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Executive Order on Marketing Carried out by Foreign UCITS in Denmark¹

Executive Order no. 924 of 07 May 2021

Pursuant to section 27(2) and section 190(5) of the Investment Associations, etc. Act, cf. Consolidation Act no. 1718 of 27 November 2020, the following is established:

Scope

1.-(1) This Executive Order applies to foreign UCITS covered by the UCITS Directive, cf. section 2, no. 2, which intend to market their units directly or indirectly and which have been approved by a competent authority in another Member State of the European Union or in a country with which the EU has concluded an agreement in the financial field in pursuance of Directive 2009/65/EU of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

Definitions

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

1) UCITS means an investment undertaking which is authorised pursuant to the rules implementing 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) (the UCITS Directive) and which, in pursuance of Article 1(3) of the Directive, may be constituted

- a) in accordance with contracts as investment funds managed by investment management companies or management companies (in Denmark: securities funds),
- b) as trusts (unit trusts) or
- c) according to articles of association as investment firms (in Denmark: investment associations and companies for investment with variable capital) (SICAVs).

2) The UCITS Directive means Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

¹ This Executive Order contains provisions implementing parts of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), Official Journal 2009, no. L 302, page 32 and parts of the announcement 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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3) A professional investor means an investor who is considered a professional client or may, on request, be treated as a professional client as defined in Annex II to Directive 2014/65/EU.

4) A retail investor means an investor who is not a professional investor.

5) Direct marketing means any form of announcement directed towards the Danish market in connection with the performance of activities as an investment undertaking which has the purpose of promoting sales of units from an investment undertaking either through direct sales from the investment undertaking or through distributors.

6) Indirect marketing means any form of announcement directed towards the Danish market which has the purpose of promoting sales of units from an investment undertaking through insurance contracts or promoting sales of other securities, including bonds, the price and risk profile of which follow closely those of the investment undertaking, whether linearly or geared.

Notification of marketing by foreign UCITS

3.-(1) In the notification, a foreign UCITS that intends to market its units directly or indirectly in Denmark must state the types of investors whom the UCITS will approach.

Name and address

4.-(1) A foreign UCITS is entitled to use the same name or the same designation for its company as it uses in its home country.

(2) In the event that this name or designation entails a risk of confusion, the Danish Financial Supervisory Authority may require the foreign UCITS to add an explanatory note to the name or designation.

(3) A foreign UCITS must notify the Danish Financial Supervisory Authority of any changes to the name or address no later than 14 days after the decision on the change has been made.

Tasks

5.-(1) A foreign UCITS that intends to market its units in Denmark directly or indirectly must be arranged in such a way that it can undertake the following tasks:

1) Process subscription, repurchase and redemption orders and make other payments to investors in relation to units in the foreign UCITS. Processing and disbursements must be carried out in accordance with the conditions laid down in the documents required by Chapter IX of the UCITS Directive.

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

3) Facilitate the processing of information and access to procedures and arrangements as covered in Article 15 of the UCITS Directive on the exercising by investors of their rights arising from their investments in the foreign UCITS in Denmark.

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- 4) Make the information and documents required under Chapter IX of the UCITS Directive available to investors for further examination and requisitioning of copies.
 - 5) On a durable medium, provide investors with information relevant to the tasks performed by the foreign UCITS.
 - 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 foreign UCITS or third parties physically being present in Denmark.
- (3)** The foreign UCITS, 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 foreign UCITS 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 foreign UCITS. The written agreement must state that the third party receives all relevant information and documents from the foreign UCITS.

Suspension

6.-(1) If a foreign UCITS suspends redemption of units, the foreign UCITS must immediately notify the Danish Financial Supervisory Authority of this.

Publication of documents and information

- 7.-(1)** The documents and information that a foreign UCITS must regularly publish in its home country must also be published in Denmark.
- (2)** Publication must be in the same manner as in the home country of the foreign UCITS. The foreign UCITS must ensure publication in Denmark, however, if it is the supervisory authority in the home country that publishes certain documents or information in the home country.
- (3)** The prospectus or a supplement to this must state where the documents and information will be published.
- (4)** Documents and information must be published in Danish, English, Norwegian or Swedish.
- (5)** Documents containing key investor information which are required to be produced in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) must always be written in Danish or available in a Danish translation.
- (6)** The foreign UCITS is responsible for ensuring that its translations of information or documents faithfully reproduce the original information or documents.

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Cessation of marketing of units

8.-(1) The Danish Financial Supervisory Authority may require a foreign UCITS to cease marketing its shares in Denmark if

- 1) the measures taken by the foreign UCITS to secure the rights of investors to receive dividends and redeem units fail to adequately secure the rights of the Danish investors,
- 2) the foreign UCITS has not paid the fee on time, cf. section 10,
- 3) the foreign UCITS is not marketed in accordance with the marketing material,
- 4) the approval or supervision of the foreign UCITS by the competent authority of the home country ceases to apply, or
- 5) the foreign UCITS is guilty of gross or repeated violation of the rules laid down in this Executive Order or other Danish legislation.

9.-(1) If a foreign UCITS or a compartment thereof ceases to market its units in Denmark, the foreign UCITS must, no later than 14 days after the decision has been made, notify all Danish investors, and notify the Danish Financial Supervisory Authority of which funds will cease and the date of cessation.

Fee

10.-(1) A foreign UCITS that markets its units in Denmark pursuant to this Executive Order pays a fee to the Danish Financial Supervisory Authority pursuant to section 361(8) of the Financial Business Act.

Penalties

11.-(1) Any board member of a foreign UCITS is liable for a fine in the event of intentional or grossly negligent violation of section 4(2) and sections 5–9.

Entry into force

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

(2) Executive Order no. 786 of 17 June 2014 on Marketing Carried out by Foreign UCITS in Denmark is repealed.

The Danish Financial Supervisory Authority, 7 May 2021

Jesper Berg

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/Sean Hove