cf. section 17.

**(13)** If the changes notified do not conflict with the regulations in this Act or regulations issued in pursuance of this Act, the Danish FSA shall immediately notify the European Securities and Markets Authority if the changes concern the termination of marketing of certain alternative investment funds or marketing of additional funds, and, if applicable, the competent authorities of the host countries where the funds are marketed.

**(14)** The Danish FSA may lay down more detailed regulations on:

- 1) the form and content of notifications pursuant to subsection (1), and
- 2) the form of the written notification sent by the manager according to subsection (10).

*Marketing by means of a passport in Denmark of alternative investment funds by a manager with its registered office in a third country which has been assigned another Member State of the European Union or countries with which the Union has entered into an agreement for the financial area as its country of reference*

**129.-(1)** An alternative investment fund manager with its registered office in a third country which has been assigned another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area as its country of reference, licensed to market investment funds managed by the manager pursuant to the regulations implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, and intending to market those funds to professional investors in Denmark, may start this marketing from the date when the competent authorities of the manager's country of reference have notified the manager that they have transmitted a complete notification file and a declaration that the manager is licensed to manage alternative investment funds with the investment strategy concerned, to the Danish FSA, pursuant to the regulations in Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

**(2)** The Danish FSA may lay down more detailed regulations on the marketing mentioned in subsection (1).

*Managers from third countries which market alternative investment funds in Denmark without a passport*

**130.-(1)** A manager of alternative investment funds with its registered office in a third country may instead of a licence pursuant to section 11, cf. section 116, obtain a licence from the Danish FSA to market units to professional investors in Denmark in an alternative investment fund managed by the manager subject to the conditions in subsections (2)-(4).

**(2)** The manager shall comply with sections 61-68 for each alternative investment fund marketed pursuant to subsection (1). Furthermore, the manager shall comply with sections 70-75 if an alternative investment fund marketed pursuant to subsection (1) falls within the scope of section 70(1).

**(3)** The Danish FSA shall have appropriate cooperation arrangements in place complying with international standards and allowing the Danish FSA to supervise the manager pursuant to this Act, including monitoring the systemic risks with the following:

- 1) The competent authorities in another Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area if the fund is established there.
- 2) The relevant supervisory authorities of the manager's home country.
- 3) The relevant authorities of the home country of the alternative investment fund if the fund is established in a third country.
- (4)** The third country where the alternative investment fund is established may not be registered as a Non-Cooperative Country and Territory by the Financial Action Task Force.
- (5)** The Danish FSA may lay down more detailed regulations on marketing covered by this provision.

## **VII**

### **Annual reports of managers**

#### **Part 22**

##### *Annual and interim financial reports of managers*

**131.-(1)** Managers of alternative investment funds with their registered office in Denmark which are not self-managed and which are licensed to manage alternative investment funds shall prepare and present an annual report in accordance with the regulations laid down by the Danish FSA pursuant to subsection (6), cf., however, subsections (2)-(5).

**(2)** Where regulations issued pursuant to subsection (6) regulate the same aspects as Regulation no. 1606/2002 on the application of international accounting standards, cf. Article 4 of the Regulation, the regulations issued pursuant to subsection (6) shall not apply to the consolidated financial statements of the undertakings covered by Article 4 of the Regulation.

**(3)** Managers the securities of which are not admitted to trading on a regulated market in Denmark, in another Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area, may, notwithstanding subsection (1), decide to apply the standards mentioned in subsection (2) in their consolidated financial statements.

**(4)** Managers, which, pursuant to subsection (3), follow the standards mentioned in subsection (2) shall apply all approved standards in their consolidated financial statements. Where regulations pursuant to subsection (6) regulate the same aspects as the standards, managers, which pursuant to subsection (3) apply the standards shall apply the standards instead of the relevant provisions.

**(5)** The Danish FSA may lay down disclosure requirements for the undertakings following the standards mentioned in subsection (2).

**(6)** The Danish FSA shall lay down regulations on annual and interim financial reports for managers of alternative investment funds with their registered office in Denmark which are not



self-managed and which are licensed to manage alternative investment funds, as well as reports of accounting information to the Danish FSA.

**132.-(1)** The Danish FSA may lay down regulations on audits for managers of alternative investment funds with their registered office in Denmark which are not self-managed and which are licensed to manage alternative investment funds and their subsidiary undertakings, including requirements for auditors and on electing and appointing auditors.

**(2)** The Danish FSA may lay down regulations on internal audit and the performance of audits at shared computer bureaus.

## VIII

### Structural provisions for capital associations

#### Part 23

##### *Establishment*

**133.-(1)** A capital association may be established by one or more founders. A founder shall not be subject to bankruptcy or financial reconstruction. Where a founder is a natural person, said person shall be legally competent, and the person must not be under guardianship pursuant to section 5 of the Danish Guardianship Act ("*værgemålsloven*") or under guardianship pursuant to section 7 of the Danish Guardianship Act. If a founder is a legal person, said person shall be empowered to acquire rights, make commitments and be a party to legal proceedings.

**(2)** The founders shall sign articles of incorporation which shall include the articles of association of the capital association. If, in connection with the establishment of the capital association, no board of directors and auditor has been elected, the founders shall, no later than two weeks from signing the articles of incorporation, hold a general meeting for the purpose of electing a board of directors and an auditor.

**134.-(1)** A capital association shall have association capital which may vary according to the terms laid down in the articles of association of the capital association. Anyone owning a unit in a compartment of a capital association shall be an investor in the capital association and the compartment.

**(2)** Capital associations shall be divided into one or more compartments, each based on a particular part of the assets in accordance with the provisions in the articles of association. The board of directors may set up new compartments and make relevant amendments to the articles of association in this respect, unless otherwise stipulated in the articles of association.

**(3)** Each compartment shall only be liable for its own obligations. Each compartment shall, however, also be liable for its share of the common costs of the compartments in a capital association. If legal proceedings have been effected without results, or if it is otherwise evident that a compartment is unable to fulfil its liabilities under the 2nd clause, the other compartments shall be jointly and severally liable for said compartment's share of the common costs.

**(4)** A compartment may be divided into unit classes according to the provisions of the articles of association.

**(5)** An investor in a compartment shall not be personally liable for the commitments of the capital association or the compartment. The investor shall only be liable for its own contribution.

**(6)** All investors in a capital association shall have the same rights in relation to aspects which concern all the investors in the capital association. All investors in a compartment shall have the same rights in relation to aspects which only concern the investors in the compartment. The provisions in the 1st and 2nd clauses may be derogated from as a consequence of establishing unit classes, issuing units without a right to dividend and determining regulations on limitations of voting rights as any investor shall, however, have at least one vote.

**(7)** The articles of association of a capital association shall state the accounting regulations according to which the capital association will be presenting its annual report.

**135.-(1)** Only capital associations may and shall use the word "kapitalforening" (capital association) in their name.

**(2)** The manager of a capital association shall make up the day-to-day management of the capital association.

*Notifications to the Danish Business Authority*

**136.-(1)** When a capital association is established, the manager of the capital association shall notify the capital association for registration with the Danish Business Authority. The notification shall have an enclosed copy of the articles of incorporation and articles of association of the capital association.

**(2)** A capital association which has not yet been registered with the Danish Business Authority may not as such acquire rights and make commitments. Neither may the capital association be a party to legal proceedings except for actions on the establishment.

**(3)** In respect of a commitment made before the registration on behalf of a capital association, anyone who has made the commitment or has co-responsibility shall be personally and jointly and severally liable without limitation. On registration the capital association shall take over such commitments.

**(4)** Where the capital association has amended its articles of association, the manager of the capital association shall notify such amendments to the Danish Business Authority which shall then make the registrations necessary.

**(5)** Part 2, section 366, section 367(1) and (4), and section 371 of the Companies Act shall apply to capital associations with the adjustments necessary. Notwithstanding the provision in section 9(1) of the Companies Act, notification of amendments to the articles of association shall be received by the Danish Business Authority no later than four weeks after the decision to amend the articles of association has been made.

**(6)** Any notification to the Danish Business Authority made by a manager according to the provisions in this Act concerning capital associations shall have a declaration enclosed issued by the manager showing that the notified aspects comply with the provisions in this Act concerning capital associations.

**(7)** The Danish Business Authority may lay down more detailed regulations on registration with the authority, including fees for registration.

#### *Unit classes*

**137.-(1)** If the articles of association of a capital association include provisions to the effect that the compartments may be divided into unit classes, the board of directors may

1) in establishment of a new compartment ex officio divide the compartment into unit classes and

2) divide an existing compartment into unit classes according to a decision made by the investors at a general meeting.

**(2)** The name of the compartment shall state whether the board of directors may establish unit classes in the compartment.

**(3)** A unit class shall not have preferential right over any unit of the assets of the compartment, including class-specific assets. A unit class shall only have a right to a share of the return on the assets, including a share of the return on the joint portfolio, which is the part of the portfolio for which all unit classes receive a return, and the return on class-specific assets which are part of the portfolio only receiving return on the relevant unit class.

**(4)** Where a compartment is divided into unit classes, the board of directors shall lay down principles for allocating costs between the unit classes such that each unit class only bears its own share of the joint costs of the compartment, as well as the particular costs connected to the specific characteristics of the unit class.

**138.** A capital association receiving funds from retail investors shall, on its website or the website of its manager, state which unit classes have been established, including provide information regarding the characteristics applicable for each unit class and regarding the principles for allocating costs between the unit classes.

#### *Registered office and representative*

**139.-(1)** Where a capital association has appointed a manager of alternative investment funds with its registered office (head office) in Denmark, the capital association shall have its registered office in the same place as the manager, cf., however, subsection (2).

**(2)** Where a capital association has appointed a manager of alternative investment funds with its registered office (head office) in another country, the capital association shall have an arrangement in place with a representative on representation of the capital association in Denmark. The capital association shall have its registered office where the representative has its registered office (head office), and its main office where the manager has its main office.

### *Liquidation*

**140.-(1)** The general meeting shall make decisions regarding liquidation of a compartment in a capital association.

**(2)** Decisions by the general meeting on liquidation shall include a provision concerning the liquidator. The liquidator shall take the place of the board of directors and the manager.

**(3)** The liquidator may be dismissed at any time by the general meeting.

**141.-(1)** A compartment under liquidation shall keep its name adding the words »i likvidation« (under liquidation) to its name.

**(2)** As soon as possible, and at no less than three months' notice, the liquidator shall, through an announcement in the Danish Official Gazette, request that the creditors of a compartment notify their claims. Requests to notify claims shall, at the same time, be sent to all known creditors.

