

Executive Order on calculation of qualifying interests¹⁾

Executive Order no. 277 of 3 April 2009

The following shall be laid down in pursuance of section 61(9) of the Financial Business Act, cf. Consolidating Act no. 897 of 4 September 2008, as amended by Act no. 133 of 24 February 2009, and section 10(9) of the Securities Trading, etc. Act, cf. Consolidating Act no. 848 of 19 August 2008, as amended by Act no. 133 of 24 February 2009:

Scope and definitions

1. This Executive Order shall apply to the calculation of qualifying interests pursuant to section 61(1) of the Financial Business Act and section 10(1) of the Securities Trading, etc. Act.

2.-(1) "Qualifying interests" shall mean direct or indirect ownership of 10 per cent or more of the capital or voting rights, or ownership of an interest which provides the opportunity for exercising significant influence on the management of the undertaking.

(2) "Controlled undertaking" shall mean any undertaking,

- 1) in which a natural or legal person has a majority of the voting rights,
- 2) in which a natural or legal person has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question,
- 3) in which a natural or legal person is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members of the undertaking in question, or
- 4) over which a natural or legal person has the power to exercise, or actually exercises, dominant influence or control.

Calculation of qualifying interests

3.-(1) The voting rights under section 2 shall be calculated on the basis of all the equity investments with voting rights attached, including when the exercise of these rights has been suspended.

(2) Calculation of the proportion of the voting rights or share capital respectively under section 2 shall include the voting rights which the shareholder in question may exercise on the basis of one or more of the circumstances listed in section 6.

(3) In the application of the definition of a controlled undertaking in section 2(2), calculation of the voting rights and rights attaching to appointment and removal shall include the rights

¹⁾ This Executive Order contains provisions that implement parts of Directive 2007/44/EC of 5 September 2007 of the European Parliament and of the Council amending Council Directive 92/49/EEC and Directive 2002/83/EC, Directive 2004/39/EC, Directive 2005/68/EC and Directive 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (Official Journal 2007 no. L 247, p. 1) (Mergers and Acquisitions Directive).

held by any other natural or legal person acting on behalf of the shareholder, or on behalf of an undertaking controlled by the shareholder, including if this takes place in own name.

4.-(1) The duty to submit an application in advance to the Danish FSA for authorisation of an intended acquisition of a qualifying interest shall not apply to

- 1) shares exclusively acquired for clearing and settlement within three trading days,
- 2) depositaries which hold shares in their capacity as depositaries, provided such depositaries may only exercise the voting rights attached to such shares according to written or electronic instructions, and
- 3) acquisition or disposal of a major holding amounting to a qualifying interest or more by a market maker acting in its capacity as a market maker, cf. subsection (2), provided that:
 - a. the market maker is authorised under Directive 2004/39/EC, and
 - b. that the market maker will neither intervene in the management of the company in question nor in any way put pressure on the company to make it purchase such shares or back such shares (maintain a high share price).

(2) A market maker who wishes to be exempted pursuant to subsection (1), no. 3 shall notify the Danish FSA as soon as possible, and no later than within four trading days, that the market maker intends to carry out activities as a market maker regarding a specific share. When the market maker ceases to carry out activities as a market maker regarding the share in question, the market maker shall also notify the Danish FSA to this effect.

(3) "Market maker" shall mean a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling securities against his proprietary capital at prices defined by him.

5. The voting rights held in the trading book of a bank, an investment company or a credit institution as defined in Directive 2006/48/EC or an investment firm with authorisation according to Directive 2004/39/EC shall not be included in statements of holdings in proprietary capital, provided that

- 1) the voting rights held in the trading book do not exceed a qualifying interest, and
- 2) the bank, investment company, credit institution or investment firm ensures that the voting rights attaching to equity investments held in the trading book are not exercised nor otherwise used to intervene in the management of the company.

6. The duty to apply to the Danish FSA in advance for authorisation of an intended acquisition of a qualifying interest shall apply correspondingly to natural and legal persons who are entitled to acquire, sell or exercise voting rights which

- 1) are held by a third party with whom that natural or legal person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the company in question,
- 2) are held by a third party under an agreement concluded with that natural or legal person providing for the temporary transfer for consideration of the voting rights in question,
- 3) are attached to shares which are lodged as collateral with that natural or legal person, provided the person controls the voting rights and declares an intention to exercise them,
- 4) are attached to shares in which that natural or legal person has the life interest,

- 5) are held, or may be exercised within the meaning of points 1) to 4), by an undertaking controlled by that person,
- 6) are attached to shares deposited with that natural or legal person which the person can exercise at his discretion in the absence of specific instructions from the shareholders,
- 7) are held by a third party in its own name on behalf of that person, or
- 8) that person may exercise as a proxy where the person can exercise the voting rights at his discretion in the absence of specific instructions of the shareholder.

