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Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act¹⁾

Consolidated Act no. 55 of 31 January 2006 - EXCLUDING MINOR AMENDMENTS

Consolidated Act no. 55 of 31 January 2006

This is an Act to consolidate the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act, cf. Consolidated Act no. 768 of 19 July 2005 with the amendments consequential upon section 1 of Act no. 1428 of 21 December 2005.

I General provisions

Part 1

Scope

1.-(1) This Act shall apply to the following collective investment schemes:

- 1) Investment associations, cf. section 4.
- 2) Special-purpose associations, that is to say placement associations, money-market associations, funds of funds, and SME associations, cf. section 5 and part 15.
- 3) Foreign investment undertakings, cf. sections 11 and 16.
- 4) Hedge associations, cf. part 16a.
- 5) Other collective investment schemes, cf. part 17.

(2) In pursuance of part 16, this Act may, in addition to the collective investment schemes mentioned in subsection (1), apply to restricted associations that do not receive funds from a wide circle or from the general public and that invest funds in accordance with the provisions of parts 13-15.

2.-(1) This Act shall not apply to:

- 1) Limited companies.
- 2) Limited liability companies.
- 3) Collective investment schemes that invest in shares in order to acquire limited companies or limited liability companies in part or in whole with a view to participating in the operations and management of such companies (equity funds).
- 4) Collective investment schemes for employees of an undertaking or group where those responsible for placing the funds of the collective investment scheme shall be employees of said undertaking or group.

(2) The Danish FSA may, however, decide whether the schemes mentioned in subsection (1), no. 4 are to be covered by section 1(1).

Part 2

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Definitions

3. For the purposes of this Act:

1) "Instruments" shall mean:

- a) Securities, cf. no. 2.
- b) Money-market instruments, cf. no. 3.
- c) Units issued by other associations, divisions, or investment undertakings, cf. section 90.
- d) Derivative financial instruments.
- e) Liquid funds, including currency.

2) "Securities" shall mean:

- a) Shares and other securities equivalent to these.
- b) Bonds and other standardised debt instruments.
- c) All other negotiable securities giving the right to acquire such securities by subscription or exchange.

3) "Money-market instruments" shall mean:

Interest-related securities with a term of up to no more than 12 months, that are normally traded on a money market and that are liquid and have a value which can be determined accurately at any time.

4) "Investment management company" shall mean:

A company that has been approved as an investment management company in pursuance of section 10 of the Financial Business Act.

5) "Depository" shall mean:

A bank with its registered office in Denmark or a corresponding foreign credit institution with a branch in Denmark and with its registered office in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area, and which has been made responsible for all the tasks stated in section 4(8), section 5(8), and section 114a(7) of this Act, as well as sections 106 and 107 of the Financial Business Act.

6) "Parent company" shall mean:

An undertaking that

- a) holds the majority of the voting rights of an undertaking,
- b) holds shares or other interests in the own funds of an undertaking (is a shareholder) and is entitled to appoint or remove a majority of the board of directors, board of management or similar management organ of the undertaking,
- c) participates in the undertaking and is entitled to exercise a controlling influence on the undertaking under the articles of association or other agreements with said undertaking,

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- d) participates in the undertaking and commands the majority of the voting rights within the undertaking under agreements with other shareholders or owners of shares of the own funds within said undertaking, or
- e) holds holdings in an undertaking and exercises a controlling influence on said undertaking.
- 7) "Subsidiary" shall mean:
- An undertaking with which a parent company has one of the links specified in no. 6.
- 8) "Group" shall mean:
- A parent company and its subsidiaries.
- 9) "Foreign investment undertaking" shall mean:
- Any foreign collective investment scheme, the activities of which correspond to the schemes mentioned in section 1(1) as well as **collective investment undertakings of the closed-end type**.
- 10) "The home country of an EU investment undertaking" shall mean:
- a) The Member State, where the management company has its registered office according to the articles of association in cases where an investment undertaking was established as an investment fund.
- b) The Member State, where the investment firm has its registered office according to the articles of association in cases where an investment undertaking was established as an investment firm.
- 11) "Management company" shall mean:
- A foreign company, the activities of which consist of management of institutions for collective investment in securities covered by Council Directive 85/611/EEC (the UCITS Directive).
- 12) "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.
- 13) "Regulated market" shall mean:
- A market, including stock exchanges and authorised market places that are covered by Article 1, no. 13 of Council Directive 93/22/EEC (the Investment Services Directive).
- 14) "Other regulated market" shall mean:
- A market in regular operation, recognised, and open to the public, but not covered by the definition in Article 1, no. 13 of Council Directive 93/22/EEC (the Investment Services Directive).
- 15) "OTC" ("Over The Counter") shall mean:

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A market in which to trade securities outside the markets or currency trading mentioned in nos. 13 and 14.

16) "Close links" shall mean:

- a) direct or indirect links of the nature described in no. 8,
- b) participating interests such that an undertaking is in direct or indirect ownership of 20 per cent or more of the voting rights or capital of another undertaking, or
- c) the joint links with an undertaking of several undertakings or persons, cf. a).

17) "Zone A countries" shall mean:

EU Member States, other countries with full membership of the Organisation for Economic Cooperation and Development (OECD), and other countries that have entered into special loan agreements with the International Monetary Fund (IMF) and are affiliated with the General Agreement on Borrowing (GAB). However, a country that restructures its foreign national debt due to inability to pay shall be excluded from Zone A for a period of five years.

