

## Executive Order on Investor Protection in connection with Securities Trading<sup>1)</sup>

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Executive Order no. 964 of 30 September 2009

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The following shall be laid down pursuant to section 43(2) and section 373(4) of the Financial Business Act, cf. Consolidated Act no. 793 of 20 August 2009:

### Part 1

#### *Scope and Definitions*

##### *Scope*

**1.-(1)** This Executive Order shall apply to the following activities, cf. however, subsections (2)-(6):

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

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

**(3)** Section 8(2)-(6), section 9(2) and (3), section 11(1), nos. 1-4, section 12, section 14 and sections 16-20 shall not apply to securities trading in mortgage-credit bonds, covered mortgage-credit bonds (SDROs) or covered bonds (SDOs) when the securities transaction takes place in connection with, and as a requirement for, execution of customers' raising, payment or change of loans secured on real property.

**(4)** Sections 5-7, section 11(1), nos. 1-4 and no. 6, section 12, section 14, section 16, section 18 and section 20 shall apply correspondingly to investment advisors, cf. part 11 of the Financial Business Act.

**(5)** With the exception of section 4, this Executive Order Act shall not apply when the customers of the securities dealer are eligible counterparties.

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

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

**(7)** Section 21 shall apply for orders relating to negotiable mortgage deeds on real property or chattels.

#### *Definitions*

**2.-(1)** Securities trading shall mean investment services as mentioned in annex 4, schedule A of the Financial Business Act and, if relevant, ancillary services as mentioned in annex 4, schedule B of the Financial Business Act.

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

**(3)** Financial instrument shall mean the instruments mentioned in annex 5, nos. 1-10 of the Financial Business Act.

**(4)** Investment advice shall mean personal recommendations for a customer on transactions in connection with financial instruments.

**(5)** Personal recommendation shall mean a recommendation given to a person in their capacity as investor, which is based on the person's own circumstances and which involves a recommendation to take one of the following actions:

- 1) To buy, sell, issue, exchange, redeem, keep or guarantee a specific financial instrument, or
- 2) to exercise or refrain from exercising a right in a specific financial instrument to buy, sell, issue, exchange, or redeem a specific financial instrument.

## **Part 2**

### *Format requirements for submission of information*

#### *Durable medium*

**3.-(1)** Information which is directed to a customer personally, and which is supplied pursuant to section 4(5) sections 10-14, section 21(1), section 22(1) and (7), section 24(1) and section 25(3) shall be supplied on paper. The information may be supplied on some other durable medium than paper, if the following conditions are met:

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

**(2)** Information which is not directed to a customer personally and which is supplied pursuant to sections 10-14 and section 25(3) may be supplied via a website, which is not a durable medium, if the following conditions are met:

- 1) The supply of information is appropriate in relation to the manner in which business between the securities dealer and customer takes place.
- 2) The customer has consented to this.
- 3) The customer is informed of the address of the website as well as where on the website the information can be found.
- 4) The information is kept up to date.
- 5) The information is available on the website for the period necessary for the customer.

#### *Categories of customer*

**4.-(1)** A securities dealer shall divide his customers into the following categories

- 1) professional customers, cf. annex 1,
- 2) eligible counterparties, cf. annex 2, or
- 3) retail customers which are neither professional customers nor eligible counterparties.

**(2)** The securities dealer may, at his own initiative, either generally or on an ad-hoc basis, treat a professional customer or an eligible counterparty as a retail customer.

**(3)** The securities dealer may, at the request of a customer, either generally or on an ad-hoc basis treat a professional customer as an eligible counterparty, or an eligible counterparty as a professional customer.

**(4)** A retail customer may, on request and if the person in question meets the conditions stated in annex 1, schedule b, be treated as a professional customer.

**(5)** A securities dealer shall inform his customers of the customer group in which they are categorised, of access to request another categorisation, and of the consequences of categorisation for the degree of customer protection.

### **Part 3**

#### *General regulations regarding investor protection*

##### *General clause*

**5.** A securities dealer shall act honestly and professionally.

##### *Customer agreements*

**6.-(1)** A securities dealer shall enter into and register an agreement with his customers which contains a description of the most important rights and obligations of the parties as well as which financial services are to be covered by the agreement.

**(2)** The terms of the agreement may appear as references to separate documents, including the normal terms of business and standard conditions of the securities dealer.

**(3)** A securities dealer shall enter into or confirm all agreements with his customers on paper or on a durable medium, cf. section 3(1).

