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Executive Order on Authorising Alternative Investment Fund Managers to Market to Retail Investors¹

Executive Order no. 1047 of 14 October 2019

Pursuant to section 5(7), section 5a(2), and section 190(5) of the Alternative Investment Fund Managers, etc. Act, cf. Consolidation Act no. 1047 of 14 October 2019, the following is established:

Scope

1.-(1) This Executive Order applies to:

1) Alternative investment fund managers from Denmark authorised to manage alternative investment funds pursuant to section 11 of the Alternative Investment Fund Managers, etc. Act and intending to market the following alternative investment funds that they manage to retail investors in Denmark:

- a) Alternative investment funds with their registered office in Denmark.
- b) Alternative investment funds with their registered office in another Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, which have been notified by the manager as being marketed to professional investors in Denmark.
- c) Alternative investment funds with their registered office in a third country which the manager has been authorised to market to professional investors in Denmark.

2) Alternative investment fund managers from another Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, which are authorised to manage alternative investment funds in accordance with rules implementing the AIFM Directive and which intend to market the following alternative investment funds which they manage to retail investors in Denmark:

- a) Alternative investment funds from another Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, which have been notified by the manager as being marketed to professional investors in Denmark.
- b) Alternative investment funds with their registered office in a third country which the manager has been authorised to market to professional investors in Denmark.

3) Alternative investment fund managers from a third country which meet the conditions in section 5a of the Alternative Investment Fund Managers, etc. Act, and which intend to market the following alternative investment funds which they manage to retail investors in Denmark:

¹ This Executive Order implements parts of 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, and parts of Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings, Official Journal 2019, no. L 188, pp. 106–115.

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- a) Alternative investment funds from a third country which meet the conditions in section 5a of the Alternative Investment Fund Managers, etc. Act and which the manager has been authorised to market to professional investors in Denmark.
- b) Alternative investment funds from another Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, which the manager has been authorised to market to professional investors in Denmark.

Definitions

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

- 1) Alternative investment fund means an entity as defined in
 - a) section 3(1), no. 1 of the Alternative Investment Fund Managers, etc. Act as well as rules issued pursuant to section 3(8) of the Alternative Investment Fund Managers, etc. Act, or
 - b) rules implementing Article 4(1), point a of the AIFM Directive.
- 2) The supreme governing body means a governing body as defined in section 3(2) and (3) of the Alternative Investment Fund Managers, etc. Act.
- 3) Retail investor means an investor as defined in section 3(1), no. 42 of the Alternative Investment Fund Managers, etc. Act.
- 4) Financial assets means mortgage deeds, foreign-exchange spot transactions for investment purposes in order to secure a profit in connection with changes in the exchange rate, and financial instruments as defined in rules implementing Annex 1 C of Directive 2014/65/EU of 15 May 2014 on markets in financial instruments.
- 5) Alternative investment fund manager means an entity as defined in section 3(1), no. 3 of the Alternative Investment Fund Managers, etc. Act.
- 6) Marketing means marketing as defined in section 3(1), no. 31 of the Alternative Investment Fund Managers, etc. Act.
- 7) Professional investor means an investor as defined in section 3(1), no. 39 of the Alternative Investment Fund Managers, etc. Act.
- 8) Other assets means all assets that are not financial assets, cf. no. 4.
- 9) AIFM Directive means Directive 2011/61/ EU of 8 June 2011 on Alternative Investment Fund Managers.
- 10) A durable medium means a durable medium as defined in Article 2(1), point a of Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

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Application

3.-(1) An alternative investment fund manager intending to market units in an alternative investment fund that it manages to retail investors in Denmark must apply to the Danish Financial Supervisory Authority for authorisation.

(2) The application must include the following:

- 1) Documentation stating that the manager has notified marketing or been authorised to market in Denmark in accordance with rules implementing the AIFM Directive.
- 2) A declaration from the supervisory authority in the manager's home country to the effect that the manager is subject to the supervision of the home country, and that the manager is authorised to manage the alternative investment fund, if the manager has its registered office in a third country.
- 3) A declaration from the supervisory authority of the home country of the alternative investment fund to the effect that the alternative investment fund is subject to the supervision of the home country if both the manager and the alternative investment fund have their registered office in a third country.
- 4) Fund rules, articles of association or other articles of establishment for the alternative investment fund, unless the alternative investment fund has not yet been established.
- 5) The information available to investors on the alternative investment fund, cf. section 62 of the Alternative Investment Fund Managers, etc. Act, e.g. in the form of a prospectus or a similar document.
- 6) Significant investor information in accordance with the Executive Order on the Form and Content of a Document containing Significant Investor Information for Alternative Investment Funds.
- 7) The most recent annual report, unless the alternative investment fund has not yet operated for a full accounting period, and any interim report.
- 8) A copy of the risk guidelines (fund instructions) laid down by the supreme governing body, cf. section 5.
- 9) The name and address of the depositary of the alternative investment fund designated pursuant to section 45(1) of the Alternative Investment Fund Managers, etc. Act or rules implementing Article 21(1) of the AIFM Directive.
- 10) Application form on virk.dk for authorisation to market units in alternative investment funds to retail investors in Denmark, including
 - a) the name and address of the alternative investment fund and the manager,
 - b) a description of the marketing planned in Denmark, including whether there is to be direct or indirect marketing,
 - c) information on the extent to which the alternative investment fund may approach the general public in the home country, including information on whether the alternative investment fund may approach retail investors, if the alternative investment fund does not have a registered office in Denmark,
 - d) information on the measures that the manager intends to implement in this country to secure the investors' rights to receive dividends and redeem units if the alternative investment fund does not have a registered office in Denmark,

