

## **Executive Order on notice, notification and public disclosure of managers' transactions, lists of insiders, notification of suspicious transactions, signals of market manipulation and accepted market practices (Executive Order on market abuse)**

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### **Executive Order no. 1179 of 11 October 2007**

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The following shall be laid down pursuant to section 28a(8), section 37(10), section 38(5) and section 93(3) of the Securities Trading, etc. Act, cf. Consolidated Act no. 1077 of 4 September 2007, as amended by Act no. 108 of 7 February 2007:

#### **Part 1**

##### *Common provisions Definitions*

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

- 1) "*Person*" shall mean:  
A natural or legal person.
- 2) "*List of insiders*" shall mean:  
A list of persons with access to inside information which a person according to section 37(4) of the Securities Trading, etc. Act shall prepare and update.
- 3) "*Suspicious transaction*" shall mean:  
A securities transaction covered by section 34(1) of the Securities Trading, etc. Act which fairly can be assumed to violate section 35(1) or 39(1) of the Securities Trading, etc. Act.
- 4) "*Accepted market practices*" shall mean:  
Practices that are reasonably expected in one or more securities markets and are accepted by the Danish FSA pursuant section 38(4), 2nd clause of the Securities Trading, etc. Act.

#### **Part 2**

##### *Notice, notification and public disclosure of managers' transactions Scope*

**2.** The regulations of section 28a of the Securities Trading, etc. Act and of sections 3-5 of this Executive Order shall only apply to:

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<sup>1</sup> This Executive Order contains provisions implementing parts of Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation (Official Journal 2003, no. L 339, p 70) and parts of Commission Directive 2003/124/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions (Official Journal 2004, no. L 162, p 70).

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- 1) Companies, which are registered in Denmark.
- 2) Companies, which neither are registered in a country within the EU nor in a country with which the Community has entered into an agreement for the financial area, but which according to article 10 of Directive 2003/71/EC are required to file annual information in Denmark.
- 3) Managers in companies covered by no. 1 or 2.
- 4) Related persons to managers covered by no. 3.

*The concept, related persons to a manager*

**3.** The concept other relatives in section 28a(4), no. 3 of the Securities Trading, etc. Act shall only include natural persons related to a manager in the direct line of ascent or descent or as siblings.

*Triviality limit*

**4.-(1)** Calculations of whether the triviality limit of EUR 5,000 in section 28a(6) of the Securities Trading, etc. Act has been exceeded shall use the most recent currency prices published by Danmarks Nationalbank (Denmark's central bank) at the time of the transaction.

**(2)** If the triviality limit of EUR 5,000 in section 28a(6) of the Securities Trading, etc. Act has been exceeded, the transaction which caused the triviality limit to be exceeded and all subsequent transactions shall be notified.

*Notification of information*

**5.** Notification of information to the Danish FSA according to section 28a(5), 1st clause of the Securities Trading, etc. Act shall be by electronic means and using a digital signature.

### **Part 3**

*Lists of insiders*

*Creation and contents of lists of insiders*

**6.-(1)** Persons covered by section 37(4), 1st or 2nd clauses of the Securities Trading, etc. Act shall prepare a list of insiders. The duty to prepare a list of insiders pursuant to section 37(4), 2nd clause shall only rest upon persons who - by virtue of the exercise of their profession or business - regularly come into possession of inside information.

**(2)** The list of insiders shall contain the information mentioned in subsection (3) for all the persons who work for the relevant party and who regularly or in isolated circumstances have access to internal knowledge which directly or indirectly relates to securities covered by section 34(1), no. 1 of the Securities Trading, etc. Act.

**(3)** The list of insiders shall, as a minimum, contain information on,

- 1) the identity of each person having access to inside information,
- 2) the reason why such person is on the list of insiders, and
- 3) the date on which the list of insiders was created and updated.

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*Updates of lists of insiders*

7. A list of insiders shall be updated immediately when,

- 1) there is a change in the reason why a person is already on the list,
- 2) a new person is to be added to the list of insiders, or
- 3) a person already on the list of insiders no longer has access to inside information.

*Keeping lists of insiders*

8. A list of insiders shall be kept for no less than five years after preparation or updating of the relevant list.

*Information for persons included on lists of insiders*

9. Persons included on a list of insiders shall, without undue delay, be informed that they are on the list and of:

- 1) the legal duties involved in possession of inside information.
- 2) the sanctions which, pursuant to legislation, may be imposed for misuse or improper circulation of inside information.