## *Inducements*

**7.-(1)** A securities dealer shall not receive or pay inducements in connection with securities trading, unless the inducement

- 1) Is paid or received by the customer or an agent of the customer.
- 2) Is paid or received by a third party or his agent, if the inducement is designed with a view to increasing the quality of the service provided for the customer and it does not affect the securities dealer's obligation to act in accordance with the interests of the customer and the customer is informed about the amount and nature of the inducement prior to completion of the agreement. If it is not possible to state the amount of the inducement, then the method of calculation shall be stated.
- 3) Is in the form of a charge which makes it possible or necessary to complete the securities transaction and cannot give rise to conflict with the obligation of the securities dealer to act honestly and professionally.

**(2)** Terms regarding inducements in securities dealers' agreements, cf. subsection (2), no. 2 may be in summary form. At the request of the customer, further information on these shall be given.

## **Part 4**

### *General information*

#### *Information for retail customers*

**8.-(1)** Information which could be received by retail customers shall be clear and not misleading. The information shall contain the name of the securities dealer.

**(2)** If the information contains a comparison of securities transactions, financial instruments or securities dealers,

- 1) the comparison shall be true and balanced,
- 2) the sources of the information in the comparison shall be stated, and
- 3) the key data and assumptions applied shall be included.

**(3)** If the information includes information about historical returns and price developments for a financial instrument, financial index or a securities transaction, the securities dealer shall

- 1) include information on returns and price developments for the previous five years or for the entire period in which the financial instrument has been in issue, the financial index has been established, or the financial service has been on offer, if this period is shorter than five years, or a longer period to be determined by the securities dealer and which in each case is based on full twelve-month periods,
- 2) clearly state the reference period and the source of information,
- 3) state that the figures are historical and that past returns and price developments cannot be used as a reliable indication of future returns and price developments, and in the event that the information is based on amounts in another currency than that used in the country of residence of the retail customer the currency shall be clearly stated and information shall be provided that the returns can be increased or reduced as a result of currency fluctuations, and
- 4) state the consequences of fees, commissions, or other charges, if the information is based on gross returns.

**(4)** If the information includes information about or references to simulated historical returns, the information shall relate to a financial instrument or a financial index, and

- 1) be based on actual historical returns on one or several financial instruments or financial indexes, which are the same as, or form the basis of, the relevant financial instrument,
- 2) with regard to the actual historical returns in no. 1, the provisions of subsection (3), nos,1-4 shall be fulfilled, and
- 3) state that the figures refer to simulated historical returns and that historical returns cannot be used as a reliable indication of future returns.

**(5)** If the information contains information about future returns,

- 1) the information shall not be based on or refer to simulated historical returns,
- 2) the information shall be based on reasonable assumptions supported by objective data,
- 3) the information shall state the consequences of fees, commissions, or other charges, if the information is based on gross returns, and
- 4) the information shall state that such forecasts cannot be used as a reliable indication of future returns.

**(6)** If the information refers to a particular tax treatment, it shall clearly state that the tax treatment depends on the situation of the individual customer and that it can change in the future.

**(7)** The name of a competent authority may not be used in such a way as to imply that the authority recommends or endorses the products or services of the securities dealer.

*Marketing material for retail customers*

**9.-(1)** Information appearing in the securities dealer's marketing materials shall be in accordance with the information which the securities dealer provides in connection with a securities transaction.

**(2)** If the securities dealer's marketing materials contain an offer to enter into an agreement on a financial instrument or to carry out securities trading for the persons who accept the offer and the materials contain a reply form or specify how to reply, the information consequential upon sections 11-14 and which is relevant for the offer or the invitation shall appear. The same shall apply correspondingly if the marketing materials contain an invitation to any person to make an offer to enter into an agreement on a financial instrument or to carry out a securities transaction.

**(3)** Subsection (2) shall not apply if, in order to reply to the offer or invitation, the customer shall refer to documents which contain the information consequential upon sections 11-14.

## **Part 5**

### *Specific information on terms of agreement and financial instruments*

#### *Information on terms*

**10.-(1)** No later than when he enters into an agreement with a retail customer on supply of a service, or supplies a service to a retail customer if this is earlier, a securities dealer shall provide information about the terms of agreement. At the same time the customer shall have the information pursuant to section 11. No later than at the time of supply of the service, the securities dealer shall also provide the retail customer with the information consequential upon sections 11-14 of this Executive Order and section 4(3), nos. 1-3 and (7), 1st clause of the Executive Order on Execution of Orders by Securities Dealers.