II Approval of activities and articles of association, exclusive rights, scope of activities for investment associations and special-purpose associations as well as divisions hereof

Part 3

Approval of investment associations and special-purpose associations as well as articles of association, etc.

Associations

4.-(1) Undertakings shall be subject to approval by the Danish FSA as investment associations in order to carry out activities which

- 1) involve receiving, from a wide circle or from the general public, funds which, in accordance with a principle of risk-spreading, are placed in instruments in accordance with the regulations in part 13 of this Act, and
- 2) at the request of a member shall redeem said member's share of the assets with funds derived therefrom.

(2) An investment association may, alone or together with other investment associations and special-purpose associations, cf. section 5, approved restricted associations, cf. section 111, or hedge associations, cf. section 114a(1) and (2), own an investment management company, cf. section 3, no. 4, which solely carries out management, investment or marketing activities and solely on behalf of the relevant association(s).

(3) Investment associations may, when permitted by their articles of association, grant an annual contribution of no more than 2 per cent of their assets to humanitarian or charitable organisations with which they have made an agreement hereon.

(4) Investment associations, special-purpose associations and the investment undertakings mentioned in section 11, shall have the exclusive right of approaching a wide circle or the general public for the purpose of receiving funds for activities referred to in subsection (1).

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(5) Investment associations may only carry out the activities mentioned in subsections (1)-(3) and shall have exclusive right to use the word "investeringsforening" (investment association) in their name. Other undertakings may not use names or expressions that may create the impression that they are investment associations.

(6) Investment associations shall be under an obligation to use the word "investeringsforening" (investment association) in their name.

(7) An undertaking seeking approval under subsection (1) shall have assets of no less than DKK 10 million. Intangible assets may not be included in the total assets for this purpose.

(8) The instruments of an investment association, cf. section 3, no. 1, shall be entrusted to and safekept separately for said association with a depositary approved by the Danish FSA, cf. section 3, no. 5. The depositary shall be a bank with its registered office in Denmark or a corresponding foreign credit institution with a branch in Denmark and with its registered office in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area.

5.-(1) Undertakings shall be subject to approval by the Danish FSA as special-purpose associations in order to carry out activities which

- 1) involve receiving, from a wide circle or from the general public, funds which, in accordance with a principle of risk-spreading, are placed in instruments mentioned in part 15 of this Act, and
- 2) redeem the member's share of the assets with funds derived therefrom.

(2) A special-purpose association may, alone or together with one or more investment associations, cf. section 4, special purpose associations, cf. subsection (1), approved restricted associations, cf. section 111, or hedge associations, cf. section 114a(1) and (2), own an investment management company, cf. section 3, no. 4, which solely carries out management, investment or marketing activities and solely on behalf of the relevant associations.

(3) Special-purpose associations may, when permitted by their articles of association, grant an annual contribution of no more than 2 per cent of their assets to humanitarian or charitable organisations with which they have made an agreement hereon.

(4) Special-purpose associations, investment associations and the institutions mentioned in sections 11 and 16, shall have the exclusive right of approaching a wide circle or the general public for the purpose of receiving funds for activities referred to in subsection (1).

(5) Special-purpose associations may only carry out the activities mentioned in subsections (1)-(3) and shall have exclusive right to use the word "specialforening" (special-purpose association), "placeringsforening" (placement association), "pengemarkedsforening" (money-market association), "investeringsinstitutforening" (fund of funds) or "erhvervsudviklingsforening" (SME association) respectively in their name. Other undertakings may not use names or expressions for their activities that may create the impression that they are special-purpose associations.

(6) Special-purpose associations shall be under an obligation to use the word "specialforening" (special-purpose association), "placeringsforening" (placement institution), "pengemarkedsforening" (money-market associations), "investeringsinstitutforening" (fund of funds) or "erhvervsudviklingsforening" (SME association) respectively in their name.

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(7) An association seeking approval under subsection (1) shall have assets of no less than DKK 10 million. Intangible assets may not be included in the total assets for this purpose.

(8) The instruments of a special-purpose association, cf. section 3, no. 1, shall be entrusted to and safekept separately for said association with a depositary approved by the Danish FSA, cf. section 3, no. 5. The depositary shall be a bank with its registered office in Denmark or a corresponding foreign credit institution with a branch in Denmark and with its registered office in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area.

6.-(1) Activities mentioned in sections 4 and 5 shall be organised in the form of an association. Members of the association shall be any owner of a share of the association's assets.

(2) An association may be divided into divisions, each based on a particular part of the assets in accordance with the relevant provisions in the articles of association.

(3) If an association is divided into divisions, each division shall only be liable for its own liabilities. Each division shall, however, also be liable for its share of the common costs. If legal proceedings have been effected without results, or if it is otherwise evident that a division is unable to meet its liabilities under the 2nd clause, the other divisions shall be jointly and severally liable for said division's share of the common costs.

(4) Any share of an association or division's assets shall confer equal rights on the members, cf. however section 10(1), no. 6 regarding shares and units without dividend rights (ex coupon) and section 22 regarding voting rights.

