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## **Executive Order on authorising Alternative Investment Fund Managers to market Alternative Investment Funds from a Third Country in Denmark**

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Executive Order no. 1047 of 14 October 2019

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Pursuant to section 110, section 130(5) 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<sup>1</sup>*

**1.-(1)** This Executive Order applies to the following companies applying for authorisation to market units in alternative investment funds with registered office in a third country to professional investors in Denmark:

- 1) Alternative investment fund managers with registered office in Denmark.
- 2) Alternative investment fund managers with 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 are authorised to manage alternative investment funds in accordance with rules implementing Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers.
- 3) Alternative investment fund managers with registered office in a third country.

### *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)a of Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers.
  - 2) Retail investor means an investor as defined in section 3(1), no. 42 of the Alternative Investment Fund Managers, etc. Act.
  - 3) Alternative investment fund manager means an entity as defined in section 3(1), no. 3 of the Alternative Investment Fund Managers, etc. Act.
  - 4) Professional investor means an investor as defined in section 3(1), no. 39 of the Alternative Investment Fund Managers, etc. Act.
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5) Third country means a country as defined in section 3(1), no. 34 of the Alternative Investment Fund Managers, etc. Act.

6) The manager's home country means the country in which the manager has its registered office.

7) The home country of the alternative investment fund means the country in which the alternative investment fund has its registered office.

### *Application*

**3.-(1)** An alternative investment fund manager intending to market units in an alternative investment fund with registered office in a third country to professional investors in Denmark must apply to the Danish Financial Supervisory Authority for authorisation.

**4.-(1)** An application for authorisation to market alternative investment funds from a third country in Denmark must include the following:

1) A programme of operations clearly identifying the alternative investment fund that the manager intends to market, and information on the country in which the alternative investment fund has its registered office.

2) Fund rules, articles of association or other articles of establishment for the alternative investment fund.

3) The information available to investors on the alternative investment fund, cf. section 62 of the Alternative Investment Fund Managers, etc. Act, such as a prospectus or similar document.

4) Information on the arrangements established to prevent units in the alternative investment fund from being marketed to retail investors, including when the alternative investment fund relies on independent entities to provide investment services in connection with the marketing of the fund.

5) A statement from the supervisory authorities in the home country of the alternative investment fund or from a lawyer from the home country of the alternative investment fund to the effect that the home country is prepared to give similar Danish alternative investment funds access to market their units in that country.

6) The name and address of the depositary of the alternative investment fund, or the name and address of the entity or entities designated in accordance with section 8.

7) The most recent annual report, unless the alternative investment fund has not yet operated for a full accounting period. If the alternative investment fund has not operated for a full accounting period, the application must include the most recent half-yearly report if the company produces a half-yearly report.

8) Application form from the Danish Financial Supervisory Authority for authorisation to market alternative investment funds with registered office in a third country, stating the following information:

a) The name and address of both the alternative investment fund and the manager.

b) Names of the sub-funds and share classes covered by the application.

c) Whether, and if so to what extent, the alternative investment fund may approach the public in the home country of the manager and the alternative investment fund.

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- d) The measures that the manager intends to take in Denmark with a view to securing the investors' rights to receive dividends and redeem units.
- e) 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) Where the master fund is established if one of the alternative investment funds is a feeder fund.

9) Any other documents that the alternative investment fund is required to make public in its home country.

**(2)** In addition to the documents mentioned in subsection (1), if the manager has its registered office in a Member State of the European Union or a country with which the EU has concluded an agreement in the financial area, the application must include the following:

1) Documentation evidencing that the manager is authorised to manage alternative investment funds according to rules implementing Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers.

2) Documentation from the supervisory authority in the home country of the alternative investment fund evidencing that the alternative investment fund is covered by the cooperation agreement between the Danish Financial Supervisory Authority and the authorities in the home country of the alternative investment fund, cf. section 109(1), no. 3, of the Alternative Investment Fund Managers, etc. Act.

**(3)** In addition to the documents mentioned in subsection (1), if the manager has its registered office in a third country, the application must include the following:

1) Documentation from the supervisory authority in the manager's home country evidencing that the manager and the alternative investment fund are covered by the cooperation agreement between the Danish Financial Supervisory Authority and the authorities in the manager's home country, cf. section 130(3) of the Alternative Investment Fund Managers, etc. Act, if the manager and the alternative investment fund have registered offices in the same third country.

2) Documentation from the supervisory authority in the home country of the manager and in the home country of the alternative investment fund evidencing that the manager and the alternative investment fund are covered by the cooperation agreement between the Danish Financial Supervisory Authority and the authorities in the manager's home country and in the home country of the alternative investment fund, cf. section 130(3) of the Alternative Investment Fund Managers, etc. Act, if the manager and the alternative investment fund have registered offices in two different third countries.

**5.-(1)** The documents mentioned in section 4(1), no. 2, 7 and 9 must be certified by persons who have been authorised in writing to act on behalf of the alternative investment fund. The documents mentioned in section 4(1), no. 5, section 4(2) and section 4(3) must be signed by the person who issued the document.

**(2)** The documents and information mentioned in subsection (4) must be written in either Danish or English.

**6.-(1)** Within three months of the submission of a complete application for authorisation, the Danish Financial Supervisory Authority will inform the manager of whether or not authorisation has been granted.

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**(2)** 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.