**(2)** If, at the request of the retail customer, the agreement is entered into using remote communication and the securities dealer is therefore unable to comply with the time limits laid down in subsection (2), or if the agreement is entered into using the telephone pursuant to section 11(2) of the Act on Certain Consumer Agreements (lov om visse forbrugeraftaler), the information shall be given to the customer immediately after the agreement has been entered into or when the securities dealer has started to fulfil the agreement.

**(3)** The securities dealer shall provide a professional customer with the information consequential upon section 13(3) and (4) no later than at the same time as the supply of a service.

**(4)** When a securities dealer makes significant changes in the information dealt with in sections 11-14 of significance to the service supplied to the customer, the customer shall receive information about this within a reasonable time before the change. Notification shall be on a durable medium if the related information was provided on a durable medium.

#### *Information about the securities dealer for retail customers*

**11.-(1)** A securities dealer shall, when relevant, provide the following information to retail customers:

- 1) The name and address of the securities dealer and how the dealer can be contacted, including how and in which language communication shall take place.
- 2) The name and address of the authority which issued the license to the undertaking.
- 3) If the securities dealer works through a tied agent, this shall be stated together with a statement of the country in the European Union, or country with which the Community has entered into an agreement for the financial area in which the agent is registered.
- 4) The nature and frequency as well as the date of reporting about the services carried out, which the securities dealer shall provide for the customer.
- 5) A brief description of the measures implemented by the securities dealer to protect the financial instruments and funds which the securities dealer holds in safe keeping for the customer, including a description of the Guarantee Fund for Depositors and Investors or, for branches, a corresponding guarantee scheme in the home country of the undertaking.
- 6) A description of the securities dealer's policy on conflicts of interest, cf. regulations issued about this pursuant to section 72(5) of the Financial Business Act. If the information is provided in summary form, at the request of the customer the securities dealer shall provide further information.

**(2)** If the securities dealer offers portfolio management, when relevant, in addition to the information mentioned in subsection (1), the securities dealer shall provide the customer with the following information:

- 1) A description of the method and frequency of assessments of the financial instruments in the customer portfolio.
- 2) A description of each delegation of management of the customer's portfolio based on estimates.
- 3) A break-down of benchmarks against which the returns on the customer's portfolio should be compared.
- 4) The types of financial instrument which may be included in the customer's portfolio and the types of transaction which may be carried out with such instruments, including any limit values.
- 5) The control targets and level of risk which is to be reflected in the manager's estimated authority and any specific limits on this.

**(3)** If the securities dealer carries out portfolio management, an appropriate method of evaluation and comparison shall be introduced, e.g. relevant benchmarks, which is based on the investment objectives of the customer and the types of financial instruments in the customer's portfolio so that the customer is able to assess the results of the securities dealer.

*Information on financial instruments*

**12.-(1)** The securities dealer shall, when relevant, provide customers with a general description of the nature of the financial instruments or the proposed investment strategy and the associated risks. The description shall enable the customer to take investment decisions on an informed basis. When relevant in relation to the specific types of instrument as well as the status of the customer as either a retail or professional customer, cf. section 4, and the customer's knowledge, the description shall include the following:

- 1) The risks associated with the specific types of instrument, including an explanation of gearing and its effects as well as the risk of losing the entire investment.
- 2) Price fluctuations for such instruments and any limits on the market available for such instruments.
- 3) Whether the transaction involves actual or potential liabilities for the customer in addition to the costs of acquisition of the instruments.
- 4) Any margin requirements or similar obligations applicable for this type of instruments.

**(2)** If the securities dealer provides a retail customer with information on a financial instrument which on the date in question is offered to the public and there is a published prospectus, the securities dealer shall inform the customer about where the prospectus has been made available for the public.

**(3)** If the risks in a financial instrument which comprises two or more different financial instruments or services are expected to be greater than the risks of any of the individual parts, the securities dealer shall provide a comprehensive description of the individual parts of the instrument and the manner in which their mutual effects increase the risk.

**(4)** For financial instruments which contain a guarantee to a third party, the information on the guarantee shall include information on the guarantor and the guarantee so that the retail customer can carry out a reasonable assessment of the guarantee.

### *Safe keeping and loan of financial instruments*

**13.-(1)** If a retail customer's financial instruments or funds are kept by a third party on behalf of the securities dealer, when relevant the securities dealer shall inform the customer about:

- 1) Where the instruments or funds are being kept.
- 2) The responsibilities for actions or omissions by the third party which are imposed on the securities dealer under current legislation.
- 3) The consequences for the customer if the third party becomes insolvent.

**(2)** If a retail customer's financial instruments or funds are kept in an omnibus account or safekeep, the securities dealer shall inform the customer about the legal effects associated with this.

