

## Executive Order on Good Business Practice for Financial Undertakings

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Executive Order no. 1046 of 27 October 2004 **EXCLUDING MINOR AMENDMENTS**

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The following shall be laid down pursuant to section 43(2) and section 373(2) of the Financial Business Act, cf. Consolidated Act no. 686 of 25 June 2004:

### Part 1

#### *Scope*

- 1.-(1)** This Executive Order shall apply to Danish and foreign financial undertakings that carry out activities in Denmark, including establishment of branches and cross-border services.
- (2)** This Executive Order shall apply to private customer relationships and commercial customer relationships provided these are not significantly different from a private customer relationship. Sections 4(3) and (4), 8(2) and 12 shall, however, only apply to private customer relationships.
- (3)** Sections 3, 5-7, and 19 shall, however, apply to all commercial relationships.
- (4)** Sections 20-23 shall not apply to securities trading in mortgage-credit bonds by mortgage-credit institutions when the transaction takes place in connection with, and as the basis of, performance of mortgage business for customers.
- (5)** For insurance companies sections 2, 3, 4(1)-(4), 5, 9 and 10, and parts 10 and 11 shall apply. Section 4(3) and (4) shall not apply to life-assurance and pension-insurance contracts nor to any personal insurance contracts established in this connection. Section 29(1) shall not apply to insurance and pension schemes established as part of an employment, an organisation relationship or matters of a similar nature.
- (6)** To the extent that the insurance company does not know the individual insured parties' identity, or to the extent that there is otherwise an authorised party in the insurance scheme, the information required pursuant to section 4(1) and (2); sections 10, 25, 26, 31 and 33 may be submitted to the natural or legal person authorised to receive this material.
- (7)** As regards compulsory pension schemes in banks established as part of employment relationships, sections 2 and 3, section 4(1)-(4), sections 5, 9, 10, 13, 19 and 21-23 and section 29(2) shall apply.
- 2.** When a financial undertaking enters agreements with other financial undertakings on sale and advice in connection with the products of said undertaking, said financial undertaking shall ensure that there is a clear division of responsibilities between the undertaking and the other party to the contract, and that the other party to the contract complies with the regulations in this Executive Order.

## Part 2

### *General provisions regarding good business practice*

3. A financial undertaking shall act honestly and loyally towards its customers.
- 4.-(1) A financial undertaking shall enter into or confirm all the important contracts with its customers on paper or on some other durable medium. An agreement shall contain a description of the significant rights and duties of the parties as well as the financial services covered by the agreement. If individual advice is provided in connection with the agreement, the important aspects of said advice shall be included in the agreement or appear in appendices to the agreement either on paper or on some other durable medium.
  - (2) The terms of the agreement may appear as references to separate documents, including the general normal terms of business of the financial undertaking.
  - (3) Terms regarding changes in the continuing general customer relationships of interest, charges, fees, or other costs shall include a statement of the conditions that may give rise to a change and may not allow the financial undertaking arbitrary access to make changes.
  - (4) Changes in continuing customer relationships may not, without notice, be unfavourable towards the customer regarding interest, charges, fees, or other costs unless the change is due to external conditions over which the financial undertaking has no influence.
  - (5) If a financial undertaking terminates an agreement with a customer, such termination shall be on grounds of fact and stated on paper or on some other durable medium.

## Part 3

### *Advice*

- 5.-(1) Advice shall mean recommendations, guidance, including information of the risk associated with a transaction, and information on the immediate consequences of the customer's options.
  - (2) A financial undertaking shall provide advice, if the customer so requests, cf. however sections 2 and 21. Furthermore, the undertaking shall provide advice at its own initiative, cf. however subsection (4), where circumstances indicate that there is reason to do so. Alternatively, the financial undertaking may refer the customer to seek advice elsewhere.
  - (3) Advice shall take into consideration the interests of the customer and provide the customer with a good basis for making decisions. Advice shall be relevant, correct, and complete. The financial undertaking shall provide information on the risks relevant to the customer.
  - (4) A financial undertaking may offer products with standardised information with little or no associated individual advice. In this event the financial undertaking shall draw special attention to these limitations. This provision shall only apply to products that are not connected with securities trading.

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November 2005, GlobalDenmark Translations

**6.-(1)** Before a financial undertaking provides advice, the undertaking shall request the customer to provide information on his financial situation, his experience with the relevant financial services, his objective for having the service provided, and his risk profile.