**Part 4**

*Notification of suspicious transactions*

*Scope*

10. The regulations of section 37(6) and (7) of the Securities Trading, etc. Act as well as sections 11-14 of this Executive Order shall only apply for:

- 1) companies with their registered office in Denmark.
- 2) companies with their headquarters in Denmark.
- 3) branches located in Denmark.
- 4) natural persons employed in one of the companies or branches mentioned in nos. 1-3.

*Suspicious transactions*

11.-(1) Persons covered by section 37(6), 1st clause of the Securities Trading etc. Act shall notify the Danish FSA if they assist in completion of a suspicious transaction which is part of loyal completion of orders from a customer.

(2) Assessment of whether there is a suspicious transaction shall take account of:

- 1) the definition of internal information in section 34(2)-(5) of the Securities Trading, etc. Act.
- 2) the ban on insider trading of section 35(1) of the Securities Trading, etc. Act.
- 3) the definition of price manipulation in section 38(1)-(3) of the Securities Trading, etc. Act.
- 4) the signals of price manipulation in sections 15-16 of this Executive Order.
- 5) the ban on price manipulation of section 39(1) of the Securities Trading, etc. Act

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*Time limit for notification*

**12.** Notification shall be sent without undue delay to the Danish FSA that the person has become acquainted with facts or information which gives reason to presume that there is a suspicious transaction.

*Content of the notification*

**13.-(1)** Notification to the Danish FSA shall contain:

- 1) a description of the suspicious transaction, including the type of the order and transaction.
- 2) information on the reason that the transaction is considered suspicious.
- 3) information enabling identification of the person(s) for whom the transaction has been completed and of other persons who may be involved in the transaction.
- 4) information about the function carried out by the notifying person.
- 5) all other information which could be significant for the assessment of the suspicious transaction.

**(2)** If all the information covered by subsection (1) is not available at the time of the notification, it shall be sufficient that notification discloses the reason that the transaction is suspicious. All other information covered by subsection (1) shall be submitted to the Danish FSA as soon as it becomes available.

*Methods of notification*

**14.-(1)** Notification to the Danish FSA may be by letter, email, fax or telephone.

**(2)** If notification is by telephone, and if so requested by the Danish FSA, written confirmation of the notification shall be submitted.

**Part 5**

*Price manipulation*

*Signals of price manipulation*

**15.-(1)** For the purposes of assessing whether orders to trade or transactions constitute price manipulation pursuant to section 38(1), nos. 2 and 4 of the Securities Trading, etc. Act, the Danish FSA and market participants may take into account whether one or more of the signals of price manipulation mentioned in subsection (2) exist. If one or more of the signals of price manipulation mentioned in subsection (2) exist, this will not necessarily mean that the order to trade shall be deemed as price manipulation.

**(2)** The following signals of price manipulation may be taken into account in particular:

- 1) If the relevant orders to trade or transactions represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, in particular when these activities lead to a significant change in the price of the financial instrument.
- 2) If the relevant orders to trade or transactions are undertaken by persons with a significant buying or selling position in a financial instrument lead to significant changes in the price of the financial instrument or related derivative or underlying asset admitted to trading on a regulated market in Denmark or in a country within the European Union or in

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a country with which the Community has entered into an agreement for the financial area, or corresponding foreign markets.

- 3) If the relevant transactions lead to no change in beneficial ownership of a financial instrument admitted to trading on a regulated market in Denmark or in a country within the European Union or in a country with which the Community has entered into an agreement for the financial area, or corresponding foreign markets.
- 4) If the relevant orders to trade or transactions include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, and might be associated with significant changes in the price of a financial instrument admitted to trading on a regulated market in Denmark or in a country within the European Union or in a country with which the Community has entered into an agreement for the financial area, or corresponding foreign markets.
- 5) If the relevant orders to trade or transactions are concentrated within a short time span in the trading session and this leads to a temporary price change which is subsequently reversed.
- 6) If the relevant orders to trade change the representation of the best bid or offer prices in a security, or more generally the representation of the order book available to market participants, and are removed before they are executed.
- 7) If the relevant orders to trade or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

**16.-(1)** For the purposes of assessing whether orders to trade or transactions constitute price manipulation pursuant to section 38(1), no. 3 of the Securities Trading, etc. Act, the Danish FSA and market participants may take into account whether one or more of the signals of price manipulation mentioned in subsection (2) exist. If one or more of the signals of price manipulation mentioned in subsection (2) exist, this will not necessarily mean that the order to trade shall be deemed as price manipulation.