**(3)** If accounts containing financial instruments or funds belonging to a customer are, or become subject to, legal regulations in a country outside the European Union, or outside a country with which the Community has entered into an agreement for the financial area, the securities dealer shall make the customer aware that the customer's rights in connection with these financial instruments or funds can vary as a consequence of this.

**(4)** If a securities dealer or a depositor is able to provide collateral for, or have a mortgage in the customer's financial instruments or funds, or have right of set off in relation to these instruments or funds, the securities dealer shall inform the customer about this and the possible conditions for this.

**(5)** Before a securities dealer lends financial instruments which the securities dealer holds in safe keeping for a retail customer, or before a securities dealer in some other way uses financial instruments on own account or on account of another customer, no later than at the same time as the loan or use, the securities dealer shall provide the retail customer with information about the obligations of the securities dealer when using the relevant financial instruments, including the conditions for return and the risks associated with this.

### *Price information*

**14.-(1)** A securities dealer shall, when relevant, provide the retail customer with the following information:

- 1) The total price, including all the associated costs and taxes, to be paid via the securities dealer. If it is not possible to give an accurate price, the basis for calculating the total price shall be stated so that the customer can check it. The commissions demanded by the securities dealer shall be allocated separately to each financial instrument.
- 2) Notification that costs may arise, including taxes, which are not imposed by the securities dealer and which are not payable by the securities dealer.
- 3) Terms of payment or terms for other services.

**(2)** If part of the total price in subsection (1), no. 1 is payable in, or represents an amount in a foreign currency, this shall be stated, including the currency applied and the principles for calculating the conversion rate and the costs associated with this.

### *Simplified prospectuses*

**15.-(1)** When marketing units in an investment association or a branch, a securities dealer shall provide information that a complete and a simplified prospectus has been prepared and on how the public can obtain the prospectuses or inspect them.

**(2)** The securities dealer shall offer a customer the simplified prospectus free of charge before purchase of units.

**(3)** At the request of a customer the securities dealer shall supply the prospectuses free of charge.

**(4)** Simplified prospectuses which meet the requirements of the "bekendtgørelse om oplysninger i investeringsforeningers, specialforeningers, hedgeforeningers og fåmandsforeningers prospekter" (executive order on information in prospectuses of investment associations, special-purpose associations, hedge associations and restricted associations), also meet the requirements of sections 12 and 14.

## **Part 6**

### *The "know-your-customer" principle*

#### *Suitability test*

**16.-(1)** When a securities dealer provides investment advice or portfolio management, the securities dealer shall obtain the necessary information about a customer's knowledge and experience in the investment field relevant to the specific type of product or service as well as the customer's financial situation and investment objective so that the securities dealer can recommend to the customer the investment services and the financial instruments that are suitable for him.

**(2)** When providing portfolio management and investment advice, on the basis of the information obtained under subsection (1) and taking into consideration the nature and scope of the service supplied, the securities dealer shall ensure that the specific transaction recommended or executed fulfils the following criteria:

- 1) It meets the investment objectives of the customer.
- 2) The customer is financially in a position to bear the investment risks involved in the transaction which are in accordance with the investment objectives of the customer.
- 3) The customer has the necessary experience and the necessary knowledge to be able to understand the risks involved in the transaction or the portfolio management.

**(3)** If a securities dealer provides portfolio management or investment advice, cf. subsection (1), for a professional customer, the securities dealer may assume that the customer has the necessary experience and the necessary knowledge, cf. subsection (2), no. 3 in connection with the products, transactions and services by which the customer is classified as professional. If the securities transaction comprises providing investment advice to a professional customer covered by annex 1, schedule a, the securities dealer may assume that the customer is financially in a position to bear a possible loss as a result of the investment.

**(4)** If a securities dealer does not receive the information required pursuant to subsection (1), the securities dealer may not advise the customer on choice of investment or portfolio management.

#### *Appropriateness test*

**17.-(1)** When a securities dealer provides or administers orders for a retail customer without providing investment advice or portfolio management, the securities dealer shall obtain information from the customer about his knowledge and experience in the investment field

relevant to the specific type of product or service being offered or requested. On the basis of this information the securities dealer shall assess whether the product or service under consideration is appropriate for the customer, cf. however, section 19. After this the securities dealer shall decide whether the customer has the necessary experience and knowledge to understand the risks associated with the specific type of product or service being offered or requested.

**(2)** If, on the basis of the information received pursuant to subsection (1), the securities dealer considers that the product or service is not appropriate for the customer, the customer shall be made expressly aware of this. This information may be provided in a standardised format.