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

**7.-(1)** In the event of a subsequent application for authorisation to market additional sub-funds in an alternative investment fund that has already been authorised for marketing in Denmark, the manager must submit the information and documents mentioned in section 4(1), no. 2–3 and 6–8.

**(2)** In the event of a subsequent application for authorisation to market additional share classes in sub-funds for which marketing has already been authorised, the manager must submit a digital document indicating the sub-funds to which the share classes belong and the names and any ISIN codes of the sub-funds and share classes covered by the application.

**8.-(1)** An alternative investment fund manager with its registered office in a third country must ensure that one or more entities, which must be different from the manager, are appointed to perform the tasks covered by section 50, section 51(1) and section 52 of the Alternative Investment Fund Managers, etc. Act.

### *Changes*

**9.-(1)** Alternative investment fund managers must notify the Danish Financial Supervisory Authority of any planned, significant changes to circumstances on which the communication of the authorisation to market units to professional investors was based.

**(2)** The Danish Financial Supervisory Authority must approve changes covered by subsection (1) before they are implemented.

**(3)** If the Danish Financial Supervisory Authority does not approve the changes covered by the notification pursuant to subsection (1), the Danish Financial Supervisory Authority will 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 will 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).

**(4)** Further to notification of the manager pursuant to subsection (3), the Danish Financial Supervisory Authority may impose restrictions relating to the changes planned by the manager.

**(5)** The manager may implement the changes if the Danish Financial Supervisory Authority does not oppose the changes before the end of the periods mentioned in subsection (3).

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**10.-(1)** An alternative investment fund manager must notify the Danish Financial Supervisory Authority of significant unplanned changes. Notification must be provided immediately after the change has occurred.

**(2)** The Danish Financial Supervisory Authority must approve changes covered by subsection (1).

**(3)** If the Danish Financial Supervisory Authority does not approve the changes covered by the notification pursuant to subsection (1), the Danish Financial Supervisory Authority will 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 will 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).

**(4)** Further to notification of the manager pursuant to subsection (3), the Danish Financial Supervisory Authority may impose restrictions relating to the changes introduced by the manager.

**(5)** The manager may maintain the changes if the Danish Financial Supervisory Authority does not oppose the changes before the end of the periods mentioned in subsection (3).

#### *Publication of information*

**11.-(1)** An alternative investment fund manager must publish in Denmark those documents and information that the alternative investment fund is required to publish regularly in the home country of the fund. Publication must take place in the same manner as in the home country.

**(2)** The manager must publish documents and information in Denmark, regardless of whether it is the supervisory authority in the home country that publishes the information or documents in question in the home country.

**(3)** The prospectus or equivalent documents must state where publication is to take place.

#### *Cessation of marketing of units*

**12.-(1)** The Danish Financial Supervisory Authority may order an alternative investment fund manager with its registered office in a third country to cease marketing units in the fund or sub-funds thereof in Denmark in the following situations:

2) The manager's measures to secure the investors' right to receive dividends and redeem units are inadequate.

3) The access of equivalent Danish alternative investment funds to marketing in the relevant country lapses.

4) The possibility for cooperation with the supervisory authority in the manager's home country or the home country of the alternative investment fund, cf. section 130(3) of the Alternative Investment Fund Managers, etc. Act, ceases to apply.

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

6) The manager's authorisation to manage the alternative investment fund is revoked or otherwise ceases to be valid.

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7) The manager has failed to pay the fee on time, cf. section 361(7) of the Financial Business Act.

(2) If the Danish Financial Supervisory Authority orders an alternative investment fund manager with its registered office in a third country to cease marketing the alternative investment fund or sub-funds thereof in Denmark, the manager must provide notice of this to all Danish investors in the fund or sub-funds thereof.

(3) The manager must inform the Danish Financial Supervisory Authority as to how the manager initiates measures to secure the investors' right to receive dividends and redeem units, as mentioned in section 4(1), no. 8d.

(4) Notification to the Danish Financial Supervisory Authority pursuant to subsection (3) and to the investors pursuant to subsection (2) must be made no later than 14 days after the Danish Financial Supervisory Authority's order is communicated to the manager.

**13.-(1)** When an alternative investment fund manager decides to cease marketing the alternative investment fund or sub-funds thereof in Denmark, the manager must provide notice of this to all Danish investors in the fund or sub-funds thereof.

(2) The manager must inform the Danish Financial Supervisory Authority of the date of cessation and how the manager initiates measures to secure the investors' right to receive dividends and redeem units, as mentioned in section 4(1), no. 8d.

(3) Notification to the Danish Financial Supervisory Authority pursuant to subsection (2) and to the investors pursuant to subsection (1) must be made no later than 14 days after the decision is made.

#### *Penalties*

**14.-(1)** Alternative investment fund managers may be liable to a fine for violation of section 3, section 8, section 9(1), section 10(1), section 11, section 13 and section 14.

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

#### *Entry into force*

**15.-(1)** This Executive Order enters into force on 1 January 2021.

(2) Executive Order no. 798 of 26 June 2014 on Authorising Alternative Investment Fund Managers to Market Alternative Investment Funds from a Third Country in Denmark is repealed.

#### *Transitional provision*

**16.-(1)** Managers authorised to market units in alternative investment funds with registered office in a third country to professional investors in Denmark before 1 January 2021 may continue to market these alternative investment funds in Denmark on the basis of the previously granted marketing authorisation.

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*The Danish Financial Supervisory Authority, 19 October 2020*

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