**(2)** The scope and nature of the information obtained may be adapted to the knowledge possessed by the customer and the information the financial undertaking has already received.

**(3)** The financial undertaking may base a decision on information from the customer unless such information is manifestly incorrect.

**7.-(1)** Advice shall be based on relevant information obtained in pursuance of section 6 and the other knowledge possessed by the financial undertaking about the circumstances of the customer.

**(2)** A financial undertaking shall request the customer to update the information obtained in pursuance of section 6 to the extent necessary to be able to provide the customer with advice in continuing customer relationships.

**8.-(1)** A financial undertaking shall provide sufficient information on its own products and services, including differences in prices and conditions from alternative products that may meet the customer's demands.

**(2)** If there are general differences between customers in determination of interest rates, fees, or other remuneration to the financial undertaking for a given product, said financial undertaking shall inform the customer of this fact before entering into an agreement to supply the service. At the request of the customer information shall be provided on the customer's conditions that may determine the position of the customer within a given price differentiation.

**(3)** A financial undertaking shall, on the basis of its general knowledge of the market, inform the customer about relevant types of product on the market. Information shall not, however, contain information about competing products or specific prices.

**9.-(1)** In the event that a financial undertaking or its employee/advisor when providing advice has a special interest in the result of the advice beyond normal income, said undertaking shall before giving advice inform the customer of the nature and scope of such special interest.

**(2)** If the financial undertaking receives commission or other remuneration as a result of providing products or services, the customer shall be made aware of this fact. The same shall apply if the attending employee/advisor receives commission or other remuneration and there is a direct link between the specific sale of services or products and the remuneration of the attending employee/advisor.

**10.-(1)** As part of its advice a financial undertaking shall include consequences of the taxation regulations that are relevant for the customer in relation to the products or services covered by the advice, or it shall refer the customer to seek other advice elsewhere regarding this.

**(2)** In the event that a financial undertaking provides advice on conditions that may have a significant financial effect on the customer's eligibility for receiving public subsidies or other financial advantages, and the financial undertaking is aware of this, such information shall be included in advice or the customer shall be referred to seek advice elsewhere.

**11.** A financial undertaking shall inform a customer of the security measures that should be observed for a given product or service including the security requirements placed on the customer and the liability of the customer in the event of misuse by a third party.

#### Part 4

##### *Special regulations regarding banks*

**12.** A bank may not refuse to open an ordinary current account without an individual reason based on fact. On request the reason shall be provided on paper or on some other durable medium.

#### Part 5

##### *Special regulations regarding banks and securities dealers*

**13.-(1)** In the event that a bank or a securities dealer recommends or is involved in high-risk associated investments, in cooperation with the customer there shall be thorough assessment of the possibility of the customer to bear any losses.

**(2)** If a customer, at his own initiative, makes enquiries of a bank or securities trader regarding an investment or financing of an investment that exceeds the customer's financial capacity, the bank or securities trader shall advise against such a transaction.

#### Part 6

##### *Special regulations regarding mortgage-credit institutions*

**14.-(1)** On receipt of a loan application the mortgage-credit institution shall provide information regarding the length of time to expect before any loan offer is available, if the loan application is not expected to be processed within 14 days. When a mortgage-credit institution issues a loan offer, it shall provide information on the characteristics of different types of loan, about the principles of fixing prices, and about the option of making a fixed price agreement.

**(2)** Information about the characteristics of different types of loan and the option of making a fixed price agreement may be provided for the customer in connection with advice, cf. part 3.

**(3)** The mortgage-credit institution may provide information on the principles of fixing prices by referring to its normal terms of business or similar.

**15.-(1)** The mortgage-credit institution shall issue or confirm a repayment/redemption offer on paper or on some other durable medium. The repayment/redemption offer shall contain a calculation of the amount of the repayment/redemption including all costs, information on terms and methods of repayment/redemption including calculation methods for interest differentials, as well as any terms of notice.

**(2)** The offer shall be accompanied by an explanatory overview of the repayment/redemption methods offered by the mortgage-credit institution, as well as of the consequences of using them.

**16.-(1)** The mortgage-credit institution shall provide the information stipulated in sections 14 and 15 when it issues offers regarding loan conversion.