**(3)** If the customer provides insufficient information regarding his knowledge and experience, cf. subsection (1), the customer shall be made expressly aware that, due to the lack of information, the securities dealer is not in a position to determine whether the product or service is appropriate for the customer. This information may be provided in a standardised format.

*Information to be used for the suitability test and appropriateness test*

**18.-(1)** When a securities dealer obtains or requests information regarding a customer's knowledge and experience in the investment field pursuant to section 16 and section 17, the information shall relate to the following:

- 1) The types of services, transactions and financial instruments with which the customer is acquainted.
- 2) The nature, number and frequency of the customer's transactions in financial instruments and the period in which they are executed.
- 3) The education, occupation or previous relevant occupation of the customer.

**(2)** When a securities dealer obtains information regarding a customer's financial situation pursuant to section 16, the information about the customer, when relevant, shall contain information about income, assets, including liquid assets, investments and real property as well as the normal financial liabilities of the customer.

**(3)** When a securities dealer obtains information regarding a customer's investment objectives pursuant to section 16, the information about the customer, when relevant, shall contain information about investment horizon, risk willingness, risk profile and the objective of the investment.

**(4)** A securities dealer shall not encourage a customer to omit to provide the information required pursuant to sections 16 and 17.

*Execution only*

**19.** When a securities dealer only receives, transmits or executes orders from a customer with or without ancillary services (execution only), the securities dealer may omit to fulfil the obligations of sections 16-18, if the conditions in nos. 1-4 are met:

- 1) The service shall relate to
  - a. shares which are admitted for trading on a regulated market in Denmark or in other countries within the European Union or countries with which the Community has entered into an agreement for the financial area or on an equivalent market in a third country,
  - b. money-market instruments,
  - c. debt instruments which do not cover a derivative instrument,

- d. units in investment associations or corresponding investment undertakings covered by Council Directive 85/611/EEC (UCITS), or
  - e. other non-complex financial instruments.
- 2) Services shall be provided at the initiative of the customer.
  - 3) The customer has been informed that the securities dealer has no duty to assess suitability of the instruments supplied or offered, nor the services provided or offered, and that the customer does not benefit from the protection of the provisions of sections 16 and 17. This information may be provided in a standardised format.
  - 4) The securities dealer complies with the obligations of section 72(2), no. 2 of the Financial Business Act as well as executive orders issued in pursuance of section 72(6).

## **Part 7**

### *Settlement notes etc.*

#### *Reports to the customer*

**20.** Securities dealers shall, when relevant, report to their customers about the services which the securities dealer has executed for customers, and which are not covered by sections 21-24. The report shall, when relevant, contain information about costs associated with the transactions and services undertaken on behalf of the customer.

#### *Settlement notes*

**21.-(1)** The conditions notified under section 20(1), nos. 21.-(1) When a securities dealer has executed an order on behalf of a customer which was not executed in connection with portfolio management, the securities dealer shall, as soon as possible, provide the customer with important information about the execution. If the order is executed for a retail customer, the securities dealer shall send the customer a settlement note no later than the first weekday after execution or, if the securities dealer receives confirmation from a third party, no later than the first weekday after receipt of the confirmation. This shall not, however, apply if the settlement note contains the same information as a settlement note sent immediately to the retail customer by a third party.

**(2)** For transactions in bonds in connection with loans in real property, the important information on execution and the settlement note may be sent together with the other information, but no later than one month after completion of the transaction. In connection with transactions in mortgages the settlement note shall be sent as soon as possible after property registration.

**(3)** The settlement note, cf. subsection (1), 2nd clause, shall, when it is possible and relevant, contain the following information:

- 1) The name and address of the securities dealer.
- 2) The customer's name, address and relevant account and depository numbers.
- 3) The date of completion of the transaction.
- 4) The type of order.
- 5) The venue.
- 6) The name or identification code of the instrument traded as well as the amount traded.
- 7) Buy, sell or other transaction.
- 8) Transaction price.

- 9) The total amount for which securities have been traded, including the currency in which the amount is stated.
- 10) The total transaction costs, including any brokerage or any other premiums or discounts added to or deducted from the transaction price which the securities dealer has charged. The costs shall be stated as a total amount and the individual cost elements shall be provided at the request of the customer.
- 11) The responsibility of the customer to settle the transaction, including payment and delivery terms as well as account information, if the customer has not already been informed of this information or the responsibility mentioned.
- 12) If the customer's counterparty is the securities dealer himself or a person in the securities dealer's undertaking, this shall be notified unless the order has been executed through a venue in which trading is anonymous.

