

Executive Order on Licencing Alternative Investment Fund Managers to Market Alternative Investment Funds from a Third Country in Denmark¹

Executive Order no. 798 of 26 June 2014

The following shall be laid down pursuant to section 110, section 130(5) and section 190(4) of Act no. 598 of 12 June 2013 on Alternative Investment Fund Managers, etc. as amended by Act no. 268 of 25 March 2014, and Act no. 403 of 28 April 2014:

Scope

1.-(1) This Executive Order shall apply to alternative investment fund managers which have their registered office in Denmark, or in another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, which have been licensed to manage alternative investment funds pursuant to the rules implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, and intending to market units in alternative investment funds with registered office in a third country to professional investors in Denmark.

(2) This Executive Order shall apply correspondingly to alternative investment fund managers with registered office in a third country intending to market units in alternative investment funds with registered office in a third country to professional investors in Denmark.

Definitions

2. For the purpose of this Executive Order:

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

¹ This Executive Order implements Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC as well as Regulation (EC) no. 1060/2009 and (EU) no. 1095/2010, Official Journal 2011, no. L 174, p. 1.

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

Application

3.-(1) An alternative investment fund manager which intends to market its units in an alternative investment fund which has its registered office in a third country to professional investors in Denmark shall apply for a licence from the Danish FSA.

(2) The application shall contain the following:

- 1) Documentation that the manager has been granted a licence to manage alternative investment funds according to the regulations implementing Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, if the manager has its registered office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area.
- 2) A programme of operations uniquely identifying the alternative investment fund the manager intends to market and information on the country in which the alternative investment fund has its registered office.
- 3) Fund rules, articles of association or other articles of establishment for the alternative investment fund.
- 4) The information available to the investors on the alternative investment fund, cf. section 62 of the Alternative Investment Fund Managers etc. Act, for example a prospectus or similar document.
- 5) Information on the arrangements established to prevent units of the alternative investment fund from being marketed to retail investors, including in cases where the alternative investment fund relies on activities of independent entities to provide investment services in respect of marketing the fund.
- 6) A statement from the supervisory authorities in the home country of the alternative investment fund to the effect that the home country is prepared to grant similar Danish alternative investment funds access to market their units in the country in question. If the fund is not subject to supervision, the statement shall be issued by a lawyer in the home country of the fund.
- 7) Name and address of the depositary of the alternative investment fund, or name and address of the entity or entities designated according to section 4.
- 8) The most recent annual report, unless the alternative investment fund has not yet operated for a full accounting period, and any interim financial report.
- 9) Application form from the Danish FSA on licencing marketing of alternative investment funds which have their registered office in a third country, including
 - a) the name and address of the alternative investment fund as well as the manager,
 - b) information on whether, and if so the extent to which, the alternative investment fund may approach the general public in the home country of the manager and the alternative investment fund,
 - c) information on the measures the manager intends to implement in Denmark with a view to securing the investors' rights to receive dividends and redeem units.

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d) information on the information the alternative investment fund is required to provide for its investors according to the regulations of its home country, including the information which the alternative investment fund is required to provide if it ceases marketing activities in Denmark,

e) names of the sub-funds and share classes covered by the application, and

f) information on where the master fund is established if one of the alternative investment funds is a feeder fund.

10) Any other documents which the alternative investment fund is under an obligation to make public in its home country.

(3) The documents mentioned in subsection (2), nos. 1, 3, 8 and 10 shall be original documents or copies which have been certified by persons who have been authorised in writing to act on behalf of the alternative investment fund in this connection. The document dealt with in subsection (2), no. 6 shall always be an original document.

(4) The documents and information mentioned in subsection (2) shall be drafted in either Danish or English.

(5) Within three months after submission of a complete application for a licence to market units in an alternative investment fund with registered office in a third country or a sub-fund hereof in Denmark, cf. subsection (2), the Danish FSA shall inform the manager whether or not a licence has been granted. The Danish FSA may prolong this period for up to three months, where the Danish FSA considers it necessary due to the specific circumstances of the case and after having notified the manager accordingly. The manager may begin marketing units in the alternative investment fund to professional investors in Denmark when the manager has received a licence from the Danish FSA.