**(3)** If a liquidator cannot accept a notified claim, the liquidator shall notify the creditor by recommended letter indicating that if the creditor wishes to dispute the decision, said creditor must bring the matter before a court of law within four weeks after the letter is sent.

**(4)** The liquidator may not distribute the proceeds of liquidation and finalise the liquidation processing until the time limit fixed in the announcement mentioned in subsection (2) has expired and

1) possible disputes under subsection (3) have been settled and

2) all debt to creditors has been paid.

**(5)** The liquidator shall ensure that liquidation accounts are prepared and approved by the general meeting.

**(6)** A capital association shall be considered wound up once the liquidation of the only or last compartment of the capital association has been carried out. If a capital association is wound up pursuant to the 1st clause, the liquidator shall notify the Danish Business Authority about the winding-up. The notification shall include the liquidation accounts approved by the general meeting and a declaration provided by the liquidator stating that the liquidation was completed in accordance with the provisions on liquidation in this Act.

### *Winding up of capital associations and compartments without investors*

**142.-(1)** If a capital association or a compartment has never had investors, the board of directors may decide to wind up the capital association or compartment.

**(2)** If a capital association or compartment is wound up pursuant to subsection (1), the manager of the capital association shall notify this winding-up to the Danish Business Authority.

### *Winding up of unit classes*

**143.-(1)** The decision on winding-up of a unit class in a capital association shall be made by the investors of the unit class at a general meeting, cf., however, subsection (2). If the investors of the unit class do not want their units transferred to another unit class, the winding-up shall be carried out in a procedure by which the compartment redeems all units which have been issued in the unit class.

**(2)** If a unit class has never had investors, the board of directors may make a decision on winding-up the unit class.

#### *Bankruptcy*

**144.** The regulations on bankruptcy in sections 233 and 234 of the Companies Act that apply to companies shall, with the changes necessary, apply correspondingly to capital associations and compartments thereof.

#### *Compulsory dissolution*

**145.-(1)** The Danish FSA may request that the bankruptcy court in the registered office of the capital association dissolves the capital association, if the capital association has no manager which is licensed to administer alternative investment funds.

**(2)** The Danish FSA may stipulate a time limit within which the capital association may appoint a manager with authorisation to administer alternative investment funds.

**(3)** The decision by the Danish FSA to remit a capital association for compulsory dissolution by the bankruptcy court shall be published in the IT system of the Danish Business Authority.

**(4)** The capital association shall keep its name adding the words »under tvangsopløsning« (under compulsory dissolution).

**(5)** The bankruptcy court may appoint one or more liquidators. The bankruptcy court may also appoint an auditor. In respect of the compulsory dissolution, the provisions on liquidation in section 141 shall otherwise apply such that the bankruptcy court or anyone so empowered by the court of law shall make decisions on the aspects of the capital association. The costs of the dissolution shall be paid by the Treasury if necessary.

**(6)** Once the processing has been concluded, the bankruptcy court shall notify the Danish FSA and the Danish Business Authority which will register the dissolution of the capital association in the IT system of the authority.

**(7)** In the period from transmission of the capital association to the bankruptcy court and until a liquidator has been appointed, the board of directors of the capital association may make transactions which are necessary and which can be carried out without detriment to the capital association and its creditors.

**(8)** After the appointment of the liquidator, former members of the board of directors and the management of the former manager of the capital association shall, where applicable, be obligated to assist the liquidator with information regarding the operations of the capital association, until commencement of the liquidation. The board of directors and the

management of the manager of the capital association shall also provide the liquidator with the information necessary for the liquidator's assessment of existing and future claims.

**(9)** The liquidator may request that the bankruptcy court summon former members of the board of directors of the association and management of the manager of the capital association to a meeting in the bankruptcy court for the purpose of collecting information pursuant to subsection (8).

### *Mergers*

**146.-(1)** A capital association may merge with another capital association, and a compartment of a capital association may merge with another compartment of a capital association. Prior to the merger, the merging entities shall publish a merger plan.

**(2)** A merger of capital associations shall be carried out by the expiring capital association transferring its compartments to the receiving capital association.

**(3)** A merger of compartments shall be carried out by the expiring compartment transferring its assets and liabilities as a whole to the receiving compartment.

**(4)** In a merger, investors of the expiring entity shall exchange their units to units in the receiving entity. When exchanging units, investors in the expiring entity shall become investors of the receiving entity.

**(5)** Excess amounts arising from the exchange of units in a merger between compartments shall be paid to the investors in the expiring compartment.

**(6)** A capital association may merge with a Danish UCITS, and a compartment in a capital association may merge with a compartment of a Danish UCITS according to the regulations in section 119 of the Investment Associations, etc. Act such that the capital association or compartment thereof is the expiring entity.

**147.-(1)** A decision on merger by the expiring entity shall be made at the general meeting.

**(2)** A decision on merger by the receiving entity shall be made by the board of directors unless stipulated by the articles of association that this decision shall be subject to a resolution passed by the general meeting.

**148.-(1)** A capital association dissolved by a merger shall be considered wound up when the capital association has transferred its compartments to the receiving capital association and the investors in the expiring capital association have had their units exchanged to units in the receiving capital association.

**(2)** A compartment expiring in a merger shall be considered wound up when the expiring compartment has transferred its assets and liabilities as a whole to the receiving compartment, and the investors in the expiring compartment have exchanged their units to units in the receiving compartment.

**(3)** A capital association shall be considered wound up when the only or last compartment of the association has merged with a compartment from another capital association and this compartment is the receiving entity.

**(4)** When a capital association is wound up pursuant to subsections (1) or (3), the manager of the capital association shall notify the winding-up to the Danish Business Authority.

**(5)** The Danish FSA may lay down more detailed regulations on mergers.

#### *Demergers*

**149.-(1)** A compartment of a capital association may be demerged. Prior to the demerger, the capital association shall publish a demerger plan.

**(2)** A demerger may be carried out by transferring part or all of the assets and liabilities of a compartment to one or more

1) existing compartments, or

2) newly established compartments.

**(3)** Demerger may be carried out without the consent of the creditors. If a creditor's claims in the demerged compartment are not satisfied, each of the other compartments participating in the demerger shall be joint and severally liable for the obligations existing at the date of publication of the demerger plan. The remaining participating compartments shall, however, be liable for a maximum amount corresponding to the net value received in connection with the demerger.

**(4)** In connection with a demerger, the investors in the demerged compartment shall have their units converted to units in one of the receiving compartments. On conversion the investors of the demerged compartment shall become investors in one or more of the receiving compartments. The 1st and 2nd clauses shall not apply to investors who remain investors in a compartment which on demerger only surrenders part of its assets and liabilities.

**(5)** Excess amounts arising from the exchange of units shall be paid to the investors of the demerged compartment.

**150.-(1)** A decision to demerge a compartment in a capital association shall be made by the investors in the compartment at the general meeting.

**(2)** A decision to receive part of the assets and liabilities of another compartment as part of a demerger shall be made by the board of directors of the receiving compartment.

**151.** Assets and liabilities transferred on a demerger shall be considered to have been passed on to the receiving compartment at the time set in the demerger plan.

**152.-(1)** A compartment expiring in a demerger shall be considered wound up when the compartment has transferred all its assets and liabilities to the receiving compartments, and the investors in the expiring compartment has exchanged their units to units in the receiving compartments.

**(2)** A capital association shall be considered wound up when the only or last compartment of the capital association on a demerger has transferred all its assets and liabilities to compartments in one or several other capital associations.

**(3)** When a capital association has been wound up pursuant to subsection (2), the manager of the capital association shall notify the winding-up to the Danish Business Authority.

**(4)** The Danish FSA may lay down more detailed regulations on demergers.

#### *Transfers of a compartment*

**153.-(1)** A compartment in a capital association may be transferred to another capital association.

**(2)** In connection with a transfer, investors in the transferred compartment shall become investors in the association to which the compartment is transferred.

**154.-(1)** A decision on transfer of a compartment shall be made in the capital association from which the compartment is transferred by the investors in the compartment at the general meeting.

**(2)** A decision on transfer of a compartment shall be made in the capital association to where the compartment is transferred, by the board of directors.

**(3)** A capital association shall be considered wound up once the only and last compartment of the association has been transferred to another capital association.

**(4)** When a capital association is wound up pursuant to subsection (3), the manager of the capital association shall notify the winding-up to the Danish Business Authority.

## **IX**

### **Supervision and fees**

#### **Part 24**

##### *Supervision etc.*

##### *General regulations regarding supervision*

**155.-(1)** The Danish FSA shall supervise compliance with this Act and regulations laid down pursuant to this Act. The Danish FSA shall supervise that the regulations regarding financial information in annual reports and interim financial reports laid down pursuant to section 131 are observed by alternative investment fund managers which have issued securities admitted to trading on a regulated market, cf. section 83(2) and (3) and section 83b of the Securities Trading, etc. Act. The Danish FSA shall also ensure compliance with the regulations laid down pursuant to section 31(8) of the Approved Auditors and Audit Firms Act ("*revisorloven*"). The Danish Business Authority shall, however, ensure compliance with section 136.

**(2)** Where the competent authorities of another Member State of the European Union or countries with which the Union has entered into an agreement for the financial area have



licensed a manager from the relevant country or from a third country to manage alternative investment funds, which has its home country in the country in question, and the manager markets units of the relevant funds in Denmark, the steps taken by the manager to market the funds in Denmark, and the steps taken by the manager to prevent the units of the funds from being marketed to retail investors, shall be subject to Danish law and supervision. This shall also apply where the manager utilises independent entities to market units in the investment funds.

**(3)** The Danish FSA shall organise its routine supervision activities with a view to promoting financial stability and inciting confidence in alternative investment fund managers and markets. In its supervision activities, the Danish FSA shall examine in particular the viability of the business model of the individual manager. The organisation of supervision activities shall take materiality into consideration so that the supervision effort is proportionate to the potential risks or damage. The executive management of the Danish FSA shall be responsible for the organisation of supervision activities.

**(4)** In its organisation of supervision activities, the Danish FSA shall consider the potential consequences for the financial stability in other Member States of the European Union and countries with which the Union has entered into an agreement for the financial area. This shall apply in particular in connection with crisis situations. With regard to branches in Denmark of foreign undertakings which have been licensed to carry out the activities mentioned in section 11 according to the regulations implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, the Danish FSA shall monitor the branches and assist the competent supervisory authorities in supervision of the branches. For significant branches and subsidiaries of foreign undertakings which have been licensed to carry out the activities mentioned in section 11 in a Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area, the Danish FSA shall participate in any cooperation fora regarding supervision of the overall group.