**(4)** If a securities dealer receives orders from a retail customer in connection with units in collective investment associations covered by the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act, and units in other institutions for collective investment which are executed periodically, the securities dealer shall either send settlement notes to the customer, cf. subsection (1), 2nd clause, or provide the customer with the information on execution of the order stated in subsection (3) at least every six months.

**(5)** In addition to the duty to provide information of subsection (1), a securities dealer shall, at the request of a customer, provide information on the current status of the order.

**(6)** The information, cf. subsection (3), may be provided using standard codes, provided the codes used are explained.

#### *Periodical statement*

**22.-(1)** A securities dealer who provides portfolio management shall provide his customers with periodical statements on portfolio management unless such statements are provided by third parties.

**(2)** With respect to provision of portfolio management for a retail customer, the periodical statement, cf. subsection (1), shall contain the following information when it is relevant:

- 1) The name and address of the securities dealer.
- 2) The customer's name, address and relevant account and depository numbers.
- 3) An account of the contents and valuation of the portfolio, including details on each financial instrument, its market price, or current price if the market price is not available, and the cash balance at the beginning and end of the period as well as the results of the portfolio for the period.
- 4) The amount of charges and fees for the period with, as a minimum, a statement of the fees and charges for portfolio management and the total costs to execute orders as well as notification that, on request, a more detailed breakdown may be provided.
- 5) A comparison of the result for the period covered by the periodical statement with any benchmark for the investment results agreed by the securities dealer and the customer.
- 6) The total dividends, interest and other amounts paid in to the customer's portfolio during the period.
- 7) Information on other commercial developments which entail rights related to the instruments in the portfolio.
- 8) The information referred to in section 21(3), nos.3-12 for each transaction executed during the period unless the customer elects to receive information on transactions executed after each transaction, cf. subsection (7).

**(3)** A securities dealer shall provide a retail customer with periodical statements, cf. subsection (1), every six months.

**(4)** On request, a securities dealer shall provide the customer with periodical statements every three months. The customer shall be informed that he is entitled to make such a request.

**(5)** If a customer, cf. subsection (7), chooses to receive information after each transaction, the securities dealer shall provide the customer with periodical statements at least every twelve months. With regard to transactions in financial instruments covered by section 2(1), nos. 1-10 of the Securities Trading etc. Act, however, the periodical statement shall be provided every six months.

**(6)** If the agreement between the securities dealer and a retail customer on portfolio management enables a geared portfolio, a securities dealer shall provide the customer with periodical statements at least once a month.

**(7)** A customer may elect to receive the most important information on executed transactions after each transaction at the time at which the portfolio manager executes the transaction.

**(8)** In the circumstances dealt with in subsection (7), the securities dealer shall provide a retail customer with a confirmation of the transaction with information pursuant to section 21(3). The confirmation shall be sent no later than on the first weekday after execution or, if the securities dealer receives confirmation from a third party, no later than the first weekday after receipt of the confirmation. This shall not apply, however, if the confirmation contains the same information as the settlement note which is sent immediately to the retail customer by a third party.

#### *Notification of losses*

**23.** A securities dealer who offers portfolio management or to manage an account which includes an uncovered open position in a contingent liability, shall provide his retail customers with an account of possible losses which exceed any threshold agreed in advance between the securities dealer and the customer, The account shall be provided no later than at the end of each weekday on which the threshold is exceeded or, if this is on a public holiday, at the beginning of the first following weekday.

#### *Annual statements*

**24.-(1)** A securities dealer who keeps customers' securities in a custody account shall, at least once a year, provide each customer with a statement of the financial instruments or funds kept, unless such a statement is contained in other periodical statements. The 1st clause shall not apply for deposits or other funds which are to be repaid in banks or mortgage-credit institutions.

**(2)** The statement shall contain information about

- 1) all financial instruments or funds kept by the securities dealer for the relevant customer at the end of the period covered by the statement,
- 2) the extent to which a customer's financial instruments or funds have been included in securities loans and similar, and
- 3) the extent to which the customer has earned any amounts as a consequence of his participation in securities loans and similar as well as the basis for these earnings.

**(3)** Securities dealers who keep financial instruments or funds and who carry out portfolio management for a customer may receive the statement of the customer's assets dealt with in subsection (1) in the periodical statement the securities dealer is to send to the customer, cf. section 22(1).

*Part 8*  
*Procedures*

**25.-(1)** A securities dealer shall, at least once a year, assess whether his procedures, systems and order execution policy, cf. section 4 of the Executive Order on Execution of Orders by Securities Dealers, function as intended and correct any deficiencies. The securities dealer shall assess regularly whether the venues which are part of his order execution policy provide the best results for customers.