7.-(1) The Danish FSA shall approve investment associations and special-purpose associations when

- 1) the foundation of the association is legal,
- 2) the requirements in section 4 or 5 above have been fulfilled,
- 3) the members of the board of management or board of directors of the association meet the requirements of sections 31 and 32 and have adequate experience with the type of association applying for approval, or, if the board of directors has not employed a board of management, when the Danish FSA has approved the association's choice of investment management company, the management of which must have adequate experience with the type of association applying for approval,
- 4) the Danish FSA has approved the articles of association of the association,
- 5) the Danish FSA has approved the depositary, chosen by the association, and which must provide sufficient financial and professional security that it is capable of performing its duties and which has been chosen by the association,
- 6) the activity plan, organisation, procedures and internal controls as well as administrative conditions of the association are appropriate,
- 7) there are no close links, cf. section 3, no. 16, between the applicant and other undertakings or persons that could complicate performance of the tasks of the Danish FSA,
- 8) legislation in a country outside the European Union with which the Community has not entered into an agreement for the financial area regarding an undertaking or person with whom the applicant has close links will not complicate performance of the tasks of the Danish FSA,

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- 9) the assets of the association, which shall be no less than DKK 10 million, shall either be subscribed at the first general meeting, or an unconditional guarantee shall be provided by a bank or insurance company for subscription of units up to the minimum amount of no less than DKK 10 million,
- 10) the association has its head office and registered office in Denmark, and
- 11) subsection (2) has been met.

(2) An application for approval under sections 4 and 5 shall contain all information necessary for assessment by the Danish FSA of whether the conditions in subsection (1) have been met.

(3) The Danish FSA shall reject the application for approval if, for legal reasons, the association is prevented from marketing its units in Denmark, including reasons arising from provisions in its articles of association.

(4) In the event that the Danish FSA rejects an application for approval, the association shall be notified no later than 6 months following receipt of the application or, if the application is incomplete, no later than 6 months after the association has submitted the information necessary to make a decision. In any case, a decision shall be made no later than 12 months after receipt of the application. Where the Danish FSA has not, within six months after receipt of an application for approval, issued a statement regarding the application, the association may bring the matter before the courts.

8.-(1) Once the Danish FSA has approved an investment association, special-purpose association or amendments to the articles of association of an association, the Danish Commerce and Companies Agency may make the registrations necessary, cf. subsection (3).

(2) Simultaneously with its application for registration, cf. subsection (1), and when applying for approval of amendments to its articles of association, an association shall submit three dated and signed copies of its articles of association together with the full statement to the Danish FSA. When the Danish FSA has approved the association or the amendments to its articles of association, the Danish FSA shall forward one copy of said articles of association including its approval endorsement to the Danish Commerce and Companies Agency and a corresponding copy to said association.

(3) In the event of application and registration in pursuance of subsection (1), the regulations of the Companies Act shall apply with the necessary changes.

9. If an association is divided into divisions, the Danish FSA shall approve new divisions when

- 1) the foundation of the division is legal,
- 2) the Danish FSA has approved the articles of association regarding the division,
- 3) the division has assets of no less than DKK 10 million, and
- 4) the minimum assets of the division are either subscribed or an unconditional guarantee has been provided by a bank or an insurance company for subscription of units up to a minimum of DKK 10 million.

10.-(1) The articles of an association shall contain provisions on

- 1) the object of the association,
- 2) the target group the association is aiming at,
- 3) the name of the association and any secondary names,
- 4) the municipality in Denmark where the association is to have its registered office (head office),

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- 5) any division of the association into divisions,
- 6) any issue by the association of units without dividend rights (ex coupon),
- 7) appointment and replacement of the association's depository,
- 8) convening of general meetings as well as time and place for such general meetings,
- 9) the business to be discussed at the ordinary general meeting,
- 10) voting rights and how to exercise them, including any restrictions on such voting rights,
- 11) adoption of proposals at general meetings, including amendment to the articles of association and the dissolution of the association,
- 12) board of directors, board of management or investment management company and auditors,
- 13) the persons entitled to sign for the association, including the persons entitled to exercise the voting rights in relation to the association's securities holdings,
- 14) whether the association or division is entitled to issue certificates or is account-holding,
- 15) the amount of the association's units (nominal amount) and the design of any certificates,
- 16) whether the association's units are to be made out in someone's name or may be made out to a bearer, and whether the association's units are to be subject to any restrictions as regards negotiability,
- 17) provisions regarding units in account-holding associations or divisions,
- 18) issue and redemption of the association's units, including any restrictions applying to special-purpose associations,
- 19) how any profit of the association is to be administered, including whether interim dividends shall be distributable several times annually, and whether the general meeting in associations or divisions paying dividends which invest their assets in bonds may decide that the amount distributed shall be carried forward in full or in part for distribution in subsequent accounting years
- 20) form of liability of the association and any divisions as well as the liability of the individual members,
- 21) how to measure the association's assets,
- 22) how to fix the issue and redemption price of the association's units,
- 23) which costs shall be chargeable to the association and the maximum amount of costs allowed in proportion to the highest asset amount during the accounting year,
- 24) annual report, audit and appropriation of the profit for the year,
- 25) whether the association or division is to be allowed to pay a dividend from the capital in order to secure a stable distribution percentage,
- 26) audit of the annual report and the right of access thereto of the general public,
- 27) any annual contribution of no more than 2 per cent of the total assets to humanitarian or charitable organisations, if the association or division makes such contribution,
- 28) the investment policy of the association and its divisions as well as the general regulations for the association's placement of its assets, including the markets in which the association or the individual divisions may place their funds when the Danish FSA has not approved the relevant market, and
- 29) 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.

(2) As regards placement associations and money-market associations, it may be stipulated in their articles of association that issue and redemption cannot take place for a predetermined period.

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(3) The articles of association of SME associations shall provide that the association is not open for issue and that no member can demand redemption. However, at the general meeting and with the same majority as in the case of amendments to the articles of association, cf. section 23(1), it may be resolved that a new issue or redemption may be effected at specific dates. In these cases, the members shall have proportionately equal shares of the assets redeemed.

