

Executive Order on Information in Prospectuses of Investment Associations, Special-Purpose Associations and Restricted Associations¹⁾

Executive Order no. 1182 of 13 December 2003 **EXCLUDING MINOR AMENDMENTS**

The following shall be laid down pursuant to section 74(2) and section 132(3) of Act no. 1169 of 19 December 2003 on Investment Associations and Special-Purpose Associations as well as Other Collective Investment Schemes etc.:

1.-(1) The complete prospectus of an association shall contain the information specified in sections 2-5. The simplified prospectus of an association shall contain the information specified in section 8, cf. however subsections (2) and (3).

(2) A special-purpose association's complete and simplified prospectuses shall, apart from the information mentioned in subsection (1), contain the information mentioned in section 6.

(3) Only the information mentioned in section 8 shall be required for the prospectuses of restricted associations.

(4) If the association is divided into divisions, the prospectus shall, apart from the information common for the whole association, also contain information for each division prepared in a clear manner.

(5) If, instead, the association prepares a separate prospectus for each division or for a group of divisions in the same association, each prospectus shall contain the information mentioned.

2.-(1) The members of the board of directors shall sign the complete prospectus and declare

- 1) that the information in the prospectus, to their knowledge, is correct and has not, as a consequence of omissions, distorted the view the prospectus is supposed to give, and
- 2) that the prospectus, to their knowledge, contains all significant information that could be of importance to the potential members of the association as defined in section 3, no. 7.

(2) If it is not possible to obtain the signatures of all members of the board of directors, the prospectus shall, as a minimum, be signed by the chairperson of the board of directors and a majority of the members of the board of directors. Those members of the board of directors who have not signed the prospectus shall sign it no later than at the next meeting of the board of directors.

3. The complete prospectus of an association shall contain the following minimum information on the circumstances of the association:

- 1) Name of the association and any divisions.
- 2) Address of the association.
- 3) The association's registration number in the Danish FSA and the Danish Commerce and Companies Agency respectively.
- 4) Date of formation of the association and any divisions.

- 5) Date of publication of the prospectus.
- 6) That the association and any divisions are in the process of approval by the Danish FSA, if such approval has not yet been granted.
- 7) The target group the association is aiming at, cf. section 4(1), no. 1; section 5(1), no. 1; or section 111(1), no. 1 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act, including a profile of the typical member the association or division is aiming at.
- 8) Names and principal occupation of the members of the board of directors, including their job title, place of employment, and address of employment or residence.
- 9) Name of the members of the board of management of the association or the name of the investment management company of the association as well as the name of its members of the board of management.
- 10) Name(s) of the auditor(s) and the name(s) and address(es) of the audit firm(s).
- 11) Name and address of the depository of the association and information on the content of the agreement with said depository. Said information is to include a description of the service, the price of said service as well as the notice period of the agreement. If the depository of the association owns shares in the association's investment management company, this is to be indicated, stating also the size of the ownership interest.
- 12) Names and addresses of undertakings with which the association has entered into agreements on consultancy as well as information on the main activities of such undertakings and whether the consultant is the depository of the association or a company in the same group as the depository or investment management company. If the consultant is the depository of the association or a company in the same group as the depository or investment management company, the content of such agreement shall be disclosed. Said information shall include a description of the service, the price of said service as well as the notice period of the agreement.
- 13) Whether the association has entered into agreements on marketing and procurement of the units of the association with the depository of the association or a company in the same group as said depository or investment management company. If this is the case, the content of such agreement shall be disclosed. Said information shall include a description of the service, the price of said service as well as the notice period of the agreement.
- 14) That the annual report is presented in accordance with the current Executive Order on the financial statements of investment associations and special-purpose associations.
- 15) The dividend thus far of the association or division, indicated as DKK per unit and in percent for the last five years.
- 16) The profit or loss thus far of the association or division per DKK 100 unit for the last five years as well as a warning against drawing conclusions on the basis of this as regards future performance.
- 17) The total administrative costs thus far of the association or division, indicated as a percentage of the average total assets (cost percentage) for the last five years.
- 18) Total assets of the association or division as stated in the latest annual report or the latest half-yearly statement of assets.
- 19) The size, or the budgeted size, of the remuneration of the board of directors, the board of management or the investment management company as well as the Danish FSA, broken down into individual items. When this information is updated, the size of remuneration amounts in the latest annual financial statements must also be stated, broken down into individual items.
- 20) If the association or division invests a considerable proportion of its assets in units in other associations or divisions hereof or other investment undertakings, cf. section 90 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act, said association or division shall indicate the maximum administration fees collectable from the association itself and the other

associations in which the association intends to invest, cf. section 49 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act.