**(5)** The Danish FSA may, in exceptional cases, utilise external assistance.

**(6)** The Danish Minister for Business and Growth may lay down more detailed regulations on the procedures of the Danish FSA in accordance with the provisions laid down in Union law.

**156.-(1)** The Financial Council shall be involved in supervision of alternative investment fund managers, cf. section 345 of the Financial Business Act.

**(2)** The Financial Council

1) shall make decisions in supervisory matters of a principle nature and in supervisory matters with far-reaching, significant consequences for alternative investment fund managers,

2) shall make decisions in cases on orders according to section 163(1),

3) shall make decisions on turning over cases covered by no. 1 to police investigation, and

4) shall assist the Danish FSA in its information activities and advise the Danish FSA in connection with issuing regulations.

**157.-(1)** The Danish FSA shall examine the circumstances of alternative investment fund managers licensed to manage alternative investment funds, including reviews of regular reports and inspections of the individual manager. This shall also apply to alternative investment fund managers which have their registered office in a third country and for which Denmark is the country of reference, cf. section 1(1), no. 2. The Danish FSA shall also examine the circumstances of managers for which Denmark is the host country in respect of compliance with sections 18, 19 and 23, where the managers manage or market alternative investment funds in Denmark through a branch established in Denmark.

**(2)** Following an inspection of an alternative investment fund manager, a meeting shall be held, including as participants the manager's supreme management body, the board of management, the external auditor and the chief internal auditor, unless such inspection concerns clearly demarcated areas of activity within the manager. At said meeting, the Danish FSA shall announce its conclusions regarding the inspection.

**(3)** Following an inspection visit, significant conclusions shall be submitted in the form of a written report to the undertaking's supreme management body, the board of management, the external auditor and the chief internal auditor.

**(4)** The supervisory authorities of another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area may, after prior notification to the Danish FSA, carry out inspections of branches located in Denmark of foreign managers licensed to manage alternative investment funds which have their registered office in the relevant country. Furthermore, at the request of the supervisory authority of the home country of the branch, the Danish FSA may carry out inspections of the branch mentioned in the 1st clause.

**(5)** The supervisory authorities of another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area may, with authorisation of the Danish FSA, carry out verification of information provided by the managers which are located in Denmark and licensed to manage alternative investment funds carrying out ancillary financial business which is subject to supplementary supervision by the relevant supervisory authority under provisions laid down in directives within the financial area.

**158.** The Danish FSA may cooperate with other Danish authorities on ensuring compliance with this Act and regulations issued pursuant to this Act concerning alternative investment fund managers established in Denmark or in other Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area, as well as the depository function for the mentioned alternative investment funds. The Danish FSA may delegate tasks to other Danish authorities, as well as bodies or persons.

**159.** The Danish FSA may request the financial supervisory authorities in another Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area, the European Securities and Markets Authority and the European Systemic Risk Board to help ensure compliance with this Act and the regulations laid

down pursuant to this Act through supervision activities, on-the-spot checks or inspections in the territory of another country.

**160.-(1)** The Danish FSA shall cooperate with the competent authorities in other Member States of the European Union or countries with which the Union has entered into an agreement for the financial area on contributing to supervision activities, on-the-spot checks or inspections in Denmark with regard to alternative investment fund managers operating in other Member States of the European Union or countries with which the Union has entered into an agreement for the financial area, or a manager licensed to manage alternative investment funds in Denmark but operating in other Member States.

**(2)** If a competent authority in another Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area, request the Danish FSA to participate in verification or investigation of an alternative investment fund manager operating in other Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area, cf. subsection (1), the Danish FSA may

- 1) carry out the verification or investigation itself,
- 2) allow the requesting authority to carry out the verification or investigation, or
- 3) allow an auditor or other expert to carry out the verification or investigation.

**(3)** If an alternative investment fund manager which has its registered office in Denmark opposes the investigation made by a competent foreign authority, cf. subsection (2), only the Danish FSA may carry out the investigation. The same shall apply to self-managed alternative investment funds established in Denmark.

**(4)** If the verification or investigation in Danish territory is carried out by the Danish FSA, cf. subsection (2), no. 1, the financial supervisory authority in the Member State of the European Union or country with which the Union has entered into an agreement for the financial area which has requested cooperation, may request that its employees accompany the employees carrying out the verification or investigation. The Danish FSA shall have overall responsibility for the verification or investigation. The Danish FSA shall also, as a condition for allowing the requesting authority to carry out the verification or investigation itself, require that employees of the Danish FSA accompany the employees who are to carry out the verification or investigation, cf. subsection (2), no. 2.

**(5)** The Danish FSA may lay down more detailed regulations on cooperation and on-the-spot checks with competent authorities in other Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area.

**161.-(1)** Alternative investment fund managers, service suppliers and sub-suppliers shall provide the Danish FSA with such information as is necessary for supervision by the authority. This shall apply correspondingly to foreign managers managing alternative investment funds established in Denmark, or marketing funds in Denmark, including through establishment of a branch, or where Denmark is the country of reference of a manager with its registered office in a third country.

**(2)** The Danish FSA may, at all times, on proof of identity and without a court order, gain access to an alternative investment fund manager and its branches with a view to obtaining information, including during inspections.

**(3)** To the extent required to assess the financial position of an alternative investment fund manager, the Danish FSA shall be entitled to obtain information and, at any time, on proof of identity and without a court order, have access to undertakings with which said manager has special direct or indirect links.

**(4)** The Danish FSA may ask for any information, including financial statements, accounting records, printouts of books, other business records and electronically stored data deemed necessary for the activities of the Danish FSA or for deciding whether a natural or legal person is covered by the provisions of this Act.

**(5)** The Danish FSA may, at any time, on proof of identity and without a court order, have access to a supplier or a sub-supplier in order to obtain information about the outsourced activity.

**162.** The Danish Minister for Business and Growth may lay down regulations regarding the duty of alternative investment fund managers to make public information about the Danish FSA's assessment of the manager, and whether the Danish FSA has had the opportunity to public this information before the manager.

**163.-(1)** The Danish FSA may order an alternative investment fund manager to arrange for and pay the costs of holding an impartial investigation of one or more aspects relating to the manager, if the Danish FSA deems that this is significant for supervision of the manager and for the Danish FSA this is not a routine investigation. The results of the impartial investigation shall be given in a written report which must be available within a time limit set by the Danish FSA. The Danish FSA may decide that the experts, cf. subsections (2)-(6), are to carry out regular reporting to the Danish FSA about matters in connection with the investigation.

**(2)** The impartial investigation shall be carried out by one or more experts. The Danish FSA shall appoint experts within a time limit set by the Danish FSA. The proposed experts shall be subject to approval by the Danish FSA.

**(3)** The alternative investment fund manager shall provide the experts with such information as is necessary for the performance of the impartial investigation.

**(4)** The experts shall submit a copy of the written report of the investigation to the Danish FSA no later than at the time the report is submitted to the manager.

**(5)** The experts shall immediately provide the Danish FSA with information about conditions they observe during the impartial investigation, if the information is of significant importance to the manager's risk profile or business model and may result in a not insignificant risk that these conditions could develop such that the manager will lose its licence.

**(6)** If, because of his special situation, the expert cannot disclose the information under subsections (4) and (5) to the Danish FSA, notification of the Danish FSA may be effected by others than the expert, including by the manager.

**164.-(1)** The Consumer Ombudsman may institute legal proceedings regarding actions contrary to honest business principles and good practice, cf. section 18(1), no. 1, including proceedings on prohibitions and orders, compensation and claims for repayment of illegally demanded amounts. Section 20, section 22(2), section 23(1), section 27(1) and section 28 of the Marketing Act ("*markedsføringsloven*") shall apply correspondingly to legal proceedings the Consumer Ombudsman wishes to institute in pursuance of this provision. The Consumer Ombudsman may be appointed as group representative in group actions, cf. Part 23a of the Administration of Justice Act.

**(2)** The Danish FSA may order that matters which are contrary to sections 18 and 23 be rectified. In this connection the Danish FSA may carry out inspection visits of branches of alternative investment fund managers.

**165.-(1)** The Danish FSA shall notify the Consumer Ombudsman if it comes to the attention of the Danish FSA that a client of an alternative investment fund manager or clients of the alternative investment funds managed by the manager may have suffered a loss as a consequence of the manager having violated section 18(1) or regulations issued in pursuance of section 18(3).

**(2)** Notwithstanding section 170, the Consumer Ombudsman shall have access to all the information in Danish FSA cases covered by subsection (1).

**166.-(1)** The Danish FSA may order the management of an alternative investment fund manager to prepare an account of the financial circumstances and future prospects of the manager. The supreme management body, board of management, external auditor and chief internal auditor of the manager shall confirm that they are aware of the contents of the order issued by the Danish FSA by signing said order.

**(2)** The account shall

- 1) include a statement made by the external auditor of the manager, unless the account has been prepared by said auditor in its entirety,
- 2) be submitted for approval by the supreme management body of the manager, and
- 3) be submitted, in the form of a copy, to the Danish FSA.

**167.-(1)** The Danish FSA may order that an alternative investment fund manager takes the measures necessary within a time limit specified by the Danish FSA, if

- 1) the manager's financial position has deteriorated to such a degree that the interests of the alternative investment funds or investors in the alternative investment funds are at risk, or
- 2) there is a not insignificant risk that, because of internal or external conditions, the financial position of the manager will develop so that the manager loses its licence.

**(2)** Where the measures ordered have not been taken within the time limit specified, the Danish FSA may withdraw the manager's licence.

**168.-(1)** The Danish FSA may order that an alternative investment fund manager remove a member of the board of management of the manager within a time limit specified by the Danish FSA, if, pursuant to section 13(2), said person may not occupy the position.

**(2)** The Danish FSA may order a member of the supreme management body of an alternative investment fund manager to resign his position within a time limit specified by the Danish FSA, if, pursuant to section 13(2), said person may not occupy the position.

**(3)** The Danish FSA may order an alternative investment fund manager to remove a member of the board of management when legal proceedings have been instigated against said member of the board of management in a criminal procedure on violation of the Criminal Code, this Act or other financial legalisation, until the criminal procedure has been concluded, if a conviction would mean that said member does not fulfil the requirements of section 13(2), no. 1. The Danish FSA shall lay down a time limit within which the requirements of the order shall be met. The Danish FSA may, under the same conditions as in the 1st clause, order a member of the supreme management body of an alternative investment fund manager to cease its duties. The Danish FSA shall lay down a time limit within which the requirements of the order shall be met.