(4) After expiry of the issue period, the board of directors of SME associations may, as provided in the articles of association, decide that the association shall be open to issue or redemption for specific periods.

Part 4

Cross-border activities

Foreign investment undertakings covered by Council Directive 85/611/EEC (UCITS)

11.-(1) Foreign investment undertakings which have been approved by a competent authority in another country within the European Union or a country with which the Community has entered into an agreement for the financial area in pursuance of Council Directive 85/611/EEC (UCITS), when such undertakings intend to market their units directly or indirectly in Denmark, shall submit the following to the Danish FSA:

- 1) A statement from the supervisory authorities of the investment undertaking verifying that the institution has been approved as an investment undertaking in accordance with Council Directive 85/611/EEC (UCITS).
- 2) Fund regulations or articles of association.
- 3) Complete and simplified prospectuses.
- 4) The latest annual report, if this has been prepared, and any half-yearly statement of assets.
- 5) Statement of planned marketing, including information on the target group the institution is aiming at.
- 6) Information on the measures intended for implementation in Denmark with a view to securing the members' rights to receive dividends and redeem units.
- 7) Information on the information the investment undertaking shall provide for its members according to the regulations in its home country, including information said investment undertaking shall provide if it ceases marketing in Denmark.
- 8) Information on the taxation regulations applicable to Danish members of the institution, including information on whether taxes are deducted at source as regards any distributions, as well as information on the taxation regulations applying to the institution in its home country.

(2) The documents specified in subsection (1) shall be available as an authorised Danish translation or in another language approved by the Danish FSA.

(3) The information mentioned in subsection (1), no. 8 must be included in both the complete and the simplified prospectus or as a supplement thereto.

(4) Changes to the planned marketing, cf. subsection (1), no. 5, or to the name or address of the investment undertaking shall be submitted to the Danish FSA no later than 14 days after the decision regarding the change.

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12. Units in foreign investment undertakings may be marketed two months after submission to the Danish FSA of the information required in section 11 unless the Danish FSA has made a prior decision to the effect that

- 1) the planned guidelines for marketing of shares and units, cf. section 11(1), no. 5, does not sufficiently secure the rights of the investors in accordance with section 11(1), nos. 6 and 7, or
- 2) the marketing planned will be contrary to legislation within areas which do not fall within the scope of this Act.

13.-(1) Foreign investment undertakings covered by section 11 shall be entitled to use the designation used for their activities in their home country.

(2) Where such designation entails a risk of confusion, the Danish FSA may require that the institution add an explanatory note to the designation.

14.-(1) The documents and information which the investment undertaking is under an obligation to make public on an ongoing basis in its home country shall also be made public in Denmark. Publication shall be in the same way as in the home country.

(2) The documents and information specified in subsection (1) shall be available as an authorised Danish translation or in another language approved by the Danish FSA.

15. The Danish FSA may demand that a foreign investment undertaking cease marketing its units in Denmark,

- 1) where the measures taken by the investment undertaking, cf. section 11(1), nos. 6 and 7, are not adequate to secure the rights of the investors,
- 2) where the investment undertaking is guilty of gross or repeated violations of the provisions laid down in legislation,
- 3) where the investment undertaking does not comply with its marketing plan, cf. section 11(1), no. 5, or
- 4) where the approval or supervision of the competent authority of the investment undertaking's home country lapses.

Other foreign investment undertakings

16.-(1) The Danish FSA may approve direct or indirect marketing in Denmark by a foreign investment undertaking not covered by section 11 when said foreign investment undertaking meets the requirements laid down by the Danish FSA in pursuance of subsection (2). Marketing may not be commenced until approved by the Danish FSA.

(2) The Danish FSA may lay down regulations regarding the terms to which foreign investment undertakings not covered by section 11 shall be subject when marketing their units in Denmark.

Danish associations

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17. A Danish association wishing to market its units in another country shall notify the Danish FSA to this effect and notify the competent authorities in said other country in accordance with the requirements in force there.

III Good practice

Part 5

Good practice

18.-(1) Associations shall be operated in accordance with honest business principles and good practice within the field of activity.

(2) The Minister for Economic and Business Affairs shall lay down detailed regulations on honest business principles and good practice.

IV General meetings and management, etc.

Part 6

General meetings

19. The notice convening a general meeting in an association shall be available to the public and in accordance with the provisions of the articles of association. The press shall have access to the general meetings.

20. For investment associations and special-purpose associations, the Danish FSA shall exercise the powers that have been assigned to the Danish Commerce and Companies Agency under section 72(2) of the Companies Act.

21.-(1) The general meeting shall be the ultimate authority of the association.

(2) The right of members to make decisions regarding the affairs of the association shall be exercised at the general meeting, cf. however subsection (3).

(3) The powers exercised by the general meeting of the association shall be vested in the members of a division at the general meeting in respect of

- 1) approval of the annual report of the division,
- 2) amendment of the regulations laid down in the articles of association concerning placement of the division's assets,
- 3) the dissolution, merger, or demerger of the division,
- 4) any other business that is exclusively relevant to the division.

(4) Subsections (1), (2), (5), and (6) as well as sections 22 and 23 shall apply correspondingly in respect of resolutions pursuant to subsection (3).

(5) Any members shall be entitled to demand that a particular issue be placed on the agenda in accordance with the relevant regulations of the articles of association.

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(6) The board of directors and the board of management shall, at the request of a members and provided that this, in the opinion of the board of directors, may be effected without serious detriment to the association, submit to the general meeting any available information regarding all matters of importance to the evaluation of the annual report and the position of the association in other respects or to issues on which the general meeting shall decide.