**(2)** In the event of significant changes which affect the ability of the securities dealer to continue consistently to achieve the best possible results from execution of customer orders using the venues included in the order execution policy, the securities dealer shall assess whether the order execution policy functions as intended and correct any deficiencies.

**(3)** Customers shall be informed of each significant change of the order execution policy.

*Compliance with the order execution policy*

**26.** At the request of a customer, a securities dealer shall render it probable that the customer's orders are executed in accordance with the order execution policy, cf. section 4 of the Executive Order on Execution of Orders by Securities Dealers.

**Part 9**  
*Customer order handling etc.*

*Customer order handling*

**27.-(1)** A securities dealer shall implement procedures to ensure,

- 1) that an order is executed on behalf of a customer, registered and allocated expeditiously and precisely,
- 2) that comparable customer orders are executed consecutively and expeditiously unless the nature of the order or the appropriate market conditions make this impossible or this conflicts with the interests of the customer, and
- 3) that, immediately he becomes aware of this, the securities dealer informs a retail customer of any significant problems with the execution of the order.

**(2)** A securities dealer who is responsible for supervision or ensuring settlement of executed orders shall take all reasonable measures to ensure that a customer's financial instruments or funds which are received in settlement of executed orders are immediately placed in the relevant customer's account.

**(3)** A securities dealer may not misuse information on non-executed customer orders. The securities dealer shall take all reasonable measures to prevent that members of the board of directors or board of management and other employees and natural persons who, within the framework of an outsourcing agreement, are involved in supply of services to the securities dealer, misuse this information.

### *Aggregation*

**28.-(1)** A securities dealer may not aggregate different customer orders or aggregate customer orders with trading for own account, unless the following conditions have been met:

- 1) It is unlikely that aggregation of the order or transaction will generally disadvantage any customer whose orders are included in the aggregation.
- 2) Customers have been informed that aggregation may disadvantage them with respect to a specific order.
- 3) The securities dealer has laid down and follows an order allocation policy which enables a reasonable allocation of the aggregated orders and transactions, including the significance of the scope and price of orders for allocation and handling part order execution.

**(2)** When a securities dealer aggregates an order with one or more other customer orders, and the aggregated order is only partly executed, the securities dealer shall allocate the transactions associated with this in accordance with his order allocation policy.

### *Allocation of transactions*

**29.-(1)** A securities dealer who has aggregated transactions for own account with one or more customer orders may not allocate the transactions associated with this such that it harms customers' interests.

**(2)** If a securities dealer aggregates a customer order with a transaction on own account, and the aggregated order is only partly executed, the securities dealer shall allocate the transactions associated with this to the customer in priority to the securities dealer. If the securities dealer is able to prove that the transaction could not have been executed on equally advantageous terms without this combination, the securities dealer may allocate the transaction proportionally to own account in accordance with the order allocation policy dealt with in section 28(1), no. 3.

### *Limited orders*

**30.-(1)** If a limited order regarding shares which are admitted for trading on a regulated market or a multilateral trading facility cannot be executed immediately under prevailing market conditions, the securities dealer shall take steps to facilitate the earliest possible execution of that order by immediately making public the limited customer order in a manner which makes the information easily accessible for other market participants, unless the customer expressly decides otherwise.

**(2)** The securities dealer shall meet the obligation under subsection (1) when the securities dealer sends the limited customer order to a regulated market in Denmark or a regulated market in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area, or a multilateral trading facility.

**(3)** The Danish FSA may grant exemption from the duty to make a limited order public which is very large in relation to the normal market size, cf. section 18a(3) of the Securities Trading etc. Act.

## **Part 10**

### *Supervision and penalties*

#### *Supervision*

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

**(2)** The Danish FSA may, cf. section 348(2) of the Financial Business Act, order correction of circumstances in conflict with the provisions laid down in this Executive Order.

#### *Penalties*

**32.-(1)** Any person who does not comply with an order issued pursuant to section 31(2) shall be liable to a fine.

**(2)** Violation of section 8, section 9(1) and (2) and section 15(1)-(3) shall be subject to a fine.

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

#### *Entry into force and transitional provisions*

**33.-(1)** This Executive Order shall enter into force on 15 October 2009.

**(2)** At the same time Executive Order no. 809 of 29 June 2007 on Investor Protection in connection with Securities Trading shall be repealed.

**34.** With regard to existing customer relations, the securities dealer shall, no later than the first contact after 1 November 2007, inform customers about whether they have been categorised as retail customers, professional customers or eligible counterparties.