**(4)** The duration of the order issued pursuant to subsection (2) shall appear on the order on the basis of section 13(2), nos. 2-4.

**(5)** Orders issued pursuant to subsections (1)-(3) may be brought before the courts at the request of the manager and of the person to whom the order relates. Such request shall be submitted to the Danish FSA within four weeks from the date on which the order was issued to the person. The request shall not act as stay of proceedings for the order, but the court may, by court order, decide that the relevant member of the management may retain his position during the legal proceedings. The Danish FSA shall bring the case before the courts within four weeks. The case shall be brought through civil proceedings.

**(6)** The Danish FSA may, at its own initiative or on application, withdraw an order notified pursuant to subsection (2) and subsection (3), 3rd clause. If the Danish FSA refuses an application for withdrawal, the applicant may demand that the refusal be brought before the courts. Such request shall be submitted to the Danish FSA within four weeks from the date on which the refusal was notified to the person. Requests for judicial review may, however, only be submitted if the order has no time limit, and no less than five years have elapsed from the date of issue of the order, or no less than two years after the refusal of withdrawal by the Danish FSA was affirmed by judgement.

**(7)** If the alternative investment fund manager has not removed the member from the board of management within the time limit, the Danish FSA may withdraw the manager's licence, cf. section 17, no. 3. The Danish FSA may also withdraw the manager's licence, cf. section 17, no. 3, if a member of the supreme management body fails to comply with an order notified pursuant to subsections (2) and (3).

**169.** The Danish FSA may independently or in collaboration with other authorities carry out such investigations as are appropriate to promote transparency on the financial market and publish the results of such investigations.

**170.-(1)** By virtue of sections 152-152e of the Criminal Code, employees of the Danish FSA shall be obliged to keep secret any confidential information they receive in the course of their supervisory duties. The same shall apply to persons performing services as part of the operations of the Danish FSA, and experts acting on behalf of the Danish FSA. This shall also apply after the termination of the employment contract or any other contract.

**(2)** Consent from the individual who the duty of confidentiality aims to protect shall not entitle the persons mentioned in subsection (1) to divulge confidential information.

**(3)** Subsection (1) shall not apply, however, to information in cases regarding:

1) good business practice, cf. section 18, and executive orders issued in pursuance of section 18(3),

2) decisions pertaining to the administrative and accounting practices, business procedures and control procedures of alternative investment fund managers, cf. sections 23-25 and 27,

3) payment of costs in connection with issuing units in managed alternative investment funds through a central securities depository,

4) Information to investor pursuant to sections 62-66 and regulations issued in pursuance of section 66,

5) publication of net asset value per unit in the managed alternative investment funds, cf. sections 30 and 36,

6) agreements on placement of the funds of clients' portfolios, cf. section 19,

7) the independence of depositaries, cf. section 53.

**(4)** Subsection (1) shall not prevent the Danish FSA from disclosing, on its own initiative, confidential information in the form of summaries, insofar as neither individual managers nor their clients are identifiable.

**(5)** Confidential information may be divulged during civil legal proceedings, where an alternative investment fund manager has been declared bankrupt, and provided such information does not involve clients or third parties where said clients or third parties are or have been involved in attempts to save the manager.

**(6)** Confidential information may be divulged during civil legal proceedings, where an alternative investment fund has been declared bankrupt, including information regarding the manager which managed the fund, to the extent that such information pertains to the fund and where such information does not relate to client relationships or third parties where said clients or third parties are or have been involved in attempts to save the fund.

**(7)** The provision of subsection (1) shall not prevent confidential information from being divulged to:

1) The Systemic Risk Council.

- 2) Other public authorities, including the prosecution service and the police, in connection with investigations and legal prosecution of possible criminal offences covered by the Criminal Code or the supervision legislation.
- 3) The Minister concerned as part of his overall supervision.
- 4) Administrative authorities and courts hearing decisions made by the Danish FSA.
- 5) The Ombudsman of the Danish Parliament.
- 6) A parliamentary commission set up by the Danish Parliament.
- 7) Courts of inquiry set up by law or in accordance with the Courts of Inquiry Act ("*lov om undersøgelseskommisioner*").
- 8) The standing committee of the Danish Parliament regarding the general financial circumstances of an alternative investment fund manager with respect to crisis management of an alternative investment fund manager when a decision is to be made on the extent to which the government is to grant guarantees or make funds available. The same shall apply correspondingly in connection with cases covered by the 1st clause.
- 9) Members of the Public Accounts Committee and the Auditor General's Office ("*Rigsrevisionen*").
- 10) Interested parties, including authorities involved in attempts to save a failing alternative investment fund manager, if the Danish FSA has received mandate from the Minister for Business and Growth, provided that the recipients of information need said information.
- 11) The liquidator, the bankruptcy court and other authorities participating in liquidation, bankruptcy proceeding or similar procedures regarding an alternative investment fund manager, as well as persons responsible for the statutory audit of the accounts of a manager, provided that such recipients of information need said information to perform their duties.
- 12) Institutions managing depositor, investor or insurance guarantee schemes, provided that such information is required by the recipients for the performance of their duties.
- 13) Danmarks Nationalbank (Denmark's central bank), foreign central banks, the European System of Central Banks and the European Central Bank in their capacity as monetary-policy authorities, provided that the information is necessary for said banks to meet their statutory obligations, including performance of monetary policy, monitoring of payment and securities management systems as well as safeguarding the stability of the financial system.
- 14) An institution which carries out clearing proceedings for securities or money, provided that such information is required to ensure that said institution reacts duly to non-compliance or potential non-compliance within the market where said institution is responsible for clearing proceedings.
- 15) The customs and tax authorities in cases covered by section 6d(2) of the Act on Tax Control ("*skattekontrolloven*").



16) The Supervisory Authority on Auditing and the disciplinary board for state-authorised public accountants and registered public accountants ("*Revisornævnet*") for the performance of their duties.

17) Ministers with responsibility for the financial legislation in other Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area, in connection with crisis management of an alternative investment fund manager.

18) The European Commission if this is regarding information mentioned in section 181(5). The European Securities and Markets Authority and the European Systemic Risk Board as well as bodies established by the such authorities, provided that the recipients of information need said information to perform their duties.

19) Financial supervisory authorities in other Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area which are responsible for the supervision of alternative investment fund managers and bodies involved in the liquidation, bankruptcy proceedings or similar procedures of the managers, and persons responsible for carrying out statutory audits of the financial statements of the managers provided that these recipients of information need it to perform their duties.

20) Financial supervisory authorities in third countries which are responsible for supervision of alternative investment fund managers and bodies involved in the liquidation, bankruptcy proceedings or similar proceedings of the managers, and persons responsible for carrying out statutory audits of the financial statements of the managers, cf., however, subsections (10) and (11).

**(8)** All those receiving confidential information from the Danish FSA under subsections (5)-(7) shall fall under the duty of confidentiality specified in subsection (1) with regard to said information.

**(9)** Confidential information received pursuant to subsection 7, no. 18, 2nd clause, may, notwithstanding the duty of confidentiality mentioned in subsection (8), directly be exchanged between the European Securities and Markets Authority on the one hand and the European Systemic Risk Board on the other hand and bodies established by said authorities.

**(10)** Information may only be divulged pursuant to subsection (7), no. 20

1) on the basis of an international cooperation agreement,

2) provided that the recipients are, at a minimum, subject to a statutory duty of confidentiality corresponding to the duty of confidentiality pursuant to subsection (1), and that the authorities receiving the information are subject to a duty of confidentiality to not disclose the information unless the Danish FSA has given written authorisation to the disclosure,

3) when the recipients need this information in order to perform their duties, and

4) when the conditions mentioned in Part 4 of the Act on Processing of Personal Data ("*lov om behandling af personoplysninger*") have been met.

**(11)** Confidential information from Member States of the European Union or countries with which the Union has entered into an agreement shall only be divulged pursuant to subsection (7), no. 20 where the authorities submitting said information have granted express permission to do so, and said information shall only be used for the purposes specified by said permission.

**171.-(1)** Supervision reactions made to an alternative investment fund manager pursuant to section 156(2), no. 1 and supervision reactions made following delegation from the Financial Council shall be made public stating the name of the manager, cf., however, subsection (3). The manager shall make this information public on its website in a place where it naturally belongs without delay and no later than three business days after the relevant manager has received notification on the supervision reaction, or no later than the time of publication required according to the Securities Trading etc. Act. At the time of publication, the relevant manager shall insert a link which provides direct access to the supervision reaction, on the home page of the relevant manager's website in a visible manner, and the link and any attached text shall clearly state that this is a supervision reaction from the Danish FSA. If the relevant manager comments on the supervision reaction, this shall be further to the reaction, and the comments shall be clearly separated from the supervision reaction. Removal of the link from the home page and the information from the website of the relevant manager shall take place according to the same principles as the relevant manager uses for other messages, however, the link and the information shall be available on the website for three months as a minimum and shall not be removed until after the first-coming general meeting at the earliest. The duty of alternative investment fund managers to publish on the website of the manager shall only apply to legal persons. The Danish FSA shall publish the information on the website of the authority. Supervision reactions made pursuant to section 156(2), no. 3 and decisions made by the Danish FSA to pass on cases for police investigation shall be made public on the website of the Danish FSA specifying the name of the manager, cf., however, subsection (3).

**(2)** If a case is passed on for police investigation and a conviction has been made in full or in part or a fine has been issued, the verdict, the fine or a summary hereof shall be made public, cf., however, subsection (3). If the verdict is not final, or if it has been appealed, this shall be stated in the publication. Publication made by the manager shall be on the website of the relevant manager in a place where it naturally belongs, as soon as possible and no later than ten business days after a verdict has been made or a fine has been issued, or no later than at the time of publication pursuant to the Securities Trading etc. Act. At the time of the publication, the relevant manager shall insert a link which provides direct access to the verdict, the fine or the summary on the home page of the relevant manager's website in a visible manner, and the link and any attached text shall clearly state that this is a verdict, fine or summary. If the relevant manager comments on the verdict, the fine or the summary, this shall take place further to this, and the comments shall be clearly separated from the verdict, the fine or the summary. Removal of the information from the home page and the information from the website of the relevant manager shall take place according to the same principles as the relevant manager uses for other messages, however, the link and the information shall be available on the website for three months as a minimum and shall not be removed until after the first-coming general meeting at the earliest. The relevant manager shall notify the Danish FSA about publication, and forward a copy of the verdict or the fine. The Danish FSA shall subsequently publish the verdict, the fine or a summary hereof on its website. The duty of

alternative investment fund managers to publish on the website of the manager shall only apply to legal persons.