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- e) if the alternative investment fund does not have a registered office in Denmark, details of the information that the alternative investment fund is required to communicate to its investors according to the regulations of the home country, including the information that the alternative investment fund is required to communicate if it ceases marketing activities in Denmark,
- f) names of the sub-funds and share classes covered by the application, and
- g) information on where the master fund is established if one of the funds is a feeder fund.

11) Any other documents that the alternative investment fund is obliged to make public in its home country, if the fund has no registered office in Denmark.

(3) Documents mentioned in subsection (2), nos. 1–4, 7 and 11 must be original documents or copies certified by persons who have been authorised in writing to act on behalf of the alternative investment fund in connection with this.

(4) Documents and information mentioned in subsection (2) must be written in Danish or English. This does not apply, however, to significant investor information as mentioned in subsection (2), no. 6, which must be written in Danish.

(5) Within three months after submission of a complete application for authorisation to market units in the alternative investment fund or a sub-fund thereof to retail investors in Denmark, cf. subsection (2), the Danish Financial Supervisory Authority will notify the manager as to whether or not authorisation has been granted. The Danish Financial Supervisory Authority may prolong this period by up to three months if the Danish Financial Supervisory Authority considers this necessary due to the specific circumstances of the case and after notifying the manager of this.

(6) The manager may start to market units in the alternative investment fund to retail investors in Denmark when the manager has received authorisation from the Danish Financial Supervisory Authority.

(7) The authorisation by the Danish Financial Supervisory Authority will indicate whether the manager is authorised to market the alternative investment fund to retail investors as an alternative investment fund that primarily invests in financial assets, or whether the manager is authorised to market the alternative investment fund to retail investors as an alternative investment fund that primarily invests in other assets.

Requirements for the alternative investment fund intended to be marketed to retail investors

4.-(1) The investment policy and risk profile of an alternative investment fund must be laid down in the alternative investment fund's articles of association, fund rules or other articles of establishment. The articles of association, the fund rules or other articles of establishment must also contain provisions regarding issuance and redemption by the alternative investment fund of the members' units.

(2) An alternative investment fund that is open and primarily invests in financial assets must, in its articles of association, fund rules or other articles of establishment, have established provisions to the effect that the alternative investment fund must publish the issuance and redemption price at least every two weeks and that the alternative investment fund must be open for redemption at least once a month.

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5.-(1) The manager's senior governing body must establish risk guidelines for the alternative investment fund or sub-funds thereof. The risk guidelines must be within the investment policy and risk profile of the articles of association, the fund rules or other articles of establishment.

(2) No later than eight working days after a decision has been made to change the risk guidelines of the fund or a sub-fund, the manager must inform the registered investors of the changes and publish the changes. At the earliest, the changes must take effect after the investors in the fund or sub-fund have had an opportunity to redeem their units.

6.-(1) An alternative investment fund manager must ensure that the alternative investment fund complies with the risk guidelines established for the fund or sub-fund, cf. section 5.

(2) If the alternative investment fund transgresses the investment policy, risk profile or risk guidelines established in the articles of association, fund rules or other articles of establishment, or established by the manager's supreme governing body, these transgressions must be brought into compliance with the investment policy, risk profile or risk guidelines immediately.

(3) The manager's supreme governing body must publish transgressions covered by subsection (2). Publication must take place no later than eight working days after the transgression occurred.

Master feeder

7.-(1) If the alternative investment fund is a feeder fund, the master fund must be from a Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, and the master fund manager must also be from a Member State of the European Union or a country with which the EU has concluded an agreement in the financial field.

Information

8.-(1) An alternative investment fund manager must, for any subscription or redemption of units in an alternative investment fund, provide the investor with information about the issuance or redemption price.

9.-(1) If the alternative investment fund has share classes, the alternative investment fund manager must provide information on its website regarding the characteristics applicable to each share class and regarding the principles for allocating costs.

10.-(1) An alternative investment fund manager must publish information about suspension or postponement of redemption of units or shares, change of depositary or manager, changes to fee rates in relation to the investors and changes to other significant matters within three working days.

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11.-(1) If the alternative investment fund does not have its registered office in Denmark, the manager must ensure that documents and information that the alternative investment fund is required to publish regularly in the home country of the fund are published in Denmark. Publication must take place in the same manner as in the home country. The manager must ensure publication in Denmark, however, if it is the supervisory authority in the home country that publishes certain information in the home country.