22.-(1) Any member shall be ensured voting rights at the general meeting proportional to his number of units. Each member shall, however, have at least one vote. The articles of association may provide that no member may vote for more than a certain percentage of the assets or for more than a certain amount.

(2) If the voting rights are conditional upon an entry in the association's register, the time limit for registration shall not exceed 4 weeks.

23.-(1) In order to pass a resolution to amend the articles of association, no less than 50 per cent of the assets shall be represented at the general meeting and the resolution shall be passed by no less than two thirds of the votes cast. Where 50 per cent of the assets are not represented at the general meeting but two thirds of the votes are cast in favour of the proposal, the proposal may be adopted at an extraordinary general meeting convened at no less than 3 weeks' notice. At the extraordinary general meeting the proposal may be adopted by two thirds of the votes cast irrespective of the percentage of the assets represented.

(2) Any amendment of the articles of association of an investment association or a special-purpose association may not enter into force before such amendment has been approved by the Danish FSA.

24.-(1) A resolution regarding the sale by an association of shares in its investment management company shall be made by the general meeting of the association in accordance with the same regulations that apply to amendments in the articles of association. The board of directors of the association may, however, decide on the sale of shares in the investment management company of said association to other associations that have chosen the relevant company as their investment management company.

(2) The board of directors of the association shall prepare a statement of the advantages and disadvantages in relation to the expected development of the association from selling shares in the investment management company of the association, cf. subsection (1), 1st clause. The statement shall be sent to all registered members at the same time as the general meeting is convened. From this time the statement shall also be available for inspection at the offices of the association.

25.-(1) Minutes of the proceedings of the general meeting shall be entered in a book. This minute book shall be signed by the chairperson of the meeting.

(2) The minutes of the proceedings of the general meeting or a certified transcript thereof shall be made available to members at the offices of the association no later than fourteen days after the general meeting.

Part 7

Management etc.

General regulations regarding management

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26.-(1) The board of directors and the board of management shall be in charge of the affairs of the association, cf. however section 27(3). They shall act independently and solely in the interests of the association.

(2) The board of directors shall consist of at least 3 members to be elected by the general meeting. A member of the board of directors of an association may neither be a member of the board of directors nor an employee of the depository or any other company with which the association has entered into significant agreements nor may a member of the board of directors of an association be a member of the board of directors or an employee in other companies of a group in which such companies are members.

(3) Notwithstanding the provision in subsection (2), a minority of the members of the board of directors of an investment association or special-purpose association may be members of the board of directors of an investment management company that is responsible for the management of the association in question. None of these members of the board of directors may be chairperson of the board of directors of the investment management company.

(4) Notwithstanding the provision in subsection (2), members of the board of directors of an investment association or a special-purpose association may be members of the board of directors of an investment management company that is responsible for the management of the association, provided the association alone or with other investment associations or special-purpose associations or restricted associations own said investment management company.

(5) An employee of the investment management company, who has been elected in accordance with the provisions in the Companies Act relating to group representation may, notwithstanding the provisions in subsection (2) be a member of the board of directors of an investment association or special-purpose association, provided that the association in question alone or with other investment associations, special-purpose associations or approved restricted associations owns said investment management company.

(6) The board of directors shall ensure that the activities of the association are carried out properly in accordance with this Act and the articles of the association. The board of directors shall decide whether the financial circumstances of the association at any time are adequate in view of the operations of the association. The board of directors shall ensure that bookkeeping and asset management are checked in a satisfactory manner considering the circumstances of the association.

(7) By means of rules of procedure, the board of directors shall make more detailed decisions with regard to the performance of its duties.

(8) The board of directors shall prepare written guidelines on the most significant areas of activity of the association, specifying the distribution of responsibilities between the board of directors and the board of management.

27.-(1) The board of directors shall appoint a board of management to be in charge of the day-to-day management of the association, cf. however subsection (3). The board of management shall follow the guidelines and instructions given by the board of directors. The day-to-day management shall not include operations that are of an unusual nature or of great importance considering the circumstances of the association. The board of management may only carry out such operations according to special authority from the board of directors unless the resolution of the board of directors cannot be awaited without causing great disadvantage

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to the association's activities. In this case, the board of directors shall be informed of such operations as soon as possible.

(2) The board of directors shall ensure that the association is in possession of adequately qualified staff and the technical expertise required to carry out the administration of the association's investment policy and to make investment decisions regarding the funds of said associations.

(3) The day-to-day management may instead be left to an investment management company which has its registered office in Denmark and is approved by the Danish FSA so that the tasks to be performed by the members of the board of management of an association are performed by the members of the board of management of the investment management company. The provisions in subsection (1) shall apply correspondingly to the investment management company chosen.

28.-(1) The chairperson of the board of directors shall ensure that the board of directors convenes when necessary, and shall ensure that all members are summoned. Any member of the board of directors, a member of the board of management, an external auditor, and the chief internal auditor may demand that the board of directors convene. A member of the board of management, an external auditor, and the chief internal auditor shall be entitled to attend and speak at the meetings of the board of directors unless otherwise stipulated by the board of directors in the individual case. External auditors and the chief internal auditor shall always be entitled to attend meetings of the board of directors when matters relevant to auditing or the presentation of the annual report are addressed.

(2) External auditors and the chief internal auditor shall participate in the board of directors' treatment of matters where such participation is requested by one or more members of the board of directors.