- 21) The place the association or division's annual report or half-yearly statement of assets can be obtained.
- 22) Whether the association or division is entitled to issue certificates or is account-holding.
- 23) Whether the association or division issues physical certificates or whether the certificates are issued through and registered by a central securities depository when the association or division issues certificates.
- 24) Whether the association or division is distributing or accumulative.
- 25) The tax regulations applicable to the association or division, and a general description of how the return of the association or division is taxed for different types of member.
- 26) The provisions of the articles of association regarding the association or division's administrative costs, cf. section 10(1), no. 23 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act.
- 27) The provisions of the articles of association regarding the voting rights of the members, cf. section 10(1), no. 10 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act.
- 28) The circumstances under which the general meeting may resolve to dissolve the association or division.
- 29) How a member can transfer investments from one association or division to another, and the costs related to such transfer.

4. The complete prospectus of an association shall contain the following minimum information on the units of the association:

- 1) Where the units can be acquired and any issue period, including whether the association or division has tap issue without fixed maximum amounts.
- 2) How the issue price is set, including the proportion of said issue price that is expected to be spent on costs incurred in connection with the association or division's purchase of securities, administration, depository functions, communication, marketing, as well as the member's commission expenses, etc., broken down into individual items.
- 3) Payment and time limit for delivery or registration of the units with VP Securities Services.
- 4) The size of the association's or division's total assets at the commencement of the issue, stated in DKK million, or information stating that an unconditional guarantee has been made in accordance with the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act. When the prospectus is updated, this information may be omitted.
- 5) The size of the units and the minimum contribution if said minimum contribution is different from the size of the units.
- 6) The name of the stock exchange(s) where the units are listed or where application for listing will be submitted - if listing is desired - or the regulated market(s) where the units are traded or where application for admission for trading will be submitted.
- 7) Any ID code of the units.
- 8) Where the units can be registered in the name of the holder, when the association or division issues certificates.
- 9) The redemption right of the members, including cases where redemption can be postponed, and for special-purpose associations whether there are restrictions to this redemption right, cf. section 48(2)-(4) of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act.
- 10) Method for fixing the redemption price, cf. regulations laid down by the Danish FSA in accordance with section 48(5) of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act.

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- 11) Publication of issue and redemption prices or the net asset value, cf. section 77 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act, and information on where such publication is to be effected.
- 12) Whether restrictions apply to the members' right of resale of the units.
- 13) How often the association or division pays dividends, including whether the association or division withholds tax from any dividends paid to members.
- 14) If the association or division is allowed under the provisions of the articles of association to pay a dividend from total assets in order to secure a stable distribution percentage.
- 15) If the association or division may or is required to issue units without a right to dividends until the ordinary general meeting, including how the issue and redemption prices for such units are to be determined.
- 16) Which facilities are available with a view to payments to members or redemption of units as well as communication of information regarding the association or division. If the units are marketed in another Member State within the European Union or countries with which the Community has entered into an agreement for the financial area, the information mentioned above shall be given as regards said country, and the prospectus published there shall contain said information.

5. The complete prospectus of an association shall contain the following minimum information on the investment policy of the association or division:

- 1) The funds of the association or division are to be placed in accordance with the regulations of parts IX and X respectively of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act.
- 2) The markets on which the funds of the association or division are placed. The market is to be indicated by its official name. If the market in question is located in another Member State within the European Union or countries with which the Community has entered into an agreement for the financial area, or a market which is a member of the World Federation of Exchanges, or which is a Full Member or Associate Member of the Federation of European Securities Exchanges (FESE), this information may replace the indication of the name of the individual markets.
- 3) The investment objectives of the association or division, including an account of the instruments in which the funds of the association or division are placed. Such account shall include information on any benchmarks and any other elements included in the investment policy and in which geographical areas, industrial sectors and sizes of undertaking the funds of the association or division are placed. If the instruments are selected on the basis of their credit rating, the association or division's investment restrictions in relation to said rating shall also be described in the account. The account shall be included in an annex to be enclosed as part of the prospectus. Section 2 shall also apply to the annex.
- 4) The last five year's performance of the benchmark, if a benchmark is applied, and the performance of the association or division for comparison.
- 5) Whether the association or division is allowed to use derivative financial instruments. Moreover, it shall be stated whether derivative financial instruments can be used on a covered or uncovered basis and what impact such use of derivative financial instruments would have on the risk profile.
- 6) The risks associated with investments planned, or those already made, by the association or division, including whether large fluctuations are to be expected in the net value of the assets of the association or division as a consequence of the composition of the portfolio or the investment strategy applied.
- 7) Which measures the association or division has taken to maintain its risk profile.

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- 8) The countries, public authorities or public international bodies issuing or guaranteeing the securities in which the association intends to invest more than 35 per cent of its assets.

6.-(1) In addition to that mentioned in sections 2-5, the prospectus of a special-purpose association shall contain information as to whether it is a placement association, a money-market association, a fund of funds or an SME association.

(2) Moreover, the prospectuses of SME associations shall include the following information:

- 1) Principles for measurement of unlisted shares in limited companies and limited liability companies and for revaluation of such shares.
- 2) That the association or division's investments in holdings in unlisted companies are generally more risky than investments in listed securities.
- 3) The provision in the articles of association stipulating that the association or division is not open for issue and that no member can demand redemption.
- 4) Any general meeting resolutions regarding issue and/or redemption in accordance with section 10(3) and (4) of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act.

7. The articles of association of the association shall be enclosed with the complete prospectus as a component hereof.

8.-(1) As a supplement to the complete prospectus, an association shall prepare a simplified prospectus. The simplified prospectus shall provide the most important information about the association and any divisions hereof in a clear and understandable summary. The simplified prospectus may be enclosed with the complete prospectus as a component that can be removed or as part of marketing material in general.

(2) Section 2(1), no. 1 and subsection (2) shall also apply to the simplified prospectus.

(3) As a minimum, the simplified prospectus shall briefly describe the information mentioned in section 3, nos. 1-5, 7, 9, 10-14, 16, 19, 22, 24-26 and 29; section 4, nos. 1-3, 5, 9-13 and 15; section 5, nos. 1, 3 and 5-7; and for special-purpose associations also section 6.

(4) The simplified prospectus shall also state that the Danish FSA is the competent supervisory authority, stating its address, telephone number, fax number and website address.

(5) Finally, the simplified prospectus shall contain information stating that the complete prospectus, the annual report and the half-yearly statement of assets of the association and division can be obtained free of charge by contacting the association.

(6) The complete prospectus of the association or division may not be replaced by the simplified prospectus.

9. Any person violating sections 1-8 shall be liable to a fine.

10.-(1) This Executive Order shall enter into force on 1 January 2004. At the same time, the "bekendtgørelse om oplysninger i investeringsforeningers og specialforeningers prospekter" (executive order no. 280 of 6 May 2002 on information in the prospectuses of investment associations and special-purpose associations) shall be repealed.

(2) The prospectuses existing at the time of entry into force of this Executive Order shall, no later than 1 January 2005, be brought up to date to comply with this Executive Order.

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The Danish Financial Supervisory Authority, 13 December 2003

Henrik Bjerre-Nielsen

/Marianne Knudsen

Official notes

¹⁾ This Executive Order contains provisions implementing Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), (Official Journal 1983 L 375, p. 3), as partially amended by Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 with a view to regulating management companies and simplified prospectuses, (Official Journal 2002 L 41, p. 20), and Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002 with regard to investments of UCITS (Official Journal 2002 L 41, p. 35), Council Directive no. 88/220/EEC of 22 March 1988 (Official Journal 1988 L 100, p. 31) (amended investment policies), and Directive 95/26/EC of the European Parliament and of the Council of 29 June 1995, (Official Journal 1995 L 168, p. 7) (reinforcing prudential supervision - the "post-BCCI" Directive).

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