**(2)** The following signals of price manipulation may be taken into account in particular:

- 1) If the relevant orders to trade or transactions in the security undertaken by persons are preceded or followed by dissemination of misleading information by the same persons or persons linked to them.
- 2) If the relevant orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them disseminate investment analyses regarding securities which are erroneous or biased or demonstrably influenced by material interests.

## Part 6

### *Accepted market practices*

#### *Factors to be considered in decisions on accepted market practices*

**17.-(1)** The Danish FSA shall decide whether a market practice can be accepted, cf. section 38(4), 2nd clause of the Securities Trading, etc. Act.

**(2)** When the Danish FSA make decisions pursuant to subsection (1), the Authority shall take particular account of:

- 1) The need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand.

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- 2) The structural characteristics of the relevant market including whether it is regulated or not, the types of securities traded and the type of market participants (professional and/or retail investors) active on the relevant market.
- 3) The level of transparency of the relevant market practice in relation to the whole market.
- 4) The degree to which the relevant market practice has an impact on market liquidity and efficiency.
- 5) The degree to which the relevant market practice has an impact on the most important parameters for the market, including the extent of the impact on the average price for the trading session, the daily closing price, or market conditions otherwise.
- 6) The degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice.
- 7) The risk inherent in the relevant practice for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant security.
- 8) The outcome of any investigation of the relevant market practice by any competent authority or other authority in particular whether the relevant market practice breached regulations in Acts, Executive Orders or codes of conduct designed to prevent market abuse on the relevant market or on a directly or indirectly related market.

**(3)** That a market practice is new or under development shall not, in itself, mean that it cannot be accepted.

*Consultation procedures and disclosure decisions on accepted market practices*

**18.-(1)** Before the Danish FSA makes a decision pursuant to section 17(1), the Authority shall consult relevant bodies, including representatives of issuers of securities, financial services providers, market operators, consumers and other authorities.

**(2)** Before the Danish FSA makes a decision pursuant to section 19(1), the Authority shall, according to the circumstances, consult other competent authorities, particularly where there exist comparative markets with regard to structures, volume or type of transactions, in other countries within the European Union or in a country with which the Community has entered into an agreement for the financial area.

**(3)** Decisions made by the Danish FSA pursuant to section 17(1) shall be disclosed on the Danish FSA website. The Danish FSA shall transmit such decisions to the Committee of European Securities Regulators (CESR), which shall make them available on its website.

**(4)** In disclosures of decisions pursuant to section 17(1) the Danish FSA shall include a comprehensive description of the relevant market practice. Disclosure shall also include a description of the factors taken into account by the Authority in determining whether the relevant practice is regarded as acceptable.

**(5)** If, prior to a decision pursuant to section 17(1), investigatory actions on specific cases of market abuse have started, the Danish FSA may delay the consultation procedures set out in subsections (1) and (2) until the end of such investigation and possible related sanctions.

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**(6)** The Danish FSA shall review regularly previous decisions on whether a market practice is acceptable, in particular if significant changes have subsequently taken place in the relevant market environment such as changes to trading rules or to market infrastructure. If a previous decision on whether a market practice is acceptable is subsequently changed, the regulations of subsections (1)-(5) shall be observed.

## **Part 7**

### *Concluding provisions*

#### *Penalties*

**19.-(1)** Violation of the provisions of sections 5-9, section 12, section 13(1) and (2), final clause, as well as section 14(2), 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.

#### *Entry into force*

**20.-(1)** This Executive order shall enter into force on 1 November 2007.

**(2)** At the same time Executive Order no. 126 of 28 February 2005 on notice, notification and public disclosure of managers' transactions, lists of insiders, notification of suspicious transactions, indications on market manipulation and accepted market practices (Executive Order on market abuse) shall be repealed.

*Danish Financial Supervisory Authority, 11 October 2007*

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