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Executive Order on Authorising Managers of Alternative Investment Funds from a Third Country to Market Alternative Investment Funds from a Member State of the European Union or a Country with which the EU has Concluded an Agreement in the Financial Field in Denmark

Executive Order no. 403 of 28 April 2014

Pursuant to section 130(5) and section 190(4) of Act no. 598 of 12 June 2013 on Alternative Investment Fund Managers, etc., as amended by Act no. 268 of 25 March 2014 and Act no. 403 of 28 April 2014, the following is established:

Scope

1.-(1) This Executive Order applies to alternative investment fund managers with their registered office in a third country which have been authorised to manage alternative investment funds established in a Member State of the European Union, or in a country with which the EU has concluded an agreement in the financial field, and which intend to market units in these alternative investment funds to professional investors in Denmark.

Definitions

2.-(1) For the purpose of this Executive Order:

- 1) Alternative investment fund means an entity as defined in
 - a) section 3(1), no. 1 of the Alternative Investment Fund Managers, etc. Act as well as rules issued pursuant to section 3(9) of the Alternative Investment Fund Managers, etc. Act, or
 - b) rules implementing Article 4(1)a of Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers.
- 2) Retail investor means an investor as defined in section 3(1), no. 40 of the Alternative Investment Fund Managers, etc. Act.
- 3) Alternative investment fund manager means an entity as defined in section 3(1), no. 3 of the Alternative Investment Fund Managers, etc. Act.
- 4) Professional investor means an investor as defined in section 3(1), no. 37 of the Alternative Investment Fund Managers, etc. Act.

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5) Third country means a country as defined in section 3(1), no. 32 of the Alternative Investment Fund Managers, etc. Act.

Application

3.-(1) An alternative investment fund manager from a third country intending to market units in an alternative investment fund with registered office in a Member State of the European Union, or a country with which the EU has concluded an agreement in the financial area, to professional investors in Denmark must apply for authorisation from the Danish Financial Supervisory Authority.

(2) The application must include the following:

- 1) Documentation that the manager is authorised to manage the alternative investment fund.
- 2) A programme of operations clearly identifying the alternative investment fund that the manager intends to market, and information on the country in which the alternative investment fund has its registered office.
- 3) Fund rules, articles of association or other articles of establishment for the alternative investment fund.
- 4) The information available to investors on the alternative investment fund, cf. section 62 of the Alternative Investment Fund Managers, etc. Act, such as a prospectus or similar documents.
- 5) Information on the arrangements established to prevent units in the alternative investment fund from being marketed to retail investors, including when the alternative investment fund relies on independent entities to provide investment services in connection with the marketing of the fund.
- 6) The name and address of the depositary of the alternative investment fund.
- 7) The most recent annual report, unless the alternative investment fund has not yet operated for a full accounting period, and any interim report.
- 8) Application form from the Danish Financial Supervisory Authority for authorisation for managers from a third country to market alternative investment funds with registered office in a Member State of the European Union or a country with which the EU has concluded an agreement in the financial field, including
 - a) the name and address of both the alternative investment fund and the manager,
 - b) information on the measures that the manager intends to take in Denmark with a view to securing the investors' rights to receive dividends and redeem units,
 - c) details of the information that the alternative investment fund is required to communicate to its investors according to the regulations of the home country, including the information that the alternative investment fund is required to communicate if it ceases to market activities in Denmark,
 - d) names of the sub-funds and share classes covered by the application, and
 - e) information on where the master fund is established if one of the alternative investment funds is a feeder fund.
- 9) Any other documents that the alternative investment fund is required to make public in its home country.

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- (3) The documents mentioned in subsection (2), nos. 1, 3, 7 and 9 must be original documents or copies certified by persons who have been authorised in writing to act on behalf of the alternative investment fund in connection with this.
- (4) The documents and information mentioned in subsection (2) must be written in either Danish or English.
- (5) Within three months after submission of a complete application for authorisation to market units in the alternative investment fund or a sub-fund thereof in Denmark, cf. subsection (2), the Danish Financial Supervisory Authority will notify the manager as to whether or not authorisation has been granted. The Danish Financial Supervisory Authority may prolong this period by up to three months if the Danish Financial Supervisory Authority considers this necessary due to the specific circumstances of the case and after notifying the manager of this. The manager may start to market units in the alternative investment fund to professional investors in Denmark when the manager has received authorisation from the Danish Financial Supervisory Authority.
- (6) In the event of a subsequent application for authorisation to market additional sub-funds in an alternative investment fund that has already been authorised for marketing in Denmark, the manager must submit the information and documents mentioned in subsection (2), nos. 3–4 and 7–8.
- (7) In the event of a subsequent application for authorisation to market additional share classes in sub-funds for which marketing has already been authorised, the manager must submit a digital document indicating the sub-funds to which the share classes belong and the names and any ISIN codes of the sub-funds and share classes covered by the application.