(3) Negotiations within the board of directors shall be minuted, and the minute book shall be signed by all members present. Members of the board of directors, members of the board of management, external auditors, or the chief internal auditor who do not agree with decisions made by the board of directors shall be entitled to have their views included in the minutes.

29.-(1) Members of the management of an association, its depositary, or an investment management company, if any, shall not - without the consent of the board of directors of the association - be allowed to transfer securities or other assets to the association or acquire such assets from the association. Consent shall be obtained in each individual case and shall be entered in the minute book of the board of directors.

(2) A member of the board of directors or a member of the board of management shall not be entitled to participate in the consideration of questions concerning agreements between the association and said member or concerning any legal actions brought against said member or any legal actions brought against any third party or concerning agreements between the association and any third party if said member of the board of directors or member of the board of management has a major interest therein which may be in conflict with that of the association.

30.-(1) An association shall immediately notify the Danish FSA of matters which are of material significance to the continued operation of said association or a division.

(2) This shall apply correspondingly to individual members of the board of directors, members of the board of management, an external auditor or the chief internal auditor of an association.

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(3) Where a member of the board of directors or board of management of an association or an external auditor has cause to believe that the association or a division does not comply with the assets requirement, cf. section 4(7) and section 5(7), such person shall immediately notify the Danish FSA of this fact.

Requirements regarding the individual members of management

31.-(1) A member of the board of directors and the board of management of an association shall have adequate experience in carrying out the duties and responsibilities of such a position.

(2) A member of the board of directors and the board of management may not occupy the position as member of the board of directors or member of the board of management respectively in an association if

- 1) the person in question is deemed to have insufficient experience to hold the relevant position, including not having the necessary professional expertise to carry out management of the type of association said member is responsible for, and to make investment decisions regarding the funds of said association,
- 2) the person in question is held criminally liable for violation of the Criminal Code or financial legislation, and this violation entails a risk that the duties are not carried out adequately,
- 3) the person in question has filed for suspension of payments, is administered in bankruptcy, has filed for debt restructuring, or negotiations have been initiated with regard to compulsory composition for said person,
- 4) the financial situation of the person in question or companies owned by the person in question has caused losses or risks of losses for the association, or
- 5) the person in question has behaved such that there is reason to assume that said person cannot perform the duties and responsibilities of such position adequately.

(3) Members of the board of directors and the board of management shall be obliged to notify the Danish FSA of the conditions mentioned in subsection (2).

32. Members of the board of directors and board of management shall have full legal capacity. Members of the board of management and at least half of the members of the board of directors shall be residents of the European Union or of a country with which the Community or Denmark has entered into an agreement, or of a country stipulated by the Minister for Economic and Business Affairs. The Minister for Economic and Business Affairs may allow exemption from this requirement.

33. A member of the board of directors shall not be a member of the board of management or chief internal auditor of the association nor of its investment management company. In the absence of a member of the board of management, however, the board of directors may temporarily appoint a member of said board of directors as a member of the board of management. In this event, the person in question shall not exercise their voting right in the organs specified.

34.-(1) Persons employed by the board of directors of an association in pursuance of legislation or provisions in the articles of association and employees for whom there is a significant risk of conflicts between own interests and the interests of the association may not, at their own expense, or through companies they control,

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- 1) take a loan or draw on credit already granted in order to purchase securities if the securities purchased are used as security for the loan or the credit,
- 2) acquire, issue, or trade in derivative financial instruments, except to hedge risk,
- 3) acquire holdings, except for units in investment associations, special-purpose associations, hedge associations and foreign investment institutions, with a view to selling such units less than 6 months from the date of acquisition, or
- 4) acquire positions in foreign currency, except for euros, if taking the position takes place with a view to anything other than payment for the purchase of securities, goods or services, or management of real property, or for use when travelling.

(2) The group of persons mentioned in subsection (1) shall not acquire holdings in companies that carry out business mentioned in subsection (1), nos. 1-4. This shall not apply, however, for purchases of shares in banks, insurance companies, mortgage-credit institutions, investment companies, as well as units in investment associations, special-purpose associations, hedge associations and foreign investment institutions.

(3) The board of directors shall decide which employees have a significant risk of conflicts between their own interests and the interests of the association, and who shall therefore be covered by the prohibition. The board of directors shall ensure that the relevant employee knows of this decision. The penalty provision in section 132 shall apply from the time when the relevant employee has received information regarding the decision.

(4) The board of directors shall, for the persons covered by subsection (1), draw up guidelines regarding compliance with the bans in subsections (1) and (2), 1st clause, including guidelines on reporting of investments.

(5) The external auditors shall once a year review the financial undertaking's guidelines under subsection (4) and in the audit book comments relating to the annual report state whether the guidelines are adequate and have functioned appropriately, as well as whether the undertaking's control procedures have given rise to observations.

(6) An account-holding institution shall, upon request from the board of directors of the financial undertaking, provide the external auditors of said financial undertaking with access to information on accounts and deposits and provide printed statements herefrom with regard to persons covered by subsection (1).

35.-(1) Persons employed by the board of directors of an association in pursuance of legislation or provisions in the articles of association may not, without the consent of the board of directors, own or operate an independent enterprise, or in the capacity as a member of the board of directors, an employee, or in any other way, participate in the management or operation of another enterprise than said association, cf. however subsections (4) and (5) as well as section 71(8) and (9).

(2) Other employees in an association for whom there is a significant risk of conflicts between the interests of the employee and those of the association may not, without the consent of the board of management, own or operate an independent enterprise, or in the capacity as a member of the board of directors, employee, or in any other way, participate in the management or operation of another enterprise than said association. The board of directors shall be informed of any authorisation granted by the board of management.