**(3)** Publication pursuant to subsection (1) or subsection (2) may not, however, take place if it will mean disproportionate damage for the manager or the alternative investment fund, or issues relating to investigations make publication inadvisable. Publication may not contain confidential information about client relationships or information covered by the provisions in the Access to Public Administration Files Act on exemption of information about private relationships and operations or business matters, etc. Confidential information from financial supervisory authorities in third countries may not be divulged unless the authorities submitting said information have granted express permission to do so.

**(4)** If publication is omitted pursuant to subsection (3), 1st clause, publication pursuant to subsection (1) or subsection (2) shall be effected when the considerations necessitating omission no longer apply. This shall only apply, however, for up to two years after the supervision reaction was made.

**172.-(1)** The Danish FSA shall inform the public about cases dealt with by the Danish FSA, the prosecution service or the courts, and which are of public interest or of significance for interpretation of the following provisions:

- 1) good business practice, cf. section 18(1), no. 1, and executive orders issued in pursuance of section 18(3),
- 2) the independence of depositaries, cf. section 53.
- 3) agreements on placement of the funds of clients' portfolios and executive orders issued in pursuance hereof, cf. section 17.

**(2)** The Danish FSA shall furthermore inform the general public about the names of undertakings or persons omitting to apply for authorisation pursuant to section 11 or omitting to register pursuant to section 9(1).

**173.-(1)** Only an alternative investment fund manager against which a decision has been made by the Danish FSA under this Act or regulations laid down in pursuance of this Act shall be considered party in relation to the Danish FSA, cf., however, subsections (2) and (3).

**(2)** In the instances specified below, persons other than the manager shall also be considered a party to the decision made by the Danish FSA as regards the parts of the case which concern said person:

- 1) The parent undertaking of an alternative investment fund manager.
- 2) Undertakings with which a manager has special direct or indirect links, and where the supervisory authority may collect information and carry out inspection visits, cf. section 161(3).
- 3) Any person natural or legal of whom the Danish FSA requires information to determine whether said person falls within the scope of the provisions of this Act, cf. section 161(4).

- 4) Any person about whom the Danish FSA receives information in connection with approval under section 13(1) and (2).
  - 5) The intended acquirer or holder of a qualifying interest where the Danish FSA deals with cases on authorising acquisitions, cf. section 11(6).
  - 6) An auditor of a manager licensed to manage alternative investment funds where the Danish FSA requires said auditor to provide information about the circumstances of the manager.
  - 7) Any undertaking applying for registration, cf. section 9(1) or for a licence to manage alternative investment funds, cf. section 11.
  - 8) A member of the management of the alternative investment fund manager or a capital owner when the authority refuses to grant a licence or withdraws such licence in whole or in part, cf. section 11(3), nos. 3 and 4, and section 17.
  - 9) Undertakings which the Danish FSA finds have close links to an alternative investment fund manager where a licence is refused pursuant to section 11(3), no. 7, or withdrawn pursuant to section 17.
  - 10) An alternative investment fund where the Danish FSA makes a decision in a case regarding the manager managing the alternative investment fund with regard to circumstances directly pertaining to the fund.
  - 11) Any person managing alternative investment funds without being registered or licensed.
  - 12) Any person who violates the prohibition laid down in this Act on employing in the name or characterisation of an undertaking the words that are covered by the exclusive right of alternative investment fund managers to names, cf. section 5(2).
- (3)** A member of the supreme management body or the central management body, an auditor, a member of the board of management or other senior staff employees in an alternative investment fund manager shall also be considered a party where decisions made by the Danish FSA are directed specifically at said person.
- (4)** Any party which the Danish FSA considers as party to the case shall be considered as party in relation to decisions made by the Danish FSA pursuant to the regulations laid down in Part 9 of this Act and regulations issued in pursuance of section 61(7) and section 131.
- 174.-(1)** Where the Danish FSA ascertains that an alternative investment fund manager for which Denmark is the host country is in breach of the regulations in relation to which Denmark has responsibility for supervising compliance, including sections 18, 19 or 23, if they manage funds established in Denmark, or market funds in Denmark, the Danish FSA may order the manager to put an end to that breach. The Danish FSA shall also notify the competent authorities in the home country of the manager.
- (2)** Where a manager for which Denmark is the host country refuses to provide the Danish FSA with information requested by the Danish FSA pursuant to section 67(4), or fails to put an end to the breach following an order issued in pursuance of subsection (1), the Danish FSA shall notify the competent authorities in the home country of the manager.

**(3)** If, despite the measures taken by the competent authorities of the host country of the manager upon notification by the Danish FSA pursuant to subsections (1) and (2), an alternative investment fund manager continues to refuse to provide the information requested by the Danish FSA pursuant to section 67(4), or the manager upon the assessment of the Danish FSA, persists in breaching the legal or regulatory provisions applicable for Denmark, the Danish FSA may, after informing the competent authorities of the home country of the manager, take appropriate measures to prevent or penalise further irregularities or if necessary to prevent the manager from initiating any further transactions in Denmark.

**(4)** The Danish FSA may also order the manager to cease managing alternative investment funds in Denmark.

**175.-(1)** Where the Danish FSA has grounds for believing that the alternative investment fund manager for which Denmark is the host country is in breach of the obligations arising from rules in relation to which another Member State of the European Union or countries with which the Union has entered into an agreement for the financial area has responsibility for supervising compliance, the Danish FSA shall contact the authorities of the home country of the manager. The Danish FSA shall present the case to the responsible authorities with a view to ensuring that the authority take appropriate measures to clarify whether the regulations issued in pursuance of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers have been breached and so the authority can take appropriate measures subsequently.

**(2)** If despite the measures taken by the competent authorities in the host country of the manager upon notification by the Danish FSA pursuant to subsection (1), an alternative investment fund manager for which Denmark is the home country, persists in acting in a manner that is clearly prejudicial to the interests of the investors of the alternative investment funds marketed or managed in Denmark, the financial integrity or integrity of the financial market in Denmark, the Danish FSA may, after having notified the competent authorities of the home country State of the manager, take all appropriate measures to protect the interests of the investors of the relevant alternative investment funds, the financial stability or integrity of the financial markets in Denmark. The Danish FSA shall have the same authority if the measures taken by the competent authorities of the home country of the manager have proven insufficient or the authorities have failed to act within reasonable time.

**(3)** The Danish FSA may, in pursuance of subsection (2), prohibit the relevant manager from marketing units in the relevant alternative investment funds in Denmark.

**(4)** Subsections (1)-(3) shall apply correspondingly in the event that the Danish FSA has grounds for disagreement with the licence to manage alternative investment funds which a manager with registered office in a third country has obtained in another Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area.

**176.-(1)** If the Danish FSA receives notification from an authority in another Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area that a manager fails to comply with the legislation in such Member State or fails to provide the information requested, the Danish FSA shall take all appropriate measures

to ensure that the manager complies with legislation or provides the information. Furthermore, the Danish FSA may collect information from third countries for use in the case.

**(2)** The nature of the measures taken by the Danish FSA pursuant to subsection (1), 1st clause shall be communicated by the Danish FSA to the competent authorities of the host country of the manager.

**(3)** Where the Danish FSA receives notification from an authority in another Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area that the authority has clear and demonstrable grounds for believing that a manager is in breach of the obligations arising from the rules in relation to which the Danish FSA is responsible for supervising compliance, the Danish FSA shall take all appropriate measures, including, if necessary, request additional information from the relevant supervisory authorities in third countries for use in the case.

**177.** Where the Danish FSA considers that an alternative investment fund manager with its registered office in a third country for which Denmark is the country of reference, is in breach of its obligations under this Act, provisions issued in pursuance of this Act or provisions issued in a Member State of the European Union pursuant to Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, the Danish FSA shall notify the European Securities and Markets Authority setting out full reasons as soon as possible.

**178.-(1)** The Danish FSA may forward a copy of the relevant cooperation arrangements entered into by them in accordance with section 98, no. 1, section 117, no. 1 and section 128(2), no. 1 to the financial supervisory authorities in other Member State of the European Union or in countries with which the Union has entered into an agreement for the financial area which are host countries for managers with Denmark as their home country.

**(2)** The Danish FSA may, in accordance with procedures relating to the applicable regulatory technical standards referred to in Article 35(14), Article 37(17) or Article 40(14) of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, forward the information received by the Danish FSA from third-country supervisory authorities in accordance with cooperation arrangements with such supervisory authorities in respect of a manager to the competent authorities of the host country of the manager concerned.

**179.-(1)** Where the stability of systemically important financial institutions or the integrity of markets is threatened by the activities of one or more alternative investment fund managers, the Danish FSA shall notify the financial supervisory authorities of other Member States of the European Union. The Danish FSA shall forward the information necessary to the authorities where this is relevant for monitoring and responding to the potential implications of the activities of the managers.

**(2)** Upon disclosure of information by the Danish FSA to an authority pursuant to subsection (1), the Danish FSA shall also disclose the information to the European Securities and Markets Authority and the European Systemic Risk Board.

**(3)** Subject to Article 35 of Regulation (EU) no. 1095/2010, the Danish FSA shall forward aggregated information relating to the activities of the managers under their responsibility to the European Securities and Markets Authority and the European Systemic Risk Board.

## **Part 25**

*Collaboration with the European Securities and Markets Authority and the possibilities of the Danish FSA and other competent authorities to bring cases before the European Securities and Markets Authority*

**180.-(1)** The Danish FSA may bring a case before the European Securities and Markets Authority in the following instances:

- 1) Where the Danish FSA disagrees with the assessment made by another competent authority that a condition in Article 21(6), points a), c) and e) of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers is complied with through marketing of an alternative investment fund with a depositary established in a third country.
- 2) Where the Danish FSA disagrees with the assessment made by another competent authority that appropriate collaboration arrangements have been made between the competent authorities of the home country of the manager which is 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 authorities of the third country where the alternative investment fund has been established.
- 3) Where the Danish FSA disagrees with the assessment made by another competent authority about determination of the manager's proper country of reference, where the Danish FSA deems that the assessment made by the competent authority of the country of reference of the manager is in breach of the criteria or procedures of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers in this respect.
- 4) Where the Danish FSA disagrees with the assessment made by another competent authority of which Member State of the European Union or country with which the Union has entered into an agreement for the financial area is the proper country of reference in connection with the manager's change of country of reference within two years after the manager has been granted a licence to manage alternative investment funds.
- 5) Where the Danish FSA disagrees with the assessment made by another competent authority of whether the manager has a legal representative established in its country of reference.
- 6) Where the Danish FSA disagrees with the assessment made by another competent authority of whether the legal representative is actually a contact person or has the competences and resources necessary to ensure that the manager complies with the requirements laid down by acts and regulations issued in pursuance hereof concerning the activities for which the manager is applying for a licence.
- 7) Where the Danish FSA disagrees with the assessment made by another competent authority as to whether the effective exercise by the Danish FSA or the competent authorities of their supervisory functions is prevented by the laws or administrative provisions of a third country

governing the manager which has been licensed to market alternative investment funds or exercise management activities or limited by the constrained powers of that third country's supervisory authorities.

