

Executive Order on the Production and Dissemination to the Public of Certain Investment Analyses¹⁾

Executive Order no. 1234 of 22 October 2007

The following shall be laid down pursuant to section 28b(2), and section 93(3) of the Securities Trading etc. Act, cf. Consolidated Act no. 1077 of 4 September 2007, as amended by Act no. 108 of 7 February 2007:

Part 1

Introductory provisions

Scope

1.-(1) This Executive Order shall apply to any person producing or disseminating analyses intended for the public or distribution channels in the exercise of his profession or the conduct of business, relating to

- 1) securities, cf. section 2 of the Securities Trading, etc. Act, which are admitted to trading on a regulated market in Denmark or in other countries within the European Union or in a country with which the Community has entered into an agreement for the financial area,
- 2) securities, cf. section 2 of the Securities Trading, etc. Act, for which a request for admission to trading on a regulated market in Denmark or in other countries within the European Union or in a country with which the Community has entered into an agreement for the financial area has been made, or
- 3) issuers of securities as mentioned in nos. 1-2.

(2) This Executive Order shall not apply to investment advice through the provision of a personal recommendation to a client in respect of one or more transactions relating to securities, which are not likely to become publicly available.

(3) The regulations in sections 6-8 shall only apply to analyses produced by persons whose main business is to produce investment analyses.

(4) The regulations in sections 9-10 and sections 16-17 shall only apply to analyses produced and disseminated by an investment firm or a credit institution.

Definitions

2. For the purposes of this Executive Order:

- 1) "*Person*":

¹⁾ This Executive Order contains provisions implementing Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest (Official Journal L 339, p 73).

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Shall mean a natural or legal person.

2) "*Distribution channel*":

Shall mean a channel through which information is, or is likely to become, publicly available, as a large number of persons have access to the information.

3) "*Analysis*":

Shall mean a report, an article or similar information (written or oral) intended for dissemination for the public or through distribution channels, and which is subject to a) or b) of this provision:

- a) Analyses produced by a person whose main business is to produce investment analyses if, directly or indirectly, the analysis expresses a particular investment recommendation in respect of a security, including any opinion as to the present or future value or price of such securities.
- b) Analyses produced by persons other than the persons referred to in a), if the analysis, directly or indirectly, expresses a particular investment recommendation in respect of a security.

4) "*Person whose main business is to produce investment analyses*":

Shall mean

- a) an investment firm or a credit institution,
- b) a legal person with a relation to an investment firm or a credit institution,
- c) an independent financial analyst,
- d) any other person whose main business is to produce investment analyses, and
- e) natural persons working for one of the persons in (a)-(d) in this provision under a contract of employment or otherwise.

5) "*Investment firm*":

Shall mean a person whose business it to provide investment services, cf. section 5(1), no. 3 of the Financial Business Act.

6) "*Credit institution*":

Shall mean an undertaking, the activity of which consists of receiving from the general public deposits or other funds to be repaid, and granting loans at its own expense, cf. section 5(1), no. 2 of the Financial Business Act.

7) "*Related legal person*":

Shall mean a legal person in the same group as a legal person, cf. section 5(1), no. 9 of the Financial Business Act.

8) "*Issuer*":

Shall mean the issuer of a security to which an analysis relates, directly or indirectly.

9) "*Recommendations*":

Shall mean analyses or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public.

Part 2

Rules on production and presentation of analyses General requirements

3. Any person presenting an analysis shall ensure that the analysis clearly and prominently discloses the name and job title of the legal person or persons who prepared the analysis and the name of the legal person responsible for its presentation.

4.-(1) Any person presenting an analysis shall ensure that:

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- 1) facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information in the analysis;
- 2) all sources in the analysis are reliable or, where there is any doubt as to whether a source is reliable, this is clearly indicated;
- 3) all projections, forecasts and price targets are clearly labelled as such and that the material assumptions made in producing or using them are clearly stated.

(2) Any person who has presented an analysis shall ensure that the analysis can be substantiated as reasonable upon request by the Danish FSA.

5.-(1) Any person presenting an analysis shall ensure that the analysis discloses all relationships and circumstances that may reasonably be expected to influence the objectivity of the analysis, including where

- 1) the relevant person has a significant financial interest in one or more of the securities which are the subject of the analysis, or
- 2) the relevant person has a significant conflict of interest with respect to the issuer to which the recommendation relates.