(3) The board of directors shall decide for which employees there is a significant risk of conflicts between the interests of the employee and those of the association, and who shall

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consequently obtain the authorisation of the board of management, cf. subsection (2), to own or operate an independent enterprise, or in the capacity as member of the board of directors, employee, or in any other way, participate in the management or operation of another enterprise than the association. The board of directors shall ensure that the relevant employee knows of this decision. The penalty provision in section 132 shall apply from the time when the employee in question has received information hereof.

(4) Members of the board of management and other senior employees may not be members of the board of directors of the depository or any other company with which the association has entered into significant agreements, nor may they be employed in the depository or any other company with which the association has entered into significant agreements, nor may they be members of the board of directors or employees in another company which is in the same group as these companies.

(5) The persons mentioned in subsections (1) and (2) may, however, have similar positions in other investment associations or special-purpose associations if the majority of the board of directors are the same persons in all the associations.

(6) All authorisations granted by the board of directors pursuant to subsection (3) shall appear in the minute book of the board of directors.

(7) The association shall at least annually publish information on the duties and positions authorised by the board of directors under subsection (1). Furthermore, the external auditors shall make a declaration in the audit book comments on the annual report stating whether the association owns securities issued by enterprises covered by subsections (1) and (2).

Disclosure of confidential information and organisation of associations

36.-(1) Members of the board of directors, members of the board of management, other employees, and auditors of an association, of its depository and of its investment management company may not without due cause disclose or use confidential information obtained during the performance of their duties.

(2) Any person receiving information pursuant to subsection (1) shall fall within the scope of the duty of confidentiality specified therein.

37.-(1) An association shall have

- 1) good administrative and accounting practises,
- 2) written procedures for all significant areas of activity,
- 3) full internal control procedures,
- 4) adequate IT control and security measures, and
- 5) the resources necessary for proper carrying out of its activities, and use these appropriately.

(2) An association shall structure and organise its business in such a way as to minimise the risk of conflicts of interest between divisions as far as possible. In the event that the association is managed together with other associations, conflicts of interest between these shall be minimised as far as possible.

(3) The Danish FSA shall issue guidelines for the areas mentioned in subsection (1).

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(4) Danish FSA may lay down regulations on remuneration when the board of directors, board of management and personnel, or an investment management company and consultant are remunerated in some other way than with a fixed amount.

(5) The Danish FSA may lay down regulations on how associations are to avoid conflicts of interest.

38.-(1) The Danish FSA may lay down more detailed regulations regarding transactions concluded between an association and a company with which said association has entered into significant agreements, or other companies in the same group as said company.

(2) Transactions carried out in contravention of the regulations laid down pursuant to subsection (1) shall be invalid. Payments made by an association in connection with transactions carried out in contravention of the regulations laid down pursuant to subsection (1) shall be returned with an annual interest corresponding to the interest rate stipulated pursuant to section 5(1) and (2) of the Interest on Overdue Payments etc. Act.

Access to delegating tasks

39.-(1) If an investment association or a special-purpose association delegates certain tasks, which the association is required to carry out, to a third party, this shall be based upon a decision made by the board of directors of the association.

(2) Decisions may not be made stipulating that an investment association or a special-purpose association may delegate decisions on investment of the funds of the association or on other core tasks. The Danish FSA shall lay down more detailed regulations as to which tasks are core tasks.

(3) The obligations of the depositary, cf. sections 106 and 107 of the Financial Business Act shall not be affected by any delegation of tasks to a third party by the association.

40.-(1) An investment association or a special-purpose association shall ensure that the undertakings to which said association delegates tasks are qualified and capable of carrying out the relevant tasks. In cases where the delegation of tasks relates to investment management, said tasks may only be delegated to undertakings that are licensed for, or registered with a view to, portfolio management, and that are subject to supervision.

(2) The delegation of tasks may not obstruct effective supervision of the investment association or special-purpose association and, in particular, it may not hinder the association from operating or from being managed in the interests of its members.

41.-(1) When delegating tasks, an investment association or a special-purpose association shall ensure that arrangements are in place allowing the persons managing the activities of the association to monitor at any time the activities of the undertaking to which the tasks have been delegated.

(2) The agreement regarding delegation may not hinder the investment association or special-purpose association from giving further instructions at any time to the undertaking to which the task has been delegated, nor from terminating the agreement with immediate effect, if this is in the interest of the association.

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42. An investment association or special-purpose association shall notify the Danish FSA no later than at the time when the agreement regarding delegation is made about the content and conditions of said agreement.

V General provisions

Part 8

Restrictions on raising and granting loans etc. as well as issue and redemption

43.-(1) An association or a division shall not be entitled to raise loans.

(2) The Danish FSA may, however, grant an association or a division permission to

- 1) raise short-term loans of a maximum of 10 per cent of its assets in order to redeem members' units or in order to utilise subscription rights, and
- 2) raise loans of up to 10 per cent of its assets for the acquisition of real property necessary for performance of its activities.

(3) The loans referred to in subsection (2), nos. 1 and 2 shall not exceed 15 per cent of the association's or the division's assets.

44.-(1) An association or division may not grant loans or issue guarantees.

(2) An association may, however, accept the liability associated with the acquisition of shares not fully paid up. Such liabilities may not exceed 5 per cent of the association's total assets.

45. An association or a division may not carry out or participate in speculative transactions.

46. Securities traded or listed on a regulated market, cf. section 3, no. 13, or traded on another regulated market, cf. section 3, no. 14, shall, if traded outside the stock exchange or the market, be traded at the same or a more favourable price than the one obtainable on the stock exchange or the regulated market, taking into account the volume of business.