**(2)** The Institution shall provide information on total costs as far as possible. If the loan offer does not take account of total costs, the institution shall make this very clear to the customer.

(3) The time limit for terminating a loan that shall be repaid/redeemed to the institution shall be stated.

## Part 7

### *Special regulations regarding use of guarantors and information obligations for banks and mortgage-credit institutions*

17.-(1) An institution may not cooperate in granting loans against guarantees where the guarantee obligation is out of proportion to the financial situation of the guarantor.

(2) Prior to entering into a guarantee obligation the institution shall ensure that the guarantor has been informed of the contents and consequences of the guarantee obligation.

(3) The guarantor shall receive information from the institution once a year on the size of the loan commitment covered by the guarantee obligation.

18.-(1) No later than one year after a compulsory sale of a property, an institution with an unsecured mortgage on the compulsory sale shall inform the customer in writing of the extent to which the institution will make its claim against the customer valid and forward a statement of the size of the claim.

(2) The institution shall forward a reminder to the customer every second year of the claim mentioned in subsection (1).

## Part 8

### *Special regulations regarding securities dealers*

19.-(1) A securities dealer shall carry out securities trading for its customers in the best interests of the customers and with due regard to the integrity of the market.

(2) A securities dealer shall endeavour to ensure that conflicts of interest do not arise and to ensure that, if it is not possible to avoid such conflicts, the customer is treated properly and that the conflicts are managed in an honest and fair manner and that the customer is informed of the conflicts of interest.

20.-(1) When establishing a customer relationship involving trade in securities, an agreement, cf. section 4, shall be entered into containing the following information to the extent it is relevant:

- 1) Name, address, CVR or CPR number of the customer, and any person authorised to act on behalf of the customer.
- 2) Name, address, registered office and legal form of the company or branch.
- 3) Whether the company is part of a group, and if so, the name of said group.
- 4) The name of the authority regulating the financial undertaking.
- 5) The financial services and securities covered by section 2 of the Securities Trading etc. Act that are included in the agreement with the customer.
- 6) The investor guarantee schemes that the relevant securities and cash are covered by, the extent of the cover, a calculation of the covering amount and how the customer shall act in the event of payment from the investor guarantee scheme, as well as,

where relevant, information on other guarantee schemes with clearing houses, including the VP Securities Services.

- 7) Provisions on safekeeping of customers' securities and cash, including on whether customers' securities are kept in omnibus accounts.
- 8) How often the financial undertaking shall report to the customer in statements of account, contract notes, and similar, as well as the content of such reporting.
- 9) The duration of the agreement, term of notice, and amendments of the contract.
- 10) The consequences in the event of breach of contract committed by the customer.
- 11) The method of calculation applied by the securities dealer for costs, including the extent to which supplements and allowances to the transaction price are applied.

(2) Agreements on management of portfolios shall contain information on the objectives and risk profile of the customer, the risk profile within which the securities dealer may act, valuation principles for the securities in the portfolio, as well as any benchmarks to be applied.

**21.-(1)** A securities dealer shall obtain information on the customer's financial situation, experience in relevant financial services, objectives in having the services supplied as well as the customer's risk profile, and on this basis a securities dealer shall advise the customer on the suitability of the specific financial services. The scope and nature of the information obtained and the advice given shall be adapted to the specific services and the information which the customer has already received.

(2) If a customer has a continuing customer relationship with the securities dealer, including access to trade using electronic communication, the securities dealer and the customer may agree the extent to which the securities dealer may offer the customer financial services without providing advice at the same time.

(3) If the customer requests the securities dealer to supply services that are not covered by the agreement in pursuance of subsection (2), the customer shall be informed that the relevant service is not in line with the agreement. The service may only be supplied provided the customer subsequently confirms to the securities dealer that he requires the service supplied.

**22.** If a securities dealer either cannot or will not supply a financial service, the securities dealer shall notify the customer immediately hereof.

**23.** A securities dealer shall, unless otherwise agreed with the customer, forward a review of accounts no less than once a year. The statement shall contain information on securities holdings, deposits, and securities loans.

## Part 9

### *Special regulations regarding investment management companies*

**24.-(1)** Upon request by a customer, the investment management company shall provide supplementary information regarding the current status as regards the matters covered by section 5, no. 3 and nos. 5-7 of the Executive Order on Information in Prospectuses of Investment Associations, Special-Purpose Associations and Restricted Associations.