(2) Where the analysis is presented by a legal person, the requirements of subsection (1) shall also include any interests or conflicts of interest of a natural or legal person who is working for this person under a contract of employment or otherwise, or who has been involved in the preparation of the analysis.

(3) Where the analysis is presented by a legal person, the information to be disclosed in accordance with subsection (1) shall at least include any interests or conflicts of interest of the responsible legal person or of related legal persons, provided that this information

- 1) was accessible or could reasonably be expected to be accessible to legal persons involved in the preparation of the analysis, or
- 2) was accessible to other legal persons, who, although not involved in the preparation of the analysis, had or could reasonably be expected to have access to the analysis prior to its dissemination to customers or the public.

(4) Subsections (1)-(3) shall not entail a duty to breach effective information barriers («Chinese Walls») put in place by a legal person in order to prevent and avoid conflicts of interest between the departments of the enterprise.

Special requirements for persons whose main business is to produce investment analyses

6. In addition to the requirements of section 3, a person whose main business is to produce investment analyses shall, when presenting an analysis, ensure that the analysis contains a reference to any external self-regulatory standards or codes of conduct, by which the person who has produced the analysis is covered.

7. In addition to the requirements of section 4, a person whose main business is to produce investment analyses shall, when presenting an analysis, ensure that the following information is included in the analysis:

- 1) All substantially material sources for the analysis, as appropriate, including if the issuer was used as a source.

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- 2) Whether the analysis or parts hereof has been disclosed to the issuer and whether the investment recommendation has been amended following this disclosure before its dissemination.
- 3) An appropriate basis of valuation or methodology used to evaluate the security or the issuer, or to set a price target for the security.
- 4) The meaning of any investment recommendation made in the analysis, such as "buy", "sell" or "hold", including the time horizon of the investment recommendation made in the analysis.
- 5) An appropriate risk warning on the recommended investment, including a sensitivity analysis of the relevant assumptions.
- 6) The frequency of any planned updates of the analysis.
- 7) Any major changes in the responsible legal person's guidelines for coverage of the security previously announced.
- 8) The date at which the analysis was first released for distribution.
- 9) Date and time for any security price mentioned in the analysis.
- 10) Any change of investment recommendations in the analysis in relation to an earlier analysis concerning the same security or issuer, issued during the 12-months period immediately preceding the presentation of the new analysis, and the date of the earlier analysis.

8.-(1) In addition to the requirements of section 5, a person whose main business is to produce investment analyses shall, when presenting an analysis, ensure that the analysis clearly and prominently includes information on the following:

- 1) Where persons whose main business is to produce investment analyses, or any related legal person holds shares in the issuer, and the denomination of the shares exceeds 5% of the total issued share capital.
- 2) Where the issuer holds shares in the person whose main business is to produce investment analyses, or any related legal person, and the denomination of the shares exceeds 5% of the total issued share capital.
- 3) Other significant financial interests held by the person whose main business is to produce investment analyses or any related legal person in relation to the issuer.
- 4) Where the person whose main business is to produce investment analyses or any related legal person is a market maker or liquidity provider in the securities of the issuer.
- 5) Where the person whose main business is to produce investment analyses, or any related legal person has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of securities of the issuer.
- 6) Where the person whose main business is to produce investment analyses, or any related legal person is party to any other agreement with the issuer relating to the provision of investment banking services, provided that
 - a) information on the agreement would not entail the disclosure of any confidential commercial information, and
 - b) that the agreement has been in effect over the previous 12 months or has given rise during the same period to the payment of compensation or to the promise to get compensation paid.
- 7) Where the person whose main business is to produce investment analyses, or any related legal person is party to an agreement with the issuer relating to the production of the investment analysis.

(2) Subsection (1) shall not entail a duty to breach effective information barriers («Chinese Walls») put in place by a legal person in order to prevent and avoid conflicts of interest between the departments of the enterprise.

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Special requirements for investment firms and credit institutions

9. In addition to the requirements of section 3 and section 6, investment firms and credit institutions shall, when presenting an analysis, ensure that the analysis states which authority supervises the firm or the institution.