(6) On subsequent application for a licence to market further sub-funds in an alternative investment fund which has already been authorised for marketing in Denmark, the manager shall submit the information and documents mentioned in subsection (2), nos. 3-4 and 8-9.

(7) For subsequent application for a licence to carry out marketing activities of additional share classes in sub-funds, the marketing of which has already been licensed, the manager shall submit a digital document stating to which sub-funds the share classes belong as well as the names and possible ISIN codes of the sub-funds and share classes covered by the application.

4. An alternative investment fund manager with registered office in a third country shall ensure that one or more entities, which shall be different from the manager itself, are appointed to carry out the duties covered by section 50, 51(1) and section 52 of the Alternative Investment Fund Managers etc. Act.

Changes

5.-(1) An alternative investment fund manager shall notify the Danish FSA of any planned significant changes to the conditions which formed the basis for granting the licence to market units to professional investors, including significant changes in the information received by the Danish FSA in connection with the application. The notification shall take place prior to implementation of the changes. Unplanned changes shall be notified to the Danish FSA immediately after the change has taken place.

(2) If the Danish FSA is unable to approve the changes referred to in subsection (1), the Danish FSA shall inform the manager within one month of receipt of the notification. The Danish FSA may prolong this

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period by up to one month where this is deemed necessary because of the specific circumstances of the case. In such case, the Danish FSA shall, within one month after the Danish FSA has received notification according to subsection (1), notify the manager about any extension of the period.

(3) Further to notification of the manager according to subsection (2), the Danish FSA may decide to impose restrictions or reject the changes planned by the manager. Furthermore, the Danish FSA may order the manager to rectify the changes if these have already been made. The manager may establish and maintain the changes, if the Danish FSA does not oppose the changes within the relevant period.

Publication of information

6.-(1) An alternative investment fund manager shall ensure publication in Denmark of documents and information which the alternative investment fund shall publish regularly in the home country of the fund. Publication shall be made in the same manner as in the home country.

(2) The manager shall ensure publication in Denmark in the event that the supervisory authority of the home country is to publish certain information in the home country.

(3) The prospectus or similar documents shall state where publication is to take place.

Cessation of marketing of units

7. The Danish FSA may require that an alternative investment fund with registered office in a third country ceases to market the units of the fund in Denmark in the following cases:

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

2) The access of similar Danish alternative investment fund to marketing activities in the country in question, cf. section 3(2), no. 6, ceases to apply.

3) The possibility to cooperate with the supervisory authorities of the home country of the manager and the alternative investment fund, cf. section 130(3) of the Alternative Investment Fund Managers etc. Act, ceases to apply.

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

5) The licence of the manager to manage alternative investment funds is withdrawn or otherwise ceases to be valid.

6) The investment undertaking fails to pay the fee in due time, cf. section 9,

8.-(1) When an alternative investment fund manager ceases to market the alternative investment fund or sub-funds thereof in Denmark, said manager shall, no later than 14 days after the decision was made, notify all Danish investors and notify the Danish FSA about this and the date of cessation. The same shall apply correspondingly if the Danish FSA requires the manager to cease to market the alternative investment fund, cf. section 7.

(2) At the same time the manager shall notify how it initiates the measures to secure the rights of Danish investors mentioned in section 3(2), no. 9c.

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Fee

9. Foreign alternative investment fund managers licensed to market alternative investment funds pursuant to this Executive Order, shall pay a fee to the Danish FSA in accordance with section 361(1), no. 31 of the Financial Business Act.

Penalties

10.-(1) Violation of section 3(1), sections 4-6 and 8 shall be liable to a fine.

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

Entry into force

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

(2) Executive Order no. 821 of 26 June 2013 on Licencing Alternative Investment Fund Managers to Market Alternative Investment Funds from a Third Country in Denmark shall be repealed.

Danish Financial Supervisory Authority, 26 June 2014

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