**35.** Securities dealers who, on the date of entry into force of this Executive Order, have categorised their customers in accordance with the provisions of this Executive Order, shall not repeat this categorisation as a consequence of entry into force of this Executive Order.

*Ministry of Economic and Business Affairs, 30 September 2009*

Lene Espersen

/ Julie Galbo

A professional customer shall be a customer, cf. schedule a or b, who possesses the experience, knowledge and expertise to make his own investment decisions and properly assess the risks that he incurs.

### *Schedule a*

*Customers who shall always be considered professional:*

- 1) Entities which are not covered by annex 2 and which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a country within the European Union under a Directive, entities authorised or regulated by a country within the European Union without reference to a Directive, and entities authorised or regulated by a third country:
  - a. Commodity and commodity derivatives dealers.
  - b. "Locals".
  - c. Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.
- 2) Large undertakings which meet the following requirements for size at undertaking level:
  - a. balance-sheet total: EUR 20,000,000.
  - b. revenue: EUR 40,000,000.
  - c. equity: EUR 2,000,000.
- 3) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

### *Schedule b*

*Customers who may be treated as professionals on request*

Customers other than those mentioned in schedule a, including public sector bodies and retail customers, may also be allowed to waive some of the protections afforded by the rules on protection of retail customers.

Securities dealers may treat any of the above customers as professionals provided the relevant criteria and procedure mentioned below are fulfilled. These customers should not, however, be presumed to possess market knowledge and experience comparable to that of the professionals listed in schedule a.

#### *1. Identification criteria*

Any waiver of the protection afforded by the standard rules on protection of retail customers shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the customer, undertaken by the securities dealer, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the customer is capable of making his own investment decisions and understanding the risks involved.

In the case of small entities, the person subject to the above assessment should be the person authorised to carry out transactions on behalf of the entity.

In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:

- 1) the customer has carried out transactions on the relevant market at an average frequency of 10 per quarter over the previous four quarters,

- 2) the size of the customer's portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000,
- 3) the customer works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

## *2) Procedure*

The customers defined above may waive the protection for retail customers only where the following procedure is followed:

- 1) They must state on a durable medium, cf. section 3(1), 2nd clause to the securities dealer that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product.
- 2) The securities dealer shall give them a clear written warning on a durable medium, cf. section 3(1), 2nd clause of the protections and investor compensation rights they may lose.
- 3) They must state on a durable medium, cf. section 3(1), 2nd clause in a separate document from the contract, that they are aware of the consequences of losing such protections.

Before deciding to accept any request for waiver, securities dealers shall take all reasonable steps to ensure that the customer requesting to be treated as a professional customer meets the relevant requirements stated in schedule 1 above.

Securities dealers shall implement appropriate written internal policies and procedures to categorise customers. Professional customers shall be responsible for keeping the securities dealer informed about any change, which could affect their current categorisation. Should the securities dealer become aware however that the customer no longer fulfils the initial conditions, which made him eligible for a professional treatment, the securities dealer shall take appropriate action.

The following shall be considered as eligible counterparties:

*Schedule a*

- 1) Investment firms.
- 2) Credit institutions.
- 3) Insurance companies.
- 4) UCITS, non-UCITS, investment management companies and management companies.
- 5) Pension funds and their management companies.
- 6) Other financial institutions authorised or regulated under Community legislation or the national law of a Member State.
- 7) Persons whose main activity is to deal on own account in commodities and/or commodities derivatives. This shall not apply, however, if persons who deal on own account in commodities and/or commodities derivatives are part of a group whose main activity is to provide other investment services within the scope of this Directive or bank services pursuant to Directive 2000/12/EC.
- 8) Companies whose investment services and/or activities exclusively entail dealing on own account in financial futures, options or other derivatives and spot markets with a view to covering their positions on derivative markets, or which deal on behalf of or set prices for other members of the same market, and which are guaranteed by this market's clearing members, in that responsibility for satisfying the contracts which are entered into by such persons lies with the same market's clearing members.
- 9) National governments and their corresponding offices including public bodies that deal with public debt, central banks and supranational organisations.

*Schedule b*

Other companies than those mentioned under schedule a meeting pre-determined proportionate requirements, including quantitative thresholds. In the event of a transaction where the prospective counterparties are located in different countries, the securities dealer shall defer to the status of the other company as determined by the law or measures of the country in which that company is established.

*Schedule c*

Third country entities equivalent to those categories of entities mentioned in schedule a as eligible counterparties.

Third country undertakings equivalent to the eligible counterparties mentioned in schedule b on the same conditions and subject to the same requirements as those laid down in schedule b.