10. In addition to the requirements of section 5 and section 8, investment firms and credit institutions shall, when presenting an analysis, ensure that the analysis includes information on the following conditions:

- 1) The organisational and administrative arrangements set up within the investment firm or the credit institution for the prevention and avoidance of conflicts of interests with respect to investment analyses, including for the establishment of information barriers.
- 2) Where a person working for the firm or the institution, under a contract of employment or otherwise, and who was involved in preparing the analysis, receives remuneration tied to investment banking transactions performed by the investment firm or credit institution or any related legal person.
- 3) Information on price and date of the acquisition, if a natural person working for the firm or institution under a contract of employment or otherwise, and who was involved in the preparation of the analysis, receives or purchases the shares of the issuers prior to a public offering of such shares.
- 4) The proportion of the firm's or institution's direct investment recommendations presented within the latest quarter that are "buy", "hold" or "sell" or equivalent categories.
- 5) The proportion of issuers corresponding to each of the categories in no. 4 to which the investment firm or the credit institution has supplied material investment banking services over the previous 12 months.

Analyses presented in a shortened form or orally

11. Where the requirements of section 5, sections 7-8 and section 10 would be disproportionate in relation to the length of the analysis distributed, it shall suffice to make clear and prominent reference in the analysis itself to the place where such disclosure can be directly and easily accessed by the public, such as the website of the legal person.

12. Where an analysis is presented orally, it shall suffice to meet the requirements of sections 3-10 that, in connection with the presentation of the analysis, reference is made, to the greatest extent possible, to the place where such disclosure can be directly and easily accessed by the public, such as the website of the legal person.

Part 3

Regulations on dissemination of analyses produced by third parties

General requirements

13. A person who, at his own responsibility, disseminates an analysis produced by a third party shall, in connection with the dissemination, clearly and prominently state his name and any job title. The 1st clause shall not apply where it is possible to identify the person responsible for the production of the analysis in connection with the dissemination.

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14.-(1) If a person, prior to the dissemination of an analysis produced by a third party, substantially alters the analysis, that person shall ensure that the information disseminated clearly indicates the changes in detail.

(2) If a substantial alteration as mentioned in subsection (1) consists of a change in the direction of the investment recommendation, such as changing a "buy" investment recommendation into a "sell" or "hold" recommendation or vice versa, the disseminator shall meet the requirements of sections 3-7 and section 9, to the extent of the substantial alteration.

(3) Legal persons who themselves, or through natural persons, disseminate substantially altered analyses shall have a formal written policy so that the persons receiving substantially altered analyses may be directed to where, provided that this information is publicly available, they can have access to

- 1) the identity of the producer of the original analysis,
- 2) the analysis itself, and
- 3) the disclosure of the producer's interests or conflicts of interest.

(4) Subsections (1)-(3) shall not apply to news reporting on analyses produced by a third party, provided that the substance of the analysis is not altered.

15.-(1) If a person disseminates a summary of an analysis produced by a third party, this person shall ensure that the summary is clear and not misleading

(2) If a person disseminates a summary of an analysis produced by a third party, this person shall ensure that, provided that this information is publicly available, the summary mentions

- 1) where the original analysis is available, and
- 2) where information on any interests and conflicts of interests for the third party can be accessed by the public, if this information is not stated in the analysis itself.

Special requirements for investment firms and credit institutions

16. If an investment firm, a credit institution or a natural person working for such firms or institutions under a contract of employment or otherwise disseminates analyses produced by a third party, the firm or the institution shall, in addition to the requirements of sections 13-15, ensure in connection with the dissemination

- 1) disclosure of the authority supervising the firm or institution, and
- 2) in accordance with section 8 and section 10, disclosure of interests or conflicts of interest with the firm or institution, unless the third party producing the analysis already has disseminated the analysis to the public or distribution channels.

17. If an investment firm or a credit institution, prior to dissemination, has substantially altered the analysis, the firm or institution shall meet the requirements of sections 3-10 with regard to the substantial alteration.

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Part 4

Final provisions

Penalties

18.-(1) Fines may be stipulated for any violation of the provisions of sections 3-4, section 5(1)-(3), sections 6-7, section 8(1), sections 9-10, section 13, section 14(1)-(3), and sections 15-17.

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

Entry into force

19. This Executive Order shall enter into force on 1 November 2007. At the same time Executive Order no. 125 of 28 February 2005 on the Production and Dissemination to the Public of Certain Investment Analyses shall be repealed.

The Danish Financial Supervisory Agency, 22 October 2007

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