8) Where the Danish FSA disagrees with the assessment of another competent authority that appropriate cooperation arrangements have been made for each alternative investment fund from a third country and the competent authorities.

9) Where the Danish FSA disagrees with the assessment of another competent authority that third countries wherein an alternative investment fund is established and which the manager is planning to market in a Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area are listed as Non-Cooperative Countries and Territories by the Financial Action Task Force.

10) Where the Danish FSA disagrees with the assessment of another competent authority that the third country where the manager has its registered office is listed as a Non-Cooperative Country and Territory by the Financial Action Task Force.

11) Where the Danish FSA disagrees with the assessment of another competent authority that a manager may omit to comply with part of the legislation implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

12) Where the content of a cooperation arrangement received by the Danish FSA from other financial supervisory authorities within the European Union or countries with which the Union has entered into an agreement for the financial area fails to comply with the requirements laid down in the applicable regulatory technical standards set forth pursuant to Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

13) Where the Danish FSA disagrees with a measure taken by a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area pursuant to Article 45(4)-(9) of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

14) Where the Danish FSA believes that a manager which has been assigned Denmark as its country of reference and which has been licensed to manage alternative investment funds should not have been granted a licence, including where the Danish FSA believes that the assessment of the competent authority that the conditions in Article 40(2), a and b of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers have been met, is wrong.

15) Where the Danish FSA disagrees with a decision made by another competent authority according to which a manager has been granted a licence to manage alternative investment funds by the relevant authority.

16) Where a competent authority in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area refuses a request for exchange of information pursuant to Article 35(15), Article 37(19) and Article 40(15) of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.



17) Where one of the competent authorities of an alternative investment fund from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area has not entered into a cooperation arrangement within reasonable time, as required pursuant to this Act, and where Denmark is the country of reference of the manager.

18) Where the Danish FSA disagrees with the assessment made by another competent authority that appropriate cooperation arrangements exist between the competent authorities in the country of reference of the manager, the competent authorities in the home country of the affected alternative investment funds which are 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 authorities of the third country where the manager has its registered office.

19) Where there is a discrepancy between the Danish FSA and the financial supervisory authorities in Member States of the European Union or countries with which the Union has entered into an agreement for the financial area about an assessment, measure or omission in areas which require cooperation between the supervisory authorities according to Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers

**(2)** In pursuance of the provisions to this effect in Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, a competent authority from another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, may instigate proceedings before the European Securities and Markets Authority in the following instances:

1) Where the competent authority disagrees with an assessment made by the Danish FSA that a condition in section 49, nos. 1, 2, 4 or 7 has been met in the case of marketing of an alternative investment fund which has a depositary established in a third country.

2) If the competent authority disagrees with an assessment made by the Danish FSA that appropriate cooperation arrangements exist between the Danish FSA and the authorities of the third country where the alternative investment fund is established, if the Danish FSA is the home country of the manager.

3) Where the competent authority disagrees with an assessment made by the Danish FSA about determination of the manager's proper country of reference where the competent authority assesses that the assessment made by the Danish FSA on the manager's country of reference contravenes with the criteria or procedures of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

4) Where the competent authority disagrees with an assessment of the Danish FSA about determination of which Member State of the European Union or country with which the Union has entered into an agreement for the financial area is the proper country of reference in connection with the manager's change of country of reference within two years after the manager has been granted a licence to manage alternative investment funds, cf. section 121.

5) Where the competent authority disagrees with an assessment made by the Danish FSA that the manager has a legal representative established in Denmark, cf. section 118(1) and (2).

6) Where the competent authority disagrees with an assessment made by the Danish FSA that the legal representative is in fact the contact person or has the competences and resources required to ensure that the manager complies with the requirements laid down in laws and regulations issued in pursuance hereof concerning the activities for which the manager is applying for a licence, cf. section 118(2) and (4)

7) Where the competent authority disagrees with an assessment made by the Danish FSA that the effective performance by the Danish FSA or the competent authority of their supervisory functions is prevented by law and administrative provisions in a third country governing a manager from a third country licensed to market alternative investment funds or exercise management activities, or by limitations in the powers of the supervisory authorities of the third country concerned, cf. section 117, no. 4.

8) Where the competent authority disagrees with an assessment made by the Danish FSA that appropriate cooperation arrangements exist for each alternative investment fund which is from a third country, cf. section 96(1), no. 2, section 98, no. 1, section 109, no. 3, section 117, no. 1 and section 130(3).

9) Where the competent authority disagrees with an assessment made by the Danish FSA that third countries in which an alternative investment fund has been established where the manager is planning to market in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area are listed as Non-Cooperative Countries and Territories by the Financial Action Task Force, cf. section 98, no. 2, section 109, no. 4, section 117, no. 2 and section 130(4).

10) Where the competent authority disagrees with an assessment made by the Danish FSA that the third country in which a manager has its registered office is listed as a Non-Cooperative Country and Territory by the Financial Action Task Force.

11) Where the competent authority disagrees with an assessment made by the Danish FSA that a manager may omit to comply with part of the legislation implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, cf. section 120.

12) Where the competent authority believes that the content of a cooperation arrangement received by the authority from the Danish FSA fails to comply with the requirements of the applicable regulatory technical standards stipulated according to section 178(2).

13) Where the competent authority disagrees with a measure taken by the Danish FSA in pursuance of sections 174-176.

14) Where the competent authority believes that a manager which has been allocated Denmark as its country of reference and which has been licensed to manage alternative investment funds should not have been granted a licence, including where the competent authority believes that the assessment made by the Danish FSA that the conditions in section 117, nos. 1, 2 and 4, section 118(1)-(3) and section 119 have been met, is wrong.

15) Where there is disagreement about a decision made by the Danish FSA pursuant to section 11(2), cf. section 116.

16) Where the Danish FSA refuses a request for exchange of information.

17) Where the Danish FSA fails to enter into a cooperation arrangement within a reasonable time limit pursuant to Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

18) Where the competent authorities in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area disagree with an assessment made by the Danish FSA that appropriate cooperation arrangements exist between the Danish FSA, the competent authorities of the home country of the affected alternative investment funds and the supervisory authorities of the country where the manager has its registered office, cf. section 117, no. 1.

19) Where there are discrepancies between the competent authorities and the Danish FSA on an assessment, measure or omission in areas which require cooperation between the supervisory authorities according to Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

**181.-(1)** The Danish FSA shall, without undue delay, inform the European Securities and Markets Authority of the outcome of the initial authorisation process for managers with their registered office in a third country and about any changes in the licences of such managers, including withdrawal hereof. The Danish FSA shall inform the European Securities and Markets Authority about the applications for a licence from managers with their registered office in third countries that the Danish FSA has rejected, including provide information about the manager and the grounds for the rejection.

**(2)** The Danish FSA shall, on a quarterly basis, inform the European Securities and Markets Authority of other licences to manage alternative investment funds granted or withdrawn in accordance with this Act.

**(3)** The Danish FSA shall, on a quarterly basis, forward information to the European Securities and Markets Authority about the alternative investment fund managers which are subject to supervision by the Danish FSA, and which are managing or marketing alternative investment funds domiciled in another country, and about marketing by managers with registered offices in a third country of funds in Denmark pursuant to section 130. The Danish FSA shall provide the information necessary in order for the European Securities and Markets Authority to be able to assess whether the arrangement about cross-border marketing and management of alternative investment funds by alternative investment fund managers from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, is functioning. The Danish FSA shall provide the European Securities and Markets Authority with such information until the European Securities and Markets Authority issues an opinion according to Article 67(1)a of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

**(4)** The Danish FSA shall annually provide the European Commission with the information mentioned in subsection (5) on the alternative investment fund managers from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area managing or marketing alternative investment funds under supervision

by the Danish FSA. The Danish FSA shall furthermore inform the European Commission about the date on which the passport has been implemented and, if relevant, applied in Denmark.

**(5)** The information mentioned in subsection (4) shall include information on

- 1) where the managers concerned have their registered office,
- 2) the alternative investment funds from Member States of the European Union or countries with which the Union has entered into an agreement for the financial area which are managed or marketed by the managers,
- 3) the alternative investment funds from a third country which are managed by a manager from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area but which are not marketed in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area,
- 4) identification of the alternative investment funds from a third country which are managed by a manager from a Member State of the European Union or countries with which the Union has entered into an agreement for the financial area, and which are marketed in Denmark,
- 5) the legal basis according to which the managers carry out their activities, and
- 6) conditions which are relevant in order to understand how the managers' management and marketing of alternative investment funds in Member States of the European Union or countries with which the Union has entered into an agreement for the financial area, function in practice.

**(6)** The Danish FSA shall, on a quarterly basis, provide the European Securities and Markets Authority with information about the alternative investment fund managers subject to supervision by the Danish FSA, and which manage or market alternative investment funds from another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, or in a third country. The Danish FSA shall inform the European Securities and Markets Authority until the issuance of an opinion by the European Securities and Markets Authority pursuant to Article 68(1), point (a) of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

**182.-(1)** In accordance with the regulations in Article 47 of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, if the European Securities and Markets Authority makes a request, the Danish FSA may

- 1) prohibit the marketing in Denmark of units in alternative investment funds from a third country,
- 2) prohibit the marketing in Denmark of units in alternative investment funds managed by a manager with its registered office in a third country,
- 3) impose restrictions on managers with their registered office in a third country relating to the management of an alternative investment fund in case of excessive concentration of risk in a specific market on a cross-border basis, and

4) impose restrictions on managers with their registered office in a third country relating to the management of alternative investment funds where their activities potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions.

**(2)** The Danish FSA may request the European Securities and Markets Authority to reconsider its decisions according to Article 47 of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.