(2) Upon request by a customer, the investment management company shall also provide information about the most recent developments in risks and yield for the most important categories of instruments.

## Part 10

### *Special regulations regarding insurance companies*

#### *Before insurance is written*

**25.** Before insurance is written, an insurance company shall inform the customer of the opportunity to receive advice regarding the insurance products on which the customer wishes to enter into contracts.

**26.-(1)** The insurance company shall provide information on the most important elements in the scope of cover of the selected type of insurance, about the customer's options, and about other important aspects of the insurance no later than in connection with entering into a non-life insurance contract.

**(2)** If the contract is entered into by telephone or in some other way by which the customer cannot immediately receive information on the scope of cover in a clear way, the customer shall receive such information on paper or on some other durable medium immediately following entry into the contract.

**(3)** An insurance company shall inform the customer of the risk of double insurance in non-life insurance.

**27.** In the event that an insurance company does not immediately accept a request for insurance, the customer shall be informed of his legal rights in the period up to the time the company issues notification that, and at what terms, the insurance can be accepted.

**28.-(1)** An insurance company shall, when writing insurance, request the customer to provide the information necessary to write the insurance contract.

**(2)** Before health information is provided when writing personal insurance, an insurance company shall supply customer guidelines to the customer on provision of health information.

**(3)** If health information is provided on the telephone or in some other way whereby the customer cannot immediately receive the customer guidelines, the guidelines shall be forwarded to the customer on paper or on some other durable medium.

**29.-(1)** When a customer changes insurance company, the recipient insurance company shall inform the customer of all significant limitations in the cover in relation to the previous insurance as well as, on request, advise the customer regarding specific cover.

**(2)** Before transferring personal insurance the recipient insurance company shall ensure that the customer has been informed regarding the terms under which the insurance can be accepted by the recipient insurance company.

#### *The insurance contract*

**30.** The customer's options under the insurance chosen shall appear on the policy/statement of cover for non-life insurance. Where, in connection with writing insurance, the customer makes a choice and such choice has significance for the premium and/or cover, the choice shall appear clearly.

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**31.** In connection with forwarding the normal conditions of insurance, an insurance company shall provide the customer with information on where the customer can obtain further information on the scope of the cover of the insurance.

**32.** When writing non-life insurance, the insurance company shall, on paper or on some other durable medium, provide information on any significant limitations in relation to the cover the customer could reasonably expect under the relevant insurance.

#### *Insurance term*

**33.** An insurance company shall inform the customer about the non-life insurance the customer has with the company each year. In such information, the company shall make any need for changes clear. Alternatively the customer may choose to have electronic access to such information.

**34.-(1)** If a claim is notified on paper or on some other durable medium, the insurance company shall, if insurance cover is refused in whole or in part, notify such refusal on paper or on some other durable medium unless it is clear from the circumstances that refusal may take place in some other way.

**(2)** If a claim is notified in some other way, the claimant may request the refusal on paper or on some other durable medium. The customer shall be informed of this right.

### **Part 11**

#### *Supervision and penalties*

**35.-(1)** The Danish FSA may, cf. section 348(2) of the Financial Business Act, order that matters which are contrary to sections 2 and 3; section 4(1) and (3)-(5); section 5(2)-(4); section 6(1); sections 7-13; section 14(1); sections 15-20; section 21(1) and (3); sections 22-32; section 33, 1st and 2nd clauses and section 34 be rectified.

**(2)** Before the Danish FSA makes a decision in matters on good business practice, the Danish FSA shall obtain an account from the undertaking.

**36.-(1)** Any person failing to comply with an order issued pursuant to section 35(1) shall be liable to a fine.

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

### **Part 12**

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

**37.-(1)** This Executive Order shall enter into force on 1 January 2005. At the same time, Executive Order no. 604 of 26 June 2003 on Good Business Practice for Financial Undertakings shall be repealed.

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(2) As regards insurance and pension schemes established as part of an employment, an organisation relationship or matters of a similar nature, this Executive Order shall, however, only apply to contact with customers and agreements and contracts established or entered into after 1 May 2005.

*The Ministry of Economic and Business Affairs, 27 October 2004*

Bendt Bendtsen

/Kåre Klein Emtoft

EXCLUDING MINOR AMENDMENTS