7.-(1) The parent undertaking of an investment management company or a management company as defined in Directive 85/611/EEC shall not be required to aggregate its holdings under sections 3-6 with the holdings managed by the investment management company or the management company, respectively under the conditions laid down in Directive 85/611/EEC, provided such investment management company or management company exercises its voting rights independently from the parent undertaking and that the provisions of section 9 are fulfilled.

(2) Notwithstanding subsection (1), sections 3-6 shall apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by an investment management company or management company as mentioned in subsection (1) and the management company has no discretion to exercise the voting rights attached to such holdings, but may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.

8.-(1) The parent undertaking of an investment company or an investment firm authorised under Directive 2004/39/EC shall not be required to aggregate its holdings under sections 3-6 with the holdings which such investment company or investment firm manages on a client-by-client basis, provided that the provisions of section 9 are fulfilled, and that:

- 1) the investment company or investment firm is authorised to provide such portfolio management,
- 2) it may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means or it ensures that individual portfolio management services are conducted independently of any other services under conditions equivalent to those provided for under Directive 85/611/EEC by putting into place appropriate mechanisms, and
- 3) the investment company or investment firm exercises its voting rights independently from the parent undertaking.

(2) Notwithstanding subsection (1), sections 3-6 shall apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by an investment management company or management company as mentioned in subsection (1) and the management company has no discretion to exercise the voting rights attached to such holdings, but may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.

9.-(1) For exemption from aggregation of holdings under section 7(1) and section 8(1), a parent undertaking shall fulfil the following conditions:

- 1) The parent undertaking may not, through direct or indirect instructions, or in any other way involve itself in the exercise of the voting rights held by the controlled company.
- 2) The controlled company shall freely and independently of the parent undertaking be able to exercise the voting rights attached to the shares it manages.

(2) A parent undertaking which wishes to be exempted from aggregation under section 7(1) and section 8(1) shall submit to the Danish FSA without delay the following:

- 1) A list of the names of group undertakings stating the competent authorities which supervise them, or a statement that there is no competent authority which supervises them, but without statement of the issuing companies as mentioned in section 1.
- 2) A statement that, for each of the companies mentioned in section 7(1) or section 8(1), the parent company fulfils the conditions stipulated in subsection (1).

(3) The parent undertaking shall keep the list mentioned in subsection (2), no. 1 up to date.

(4) When the parent undertaking only intends to exploit the exemptions in relation to securities covered by Section C of Annex I of Directive 2004/39/EC, the parent company shall only submit the list as mentioned in subsection (2), no. 1.

(5) For subsection (1), no. 1, section 7(2) and section 8(2):

- 1) "direct instructions" shall mean any instruction given by the parent undertaking, or another controlled undertaking of the parent undertaking, specifying how the voting rights are to be exercised by the company covered by section 7(1) and section 8(1) in particular cases.
- 2) "indirect instructions" shall mean any general or particular instruction, regardless of the form, given by the parent undertaking, or another controlled undertaking of the parent undertaking, that limits the discretion of the company covered by section 7(1) and section 8(1) in relation to the exercise of the voting rights in order to serve specific business interests of the parent undertaking or another controlled undertaking of the parent undertaking.

(6) A parent undertaking which wishes to be exempted from aggregation under section 7(1) and section 8(1) shall demonstrate to the Danish FSA that

- 1) the structure of the parent undertaking and the subsidiary means that the voting rights are exercised independently of the parent undertaking,
- 2) the persons who decide how the voting rights are to be exercised act independently, and
- 3) there is a clear written mandate for a client relationship on normal market terms between the parent undertaking and the subsidiary in the circumstances where the parent undertaking is a client of the subsidiary or holds assets which are managed by the subsidiary.

(7) With regard to subsection (6), no. 1, as a minimum there shall be written procedures prepared with a view to preventing disclosure of information between the parent undertaking and the subsidiary.

Entry into force

10. This Executive Order shall enter into force on 15 April 2009.