#### *Time limits*

**183.-(1)** The time limits fixed in or pursuant to this Act shall take effect from the day following the day when the event triggering the time limit occurred. This shall apply to the calculation of time limits involving days, weeks, months, and years.

**(2)** Where the time limit is indicated in weeks, said time limit shall expire on the day in the week when the event occasioning the time limit occurred, cf. subsection (1).

**(3)** If the time limit is indicated in months it shall expire on the day in the month when the event triggering the time limit occurred, cf. subsection (1). If the day when the event occasioning the time limit occurred is the last day of a month or if the time limit expires on a date which does not exist, the time limit shall always expire on the last day of the month, irrespective of its length.

**(4)** Where the time limit is indicated in years, said time limit shall expire on the day in the year when the event occasioning the time limit occurred, cf. subsection (1).

**(5)** If a time limit expires during a weekend, on a holiday, 5 June, 24 December or on 31 December, the time limit shall be extended to the next business day.

### **Part 26**

#### *Fees and compulsory digitalisation*

**184.** Alternative investment fund managers which are licensed to manage alternative investment funds pursuant to section 11, managers with Denmark as their country of reference which have been licensed pursuant to section 11, cf. section 111(2), 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 which market one or more alternative investment funds in Denmark or manage one or more alternative investment funds established in Denmark, as well as managers from a third country which have been licensed pursuant to section 130(1) shall pay fees to the Danish FSA. The fee shall be set pursuant to Part 22 of the Financial Business Act.

**185.-(1)** The Minister for Business and Growth may lay down regulations stipulating that communication to and from the Danish FSA and to and from the Danish Business Authority about circumstances covered by this Act or regulations issued in pursuance of this Act, shall be digital.

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**(2)** The Minister for Business and Growth may lay down more detailed regulations regarding digital communication, including the use of specific IT systems, special digital formats and digital signatures, or similar.

**(3)** A digital notification shall be considered to have arrived when it is available to the addressee.

**186.-(1)** The Minister for Business and Growth may lay down regulations stipulating that the Danish FSA and the Danish Business Authority may issue decisions and other documents according to this Act or regulations issued in pursuance of this Act without a signature, with a digital or similarly provided signature or by means of a technique that clearly identifies the person who has issued the decision or document. Such decisions and documents shall be equivalent to decisions and documents with a personal signature.

**(2)** The Minister for Business and Growth may lay down regulations to the effect that decisions and other documents which are exclusively made or issued on the basis of electronic data processing be issued solely with specification of the Danish FSA or the Danish Business Authority as the sender.

**187.-(1)** Where this Act or regulations issued in pursuance of this Act require a document issued by other parties than the Danish FSA or the Danish Business Authority to be signed, such requirement may be satisfied by use of a technique which clearly identifies the person who has issued the document, cf., however, subsection (2). Such documents shall be equivalent to documents with a personal signature.

**(2)** The Minister for Business and Growth may lay down more detailed regulations regarding deviation from the signatory requirement. This includes that requirements for a personal signature may not be deviated from for certain types of documents.

## **X**

### **Penalties, entry into force and transitional provisions, etc.**

#### **Part 27**

##### *Provisions concerning delegation and appeals*

**188.** If the Minister for Business and Growth delegates his powers under this Act to the Danish FSA, the Minister may lay down regulations concerning the right of appeal, including regulations to the effect that appeals cannot be made to another administrative authority.

**189.** Decisions made by the Danish FSA or the Danish Business Authority under this Act or regulations issued pursuant to this Act may be brought before the Danish Company Appeals Board by the against whom said decision is directed no later than four weeks after the person concerned has been notified about the decision.

#### **Part 28**

##### *Penalties*

**190.-(1)** Any person violating section 4(2), 1st clause; section 5(1)-(3), subsection (4), 1st clause and (5); section 6(1); section 8(1) and (4); section 9(1)-(3); section 10(1); section 11(1); section 13(1); section 15(1); section 16(1), (2), 1st clause, (4), 1st and 3rd clause, and (5) and (7); section 18(1) and (2); section 19; section 23(1)-(5); section 24(1)-(6); section 25(1)-(3); section 27(1) and (2); sections 29 and 30; section 31(3) and (4); section 32(1); section 33; section 34(1); section 36(1) and (2); sections 38-41; section 42(2); sections 43, 45 and 50-53; section 54(1), subsections (4) and (5); section 59; section 61(1)-(5); section 62(1) and (2); sections 64 and 65; section 67(1)-(5); section 68(1)-(3); sections 72-74; section 75(1); section 77; section 79(1); section 81; section 86(1); section 88(1); section 93(1); section 95; section 96(1); sections 98 and 99; section 101(1); section 106(1); section 108(1); section 109, no. 2, 2nd clause; section 111, section 118(1) and (4); section 121(1)-(3); section 123(1); section 127; section 128(1) and (10); section 129(1); section 134(6), 1st and 2nd clauses; section 135(1); section 136(4); section 137(4); section 138; section 139(2), 1st clause; section 141(1)-(5); section 146(1), 2nd clause and section 149(1), 2nd clause shall be liable to a fine or imprisonment for up to four months unless more severe punishment is incurred under other legislation.

**(2)** Violation of section 20(1)-(7) and (9); section 21(1), (2), 2nd clause and subsections (3) and (4); section 22(1)-(3); section 28(1), no. 1 and subsection (2), no. 1; section 163(3), (5) and (6) and section 171(1), 1st-5th clause, and subsection (2), 1st-7th clause shall be liable to a fine.

**(3)** Any alternative investment fund manager violating an order or prohibition issued in pursuance of section 4(1), 2nd clause; section 34(2); section 69(4); section 79(2) and (3); section 86(2) and (3); section 93(2) and (3); section 101(2) and (3); section 106(2) and (3); section 122(1); section 126(9) and (10); section 128(11) and (2); section 164(2), 1st clause; section 167; section 174(4) and section 175(3) shall be liable to a fine. Any person who fails to comply with an order issued pursuant to section 163(1), 1st clause and section 168(2), and subsection (3), 3rd clause shall be liable to a fine.

**(4)** Violation of the provisions in regulations issued pursuant to section 3(9); section 5(7) and (8), subsections (5) and (6); section 9(4); section 10(3); section 11(7); section 16(8) and (9); section 18(2); section 20(11); section 22(4); section 23(6); section 24(7); section 25(4); section 26; section 27(3); section 32(3); sections 37-44 and 60; section 61(7); section 62(3); section 66; section 67(6); section 68(4); section 69(8); sections 80 and 87; section 88(2); section 94; section 96(2); section 107; section 108(2); section 110; section 119(3); section 120(5); section 123(2); section 126(12); section 128(14); section 129(2); section 130(5); section 131(6); section 132; section 148(5); section 152(4); section 160(5); section 185(2); section 186; section 187(2) and section 188 may be liable to a fine or imprisonment for up to four months.

**(5)** The Danish FSA may stipulate fines for any violation of the provisions included in the Regulations from the European Union in the areas of legislation with which the Danish FSA carries out supervision.

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

**(7)** If a member of the management of an alternative investment fund manager omits to take the steps necessary in the event of losses or imminent danger of material losses, such member shall be liable to a fine or imprisonment for up to four months unless more severe penalty is incurred under other legislation.

**(8)** Persons who are connected to an alternative investment fund manager and who submit incorrect or misleading information on matters pertaining to the manager to the public authorities, the general public, any company body, or to investors in said manager, or in an alternative investment fund managed by the manager, or who are guilty of gross or repeated negligence or carelessness which may entail losses for the manager or investors in an alternative investment fund managed by the manager shall be liable to a fine or imprisonment for up to four months unless more severe penalty is incurred under other legislation.

**(9)** The period of limitation for criminal liability for violation of the provisions of this Act or regulations issued pursuant to this Act shall be five years.

**191.-(1)** If an alternative investment fund manager omits to promptly fulfil the obligations to the Danish FSA imposed on the manager pursuant to section 5(1) and (5), section 10(1), section 11(1), section 61(2), no. 2, section 67(1)-(5), section 68(1)-(3) and section 73(1), no. 3 and subsection (6), or if a depositary omits to promptly fulfil the obligations to the Danish FSA imposed on the depositary pursuant to section 59, the Danish FSA may, as a coercive measure, impose daily or weekly fines on the parties concerned.

**(2)** If a natural or legal person omits to fulfil the obligations consequential upon section 161(3) and (4), the Danish FSA may, as a coercive measure, impose daily or weekly fines on the natural and legal person or on the persons responsible for said legal person.

**(3)** If an alternative investment fund manager omits to comply with an order issued pursuant to section 168(1) and (3), 1st clause, the Danish FSA may order the members of the supreme management body to pay daily or weekly default fines.

**(4)** If an alternative investment fund manager which has issued securities admitted to trading on a regulated market fails to meet its obligations under the provisions of section 131, the Danish FSA may order the relevant manager to rectify the matter and to make public amended or supplementary information. If deemed appropriate, the Danish FSA itself may make public the relevant information or the order, or suspend or remove the securities involved from trading on a regulated market.

**(5)** An alternative investment fund manager not complying with an order issued by the Danish FSA or giving incorrect or misleading information to the Danish FSA on the tasks of the authority pursuant to subsection (4) shall be liable to a fine, provided that the offence does not carry a more severe penalty under other legislation.

**(6)** Subsections (1)-(3) shall apply correspondingly to the Danish FSA with regard to the authority's inspection according to section 155(1), 2nd clause.

**(7)** In regulations issued pursuant to this Act establishing obligations for alternative investment fund managers or other natural or legal persons covered by this Act, provisions



may be laid down to the effect that the Danish FSA, as a coercive measure, may impose daily or weekly fines.

## **Part 29**

### *Entry into force, transitional provisions, amendments to other legislation and territorial validity*

#### *Entry into force*

**192.-(1)** This Act shall enter into force on 22 July 2013, cf. however, subsections (2) and (3).

**(2)** Section 28 and section 197, no. 5 shall enter into force on 22 July 2014.

**(3)** The Minister for Business and Growth shall lay down the date of entry into force of sections 97-108 and sections 111-129, section 181(6) and section 197, no. 8.

**(4)** Section 20 shall apply to agreements made by alternative investment fund managers that are entered into, prolonged or renewed after the entry into force of this Act.

**(5)** Sections 21 and 22 shall first take effect for the individual alternative investment fund manager from the first general meeting or similar after entry into force of this Act.