Changes

- 4.-(1) Alternative investment fund managers must notify the Danish Financial Supervisory Authority of any planned, significant changes to circumstances on which the communication of the authorisation to market units to professional investors was based, including significant changes to information received by the Danish Financial Supervisory Authority in connection with the application. The notification must take place before the changes are implemented. Unplanned changes must be notified to the Danish Financial Supervisory Authority immediately after the change has occurred.
- (2) If the Danish Financial Supervisory Authority is unable to approve the changes referred to in the notification pursuant to subsection (1), the Danish Financial Supervisory Authority must inform the manager of this within one month of receipt of that notification. The Danish Financial Supervisory Authority may prolong this period by up to one month where this is deemed necessary due to the specific circumstances of the case. Where this is the case, the Danish Financial Supervisory Authority will notify the manager of any extension of the period within one month of the Danish Financial Supervisory Authority receiving the notification pursuant to subsection (1).
- (3) Further to notification of the manager pursuant to subsection (2), the Danish Financial Supervisory Authority may impose restrictions or reject the changes planned by the manager. Furthermore, the Danish Financial Supervisory Authority may order the manager to rectify the changes if these have already occurred. The manager may

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implement and maintain the changes if the Danish Financial Supervisory Authority does not oppose the changes within the relevant period.

Publication of information

5.-(1) An alternative investment fund manager must ensure publication in Denmark of documents and information that the alternative investment fund is required to publish regularly in the home country of the fund. Publication must take place in the same manner as in the home country.

(2) The manager must likewise ensure publication in Denmark if it is the supervisory authority of the home country that publishes certain information in the home country.

(3) The prospectus or equivalent documents must state where publication is to take place.

Cessation of marketing of units

6.-(1) The Danish Financial Supervisory Authority may require an alternative investment fund manager with its registered office in a third country to cease marketing the alternative investment fund in Denmark if:

1) The measures taken by the manager to secure the rights of investors to receive dividends and redeem units fail to adequately secure the rights of the Danish investors.

2) The manager has failed to pay the fee on time, cf. section 8.

3) The manager's authorisation to manage the alternative investment fund is revoked or otherwise ceases to be valid.

4) The manager is guilty of gross or repeated violation of the rules laid down in this Executive Order or other Danish legislation.

5) The possibility for cooperation with the supervisory authority in the manager's home country, cf. section 130(3), no. 2 of the Alternative Investment Fund Managers, etc. Act, ceases to apply.

7.-(1) When an alternative investment fund manager decides to cease marketing the alternative investment fund or sub-funds thereof in Denmark, the manager must, no later than 14 days after the decision is made, notify all Danish investors of this and notify the Danish Financial Supervisory Authority of the date of cessation. The same applies if the Danish Financial Supervisory Authority requires the manager to cease marketing the alternative investment fund, cf. section 6.

(2) At the same time, the manager must communicate how the manager initiates measures to secure the rights of Danish investors as mentioned in section 3(2), no. 8b.

Fee

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8.-(1) Alternative investment fund managers authorised to market alternative investment funds pursuant to this Executive Order pay a fee to the Danish Financial Supervisory Authority in accordance with section 361(1), no. 31 of the Financial Business Act.

Penalties

9.-(1) Any violation of section 3(1), section 4, section 5 and section 7 is punishable by a fine.

(2) Companies, etc. (legal persons) may incur criminal liability according to the rules in Part 5 of the Danish Criminal Code.

Entry into force

11.-(1) This Executive Order enters into force on 15 July 2014.

The Danish Financial Supervisory Authority, 26 June 2014

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/Anna Frost-Jensen