

## Executive Order on Marketing Carried out by Certain Foreign Investment Undertakings in Denmark

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Executive Order no. 1445 of 21 December 2005 **EXCLUDING MINOR AMENDMENTS**

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The following shall be laid down pursuant to section 16(2) and section 132(3) of Consolidated Act no. 768 of 19 July 2005 on Investment Associations and Special-Purpose Associations as well as Other Collective Investment Schemes etc., as amended by Act no. 1428 of 21 December 2005:

### Scope

**1.** This Executive Order shall apply to foreign investment undertakings, cf. section 3, no. 9 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act, which have been approved by a competent authority in another country within the European Union or a country with which the Community has entered into an agreement for the financial area and which are not covered by Council Directive 85/611/EEC (UCITS), as well as foreign investment undertakings which have been approved in a country outside the European Union and outside countries with which the Community has entered into an agreement for the financial area, when such undertakings intend to market their units directly or indirectly in Denmark, and

- 1) have as their object to receive funds from a wide circle or from the general public which, in accordance with a principle of risk-spreading, are placed in instruments, cf. section 3 no. 1 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act, and at the request of a unit-holder shall redeem the unit-holder's share of the assets with funds derived therefrom, or
- 2) have as their object to receive funds from a wide circle or from the general public without the undertaking being covered by no. 1, and place the funds in liquid funds, including currency, cf. section 3, no. 1(e), of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act or in instruments as mentioned in annex 5 of the Financial Business Act, in accordance with the risk policy and risk profile of the investment undertaking, cf. section 114 d(1) of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act and redeem a member's share of the assets with funds derived therefrom, or
- 3) have as their object to receive funds from a wide circle or from the general public in connection with the first general meeting, place funds in the instruments stated in no. 1 or 2 but which are not regularly open to issue and redeem units, and
- 4) are subject to public supervision.

### Marketing

**2.-(1)** A foreign investment undertaking, cf. section 1, shall submit the following to the Danish FSA.

- 1) Fund rules or articles of association.

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- 2) Prospectus.
- 3) The most recent annual report, unless the undertaking has not yet operated for a full accounting period, and any half-yearly statement of assets.
- 4) Statement of planned marketing, including information on the target group the investment undertaking is aiming at.
- 5) Information on the measures intended for implementation in Denmark with a view to securing the unit-holders' rights to receive dividends and redeem units.
- 6) Information on the information the investment undertaking is required to provide for its unit-holders according to the regulations in its home country, including the information the investment undertaking is required to provide if it ceases marketing in Denmark.
- 7) Information on the taxation regulations applicable to Danish unit-holders of the investment undertaking, including information on whether taxes are deducted at source as regards any distributions, as well as information on the taxation regulations applying to the investment undertaking in its home country.
- 8) A statement from the supervisory authorities of the home country of the investment undertaking to the effect that said undertaking has been approved in accordance with the legislation of the home country and falls within the scope of the supervisory authority of the said country, including as regards said undertaking's activities in Denmark, and information on the scope of the approval granted.
- 9) A statement from the supervisory authorities of the home country of the investment undertaking to the effect that the home country is prepared to grant similar Danish associations access to market their units in the country in question.
- 10) Other documents which the investment undertaking is under an obligation to make public in its home country.

**(2)** The prospectus shall contain the information mentioned in subsection (1), no. 7.

**(3)** All documents submitted to the Danish FSA shall be written in Danish as an authorised Danish translation, or in another language stipulated by the Danish FSA. The prospectus specified in section 2(1), no. 2 shall be available as an authorised Danish translation.

**3.** Before the Danish FSA can approve marketing of a foreign investment undertaking, the Danish FSA requires authority to cooperate with the supervisory authority in the home country of the investment undertaking.

**4.-(1)** The Danish FSA shall approve direct or indirect marketing after the investment undertaking has submitted the information mentioned in section 2(1). The Danish FSA may, however, request further information deemed necessary to decide whether the interests of unit-holders are adequately secured.

**(2)** If the Danish FSA approves marketing by the investment undertaking, cf. subsection (1), said undertaking may commence marketing once it has received approval from the Danish FSA.

**5.** Investment undertakings mentioned in section 1 shall notify the Danish FSA of all changes regarding depositary and management company, changes in the name or address of the investment undertaking as well as of any changes regarding the matters specified in section 2(1). Said information shall be submitted to the Danish FSA no later than 14 days after the date the change was decided.

**6.-(1)** The documents and information which the investment undertaking is under an obligation to make public in its home country shall also be made public in Denmark. Publication shall be in the same way as in the home country.

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(2) The documents and information specified in subsection (1) shall be available as an authorised Danish translation or in another language stipulated by the Danish FSA.

7.-(1) As regards its activities in Denmark, the investment undertaking may use the same designation for its activities as used in its home country.

(2) Where such designation entails a risk of confusion, the Danish FSA may require that an explanatory note be added to the designation.

8. The Danish FSA may demand that an investment undertaking cease marketing its units in Denmark,

- 1) where the measures taken by the investment undertaking, cf. section 2(1), no. 5, are not adequate to secure the rights of the unit-holders,
- 2) where the investment undertaking is guilty of gross or repeated violations of provisions laid down in this Executive Order or in regulations in other Danish legislation,
- 3) where the undertaking does not comply with its marketing plan, cf. section 2(1), no. 4,
- 4) where the approval or supervision of the public authority of the undertaking's home country, cf. section 2(1), no. 8, is amended or ceases to apply,
- 5) where the access of Danish associations to market their units in the country in question, cf. section 2(1), no. 9, is changed or ceases to apply, or
- 6) where authority of the Danish FSA to cooperate with the supervisory authority in the home country of the investment undertaking, cf. section 3, ceases to apply.

9. When an investment undertaking, cf. section 1, ceases to market its units in Denmark, said undertaking shall immediately notify the Danish FSA hereof, stating the date of cessation. At the same time the investment undertaking shall notify how it will implement the measures mentioned in section 2(1), no.5.

#### **Penalties**

10. Any person violating section 5, 1st clause, section 6(1) and (2) and section 9, 1st and 2nd clauses shall be liable to a fine.

#### **Entry into Force**

11. This Executive Order shall enter into force on 1 January 2006. At the same time, Executive Order no. 1178 of 10 December 2003 on Marketing Carried out by Certain Foreign Investment Undertakings in Denmark shall be repealed.

*Danish Financial Supervisory Authority, 21 December 2005*

Henrik Bjerre-Nielsen

/Anne Marie Pico