#### *Transitional provisions*

**193.-(1)** Undertakings carrying out activities on 22 July 2013 and which will be covered by the provisions of this Act regarding alternative investment fund managers may continue their activities until 22 July 2014. Such undertakings shall take all necessary steps to organise their activities to comply with the regulations of this Act regarding alternative investment fund managers, and submit an application for a licence or be registered before 22 July 2014. The undertaking may then continue its activities in Denmark without a licence until the Danish FSA has made a decision regarding the application.

**(2)** For undertakings carrying out activities on 22 July 2013 and which will be covered by the provisions of this Act regarding alternative investment fund managers, section 11(3), no. 2, cf. section 13, shall not apply with regard to application for a licence.

**194.** Parts 13 and 14 of this Act shall not apply to marketing of units in alternative investment funds covered by a current offer to the public under a prospectus published before 22 July 2013 in accordance with the regulations implementing Directive 2003/71/EC of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading for the duration of validity of that prospectus.

**195.** Undertakings which before 22 July 2013 manage close-ended alternative investment funds may continue management of such alternative investment funds without a licence under this Act, provided that such alternative investment funds do not make further investments after 22 July 2013.

**196.** Undertakings managing close-ended alternative investment funds where the subscription period for investors has expired before 22 July 2013 and which were established with expiry no later than 22 July 2016 may continue managing such alternative investment funds without

having to submit an application for a licence to manage alternative investment funds and without complying with the regulations of this Act except for the regulations in Part 9, and where relevant, Part 12.

*Amendments to other legislation*

**197.** The Financial Business Act, cf. Consolidating Act no. 705 of 25 June 2012 as amended by e.g. section 2 of Act no. 512 of 17 June 2008, section 2 of Act no. 557 of 18 June 2012 and section 1 of Act no. 1287 of 19 December 2012 and most recently, section 3 of Act no. 378 of 17 April 2013, shall be amended as follows:

**1.** In the *footnote* of the title of this Act »Directive 2010/76/EC of the European Parliament and of the Council of 24 November 2010 amending Directive 2006/48/EC and 2006/49/EC as regards capital requirements for the trading portfolio and for re-securitisations, and the supervisory review of remuneration (CRD III), Official Journal 2010, no. L 329, p. 3« shall be amended to: »Directive 2010/76/EC of 24 November 2010 of the European Parliament and of the Council amending Directive 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration (CRD III), Official Journal 2010, no. L 329, p. 3 and parts of Directive 2011/61/EU of 8 June 2011 of the European Parliament and of the Council on alternative investment fund managers and amending Directive 2003/41/EC and 2009/65/EC as well as Regulation (EC) no. 1060/2009 and (EU) no. 1095/2010, Official Journal no. L 174, p. 1«.

**2.** After section 10, the following shall be inserted:

»**10.a.** An investment management company may, in addition to the activities which the company may carry out according to this Act, manage one or more alternative investment funds if the company has obtained a licence pursuant to section 11 of the Alternative Investment Fund Managers etc. Act.«

**3.** In *section 77c(2), 1st clause* »or section 21(1) of the Alternative Investment Fund Managers etc. Act« shall be inserted after »(1)«.

**4.** In *section 360(2)* »section 361(1), no. 20« shall be amended to »section 361(1), no. 19«.

**5.** *Section 361(1), no. 19* shall be repealed.

Nos. 20-22 shall hereafter become nos. 19-21.

**6.** *Section 361(1), no. 22* which becomes 21 shall be repealed.

Nos. 23-32 shall hereafter become nos. 21-30.

**7.** *Section 361(1), nos. 31 and 32* which become nos. 29 and 30 shall be repealed and replaced by:

» 29) Central counterparties with authorisation, cf. Article 14 of Regulation no. 2012/648 of the European Parliament and of the Council of 4 July 2012 (the EMIR regulation), cf. section 83(1) of the Securities Trading etc. Act shall pay DKK 387,250 per annum.

30) Foreign alternative investment fund managers 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 foreign alternative investment fund managers from a third country which has Denmark as its country of reference which have been granted a licence to manage Danish alternative investment funds shall pay DKK 20,000 per annum.

31) Foreign alternative investment fund managers which have been granted a licence to market a foreign alternative investment fund in Denmark shall pay DKK 2,000 per annum per alternative investment fund plus DKK 2,000 per compartment.

32) Approved foreign clearing centres, cf. section 8a of the Securities Trading etc. Act shall pay DKK 68,150 per annum.«

**8.** *Section 361(1), no. 32* shall be repealed.

**9.** *Section 362(2)* shall be worded as follows:

»**(2)** Investment management companies shall pay 10.5 % annually of their expenses for wages, commission and performance-related bonuses. Alternative investment fund managers with their registered office in Denmark which have been licensed to manage alternative investment funds shall pay 10.5 % per annum of their expenses for wages, commission and performance-related bonuses. A minimum fee of DKK 20,000 shall always be imposed.«

**10.** *Section 362(4)* shall be repealed.

**11.** *Section 367* shall be worded as follows:

»**367.-(1)** Danish UCITS and alternative investment fund managers licensed to manage alternative investment funds shall pay 4.4% per annum of the difference between the expenses of the Danish FSA and the fees paid in pursuance of sections 361 and 362.

**(2)** The fee shall be distributed between the undertakings as DKK 10,000 per Danish UCITS and as DKK 10,000 per alternative investment fund managed or marketed by a manager licensed to manage alternative investment funds, cf. section 184 of the Alternative Investment Fund Managers etc. Act. Furthermore, Danish UCITS shall pay DKK 3,000 per compartment in each UCITS and alternative investment fund managers licensed to manage alternative investment funds shall pay DKK 2,000 per compartment in each alternative investment fund. The remaining fee shall be distributed in relation to the unit of the individual undertaking of the total assets of the undertakings covered by subsection (1).«

**198.** The Certain Commercial Undertakings Act, cf. Consolidating Act no. 559 of 19 May 2010 as amended by section 1 of Act no. 616 of 14 June 2011, section 3 of Act no. 1231 of 18 December 2012 and section 2 of Act no. 1383 of 23 December 2012 shall be amended as follows:

**1.** In *section 1(2), 1st clause* »or the Corporate Funds Act« shall be amended to », the Corporate Funds Act or sections 133-154 of the Alternative Investment Fund Managers etc. Act«.

**199.** The Guarantee Fund for Depositors and Investors Act, cf. Consolidating Act no. 133 of 22 February 2011 as amended most recently by section 49 of Act no. 1231 of 18 December 2012 shall be amended as follows:

**1.** *Section 3(1)* shall be worded as follows:

»The following institutions shall join and pay contributions to the Fund:

1) Banks.

2) Mortgage-credit institutions.

3) Investment firms and investment management companies as regards the part of the activity of the companies covered by a licence under section 10(2) of the Financial Business Act.

4) Alternative investment fund managers with a licence under section 11 of the Alternative Investment Fund Managers etc. Act as regards those of the activities of the managers covered by Annex 1, no. 3 of the Alternative Investment Fund Managers etc. Act.

5) Branches in Denmark of credit institutions and investment companies with registered office in a Member State of the European Union except for countries with which the Union has entered into an agreement for the financial area.«

**2.** In *section 4, 1st clause* »and investment management companies« shall be amended to », investment management companies and alternative investment fund managers«.

**3.** In *section 5(4)* »and 4« shall be inserted after »section 3(1), no. 3«.

**4.** In *section 5(6) and section 9(1)* »section 3(1), no. 4« shall be amended to »section 3(1), no. 5«.

**5.** In *section 10* »section 3(1), nos. 2 and 3« shall be amended to »section 3(1), nos. 2-4« and »section 3(1), no. 4« shall be amended to »section 3(1), no. 5«.

**6.** In *section 18(2)* »and 4« shall be inserted after »section 3(1), no. 1«.

**200.** The Securities Trading etc. Act, cf. Consolidating Act no. 219 of 20 February 2013 as amended by section 2 of Act no. 155 of 28 February 2012, section 2 of Act no. 1287 of 19 December 2012 and section 8 of Act no. 1383 of 23 December 2012 shall be amended as follows:

**1.** In *section 83(2), 1st clause* », in regulations issued pursuant to section 131 of the Alternative Investment Fund Managers etc. Act« shall be inserted after »sections 63 and 64 of the Investment Associations etc. Act«.

**201.** Act no. 1287 of 19 December 2012 amending the Financial Business Act, the Securities Trading etc. Act, the Payment Services and Electronic Money Act and various other acts (Disclosure of information to the prosecution and police, establishment of the Systemic Risk Council, amalgamation of the Financial Business Council and the Danish Securities Council,

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shortselling, new approach to enforcement of solvency requirements and establishment of supervision of reference centres, etc.) shall be amended as follows:

**1. Section 1, no. 49 shall be repealed.**

*The Faeroe Islands and Greenland*

**202.** This Act shall not apply to the Faeroe Islands and Greenland, but may by Royal Decree be brought fully or partially into force for these parts of the Realm subject to any variations necessitated by the conditions prevailing in the Faeroe Islands and Greenland.

*Christiansborg Slot, 12 June 2013*

Under our Royal Hand and Seal

MARGRETHE R.

/ Annette Vilhelmsen

## **Annex 1**

### **The functions for which alternative investment fund managers may be issued a licence**

- 1) Investment management functions which a manager shall at least perform when managing an alternative investment fund:
  - a) Portfolio management.
  - b) Risk management.
- 2) Other functions that a manager shall perform in the course of collective management of an alternative investment fund:
  - a) Administration, including:
    - i) Legal and fund management and accounting services.
    - ii) Customer inquiries.
    - iii) Valuation and pricing, including tax returns.
    - iv) Regulatory compliance monitoring.

- v) Maintenance of unit-/shareholder register.
    - vi) Distribution of dividend.
    - (vii) Issuance and redemption of units and shares.
    - viii) Contract settlements, including certificate dispatch.
    - ix) Record-keeping.
  - b) Marketing.
  - c) Activities related to the assets of the alternative investment fund, i.e. services necessary to meet the fiduciary duties of the manager, facilities management, real property administration activities, advice to undertakings on capital structure, business strategy and related issues, advice and services connected to mergers and acquisitions of undertakings and other services connected to the management of the alternative investment fund and the companies and other assets in which it has invested.
- 3) Further functions for which a manager can be licensed:
- a) Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provisions in accordance with the regulations implementing Article 19(1) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, in accordance with mandates given by investors on a discretionary, client-by-client basis.
  - b) Non-core services comprising:
    - i) investment advice,
    - ii) safe-keeping and administration in relation to shares or units of collective investment undertakings, or
    - iii) reception and transmission of orders in relation to financial instruments.