(2) Documents and information covered in subsection (1) must be written in Danish or English.

Changes to information

12.-(1) Alternative investment fund managers must notify the Danish Financial Supervisory Authority of any planned, significant changes due to circumstances on which the communication of the authorisation to market units to retail investors was based, including significant changes to information received by the Danish Financial Supervisory Authority in connection with the application. The notification must take place before the changes are implemented. Unplanned changes must be notified to the Danish Financial Supervisory Authority immediately after the change has occurred.

(2) If the Danish Financial Supervisory Authority is unable to approve the changes referred to in the notification pursuant to subsection (1), the Danish Financial Supervisory Authority must inform the manager of this within one month of receipt of that notification. The Danish Financial Supervisory Authority may prolong this period by up to one month where this is deemed necessary due to the specific circumstances of the case. Where this is the case, the Danish Financial Supervisory Authority must notify the manager of any extension of the period within one month of the Danish Financial Supervisory Authority receiving the notification pursuant to subsection (1).

(3) Further to notification of the manager pursuant to subsection (2), the Danish Financial Supervisory Authority may impose restrictions or reject the changes planned by the manager. Furthermore, the Danish Financial Supervisory Authority may order the manager to rectify the changes if these have already occurred. The manager may implement or maintain the changes if the Danish Financial Supervisory Authority does not oppose the changes within the relevant period.

Tasks

13.-(1) An alternative investment fund manager that intends to market units in an alternative investment fund in Denmark must be arranged in such a way that it can undertake the following tasks:

1) Process investors' subscription, repurchase and redemption orders in relation to units in the alternative investment fund. Processing must be carried out in accordance with the conditions laid down in the alternative investment fund's documents.

2) Provide investors with information on how an order covered by no. 1 can be undertaken and how repurchases and redemptions are paid.

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- 3) Facilitate the processing of information on the exercising of investors' rights arising from their investments in the alternative investment fund that is marketed in Denmark.
 - 4) Provide investors with access to information and documents covered by Articles 22 and 23 of the AIFM Directive for further examination and requisitioning of copies.
 - 5) On a durable medium, provide investors with information relevant to the tasks performed by the manager.
 - 6) Act as a point of contact for communication with the Danish Financial Supervisory Authority and other competent authorities.
- (2) Tasks under subsection (1) may be performed without the manager or third parties physically being present in Denmark.
- (3) The manager, or a third party subject to regulation and supervision concerning the tasks undertaken by the third party, must provide facilities for the performance of tasks pursuant to subsection (1) for Danish investors in Danish. The facilities are not required to be made available in the event of the manager or third parties being physically present in Denmark.
- (4) The appointment of a third party must be documented in a written agreement specifying which tasks pursuant to subsection (1) the third party will perform on behalf of the manager. The written agreement must state that the third party receives all relevant information and documents from the manager.

Significant investor information

14.-(1) When offering units in an alternative investment fund or a sub-fund thereof, an alternative investment fund manager must supply a document containing significant investor information for interested retail investors. The document must be prepared in accordance with the Executive Order on the Form and Content of a Document containing Significant Investor Information for Alternative Investment Funds.

Cessation of marketing to retail investors

- 15.-(1)** The Danish Financial Supervisory Authority may require the manager to cease marketing the alternative investment fund to retail investors in the following situations:
- 1) The measures taken by the manager to secure the rights of investors to receive dividends and redeem units fail to adequately secure the rights of the investors.
 - 2) The alternative investment fund is not marketed in accordance with the marketing material.
 - 3) The manager is guilty of gross or repeated violation of the rules laid down in this Executive Order or other relevant Danish legislation.
 - 4) The manager's authorisation to manage the alternative investment fund is revoked or otherwise ceases to be valid.
 - 5) The manager has failed to pay fees to the Danish Financial Supervisory Authority on time.

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16.-(1) When an alternative investment fund manager decides to cease marketing the alternative investment fund or sub-funds thereof to retail investors in Denmark, the manager must, no later than 14 days after the decision is made, notify all Danish investors of this and notify the Danish Financial Supervisory Authority of the date of cessation. The same applies if the Danish Financial Supervisory Authority requires the manager to cease marketing the alternative investment fund, cf. section 15.

(2) At the same time, the alternative investment fund manager must communicate how the manager initiates measures to secure the rights of Danish investors as mentioned in section 3(2), no. 10d.

Penalties

17.-(1) Any board member of the alternative investment fund manager is liable to a fine in the event of violation of section 3(1) and (6), sections 4–6, sections 8–14 and section 16.

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

Entry into force

18.-(1) This Executive Order enters into force on 1 July 2021.

(2) Executive order no. 797 of 26 June 2014 on Authorising Alternative Investment Fund Managers to Market to Retail Investors is repealed.

The Ministry of Industry, Business and Financial Affairs

Simon Kollerup

/Hans Høj