47. An investment association may acquire the movable and immovable property necessary for pursuit of its business.

Issue and redemption

48.-(1) Units in an association or a division shall only be subscribed against simultaneous payment of the issue price. Bonus units shall not be covered by the 1st clause.

(2) An association or division shall, at the request of a member, redeem units. The articles of association of a special-purpose association may contain a different provision, cf. section 10(2)-(4).

(3) Redemption may be postponed in accordance with the provisions of the articles of association to that effect. The association shall, immediately after such postponement, give notification regarding said postponement to the Danish FSA and to the competent authorities in other Member States of the European Union and in countries with which the Community has

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entered into an agreement for the financial area when said investment association markets its units there.

(4) The Danish FSA may demand that the association postpone the redemption of units.

(5) The Danish FSA shall lay down regulations regarding calculation of the issue price with regard to subscription to units, cf. subsection (1), and the redemption price, cf. subsection (2), as well as regarding the information an association is under an obligation to make public in this respect.

(6) If the association has made mistakes when calculating the issue or redemption price that have resulted in a deviation of 0.5 per cent or more, the association shall ensure that affected members are informed of the mistake and publish information about the mistake. Within three [weekdays](#) after the mistake was discovered, the association shall commence correcting the mistake and report the matter to [the Danish FSA](#). The report to [the Danish FSA](#) shall contain a report of the background for the mistake and a description of how the association intends to avoid similar mistakes in future.

(7) [The Danish FSA may lay down more detailed regulations](#) regarding the reporting obligations of associations as regards mistakes in calculations of issues and redemption prices of 0.5 per cent or more.

49.-(1) When an investment association or special-purpose association invests in units in other investment associations, special-purpose associations or foreign investment undertakings managed directly or through delegation by the same investment management company or by another company with which said investment management company has links through joint administration or control or through a significant direct or indirect participation, said investment management company or said other company may not charge subscription or redemption fees for the investment association or special-purpose association's investments in units in the other investment associations or special-purpose associations.

(2) Subsection (1) shall apply correspondingly to investments in divisions of the associations mentioned in subsection (1).

Part 9

Investment certificates, etc.

50. If an investment association or a division issues certificates, it shall issue one or more investment certificates to each individual member. If the association or one or more of its divisions are account-holding, the association shall keep a register of members' shares and units and submit to said members a printout of said register as documentation of the member's share in the assets of the association.

51.-(1) If, according to a decision of the board of directors, the association's units are issued through a central securities depository, said association shall pay all costs in this connection. The association shall make an agreement with one or more account-holding institution(s) stipulating that, on the association's account, the members may

- 1) have their units, etc. registered and deposited there, and

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2) receive information on dividends, etc. and annual statements of account.

(2) The members themselves shall be entitled to select an account-holding institution which, on the association's account, shall carry out the tasks referred to in subsection (1), nos. 1 and 2 if the institution undertakes the tasks at the same cost as the association would have had to pay the institution with which an agreement has been made.

52. If an investment certificate is transferred in ownership or as security, section 14(1) and (2) of the "lov om gældsbreve" (bonds act) shall apply correspondingly. This shall, however, not apply if, in accordance with a provision of the articles of association, unambiguous and conspicuous reservations have been made in the investment certificate, to the effect that the certificate shall be a non-negotiable instrument.

53.-(1) An investment certificate issued to bearer shall, even if endorsed by the investment association to the effect that the name of the holder has been registered, remain a document issued to bearer if said name is not stated on the certificate.

(2) Sections 24 and 25 of the "lov om gældsbreve" (bonds act) shall apply correspondingly to dividend coupons.

54.-(1) Cancellation of investment certificates out of court may only take place if provisions to that effect are contained in the articles of association and the investment certificates of the association. Notice of cancellation shall be published in the first issue of a quarter of the Danish Official Gazette with the following notice:

- 1) no less than 4 weeks in cases of cancellation of non-negotiable investment certificates.
- 2) no less than 6 months in cases of cancellation of other investment certificates.

(2) The provisions in subsection (1) shall apply correspondingly to coupons. Coupon sheets may be cancelled out of court together with the investment certificate to which they belong unless otherwise provided by the articles of association.

VI Annual report, audit and appropriation of the profit for the year

Part 10

Annual report and audit

55.-(1) Investment associations and special-purpose associations shall prepare an annual report, which as a minimum shall comprise a management endorsement, a balance sheet, an income statement, notes, including a statement of accounting policies, as well as a management review. When the annual report has been audited, the auditors' report shall be included therein.

(2) If an association is divided into divisions, the annual report shall contain separate balance sheets, income statements and notes for each division. Disclosure of accounting policies may, however, be prepared as a joint statement for all divisions.

(3) The annual report shall be prepared in accordance with the regulations in this part of this Act as well as regulations laid down pursuant to section 68.

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56.-(1) The board of directors and the board of management shall present the annual report of the association.

(2) Each individual member of the management shall be responsible for ensuring that the annual report is prepared in accordance with the legislation and any further accounting and reporting requirements provided for by the articles of association or by agreement. Further, each individual member shall be responsible for ensuring that the annual report may be audited and approved in time if auditing is required. Finally, each individual member of the board of directors shall be responsible for ensuring that the annual report is submitted to the Danish FSA within the time limits stipulated in legislation.

57.-(1) When the annual report has been prepared, it shall be signed and dated by all members of the board of directors and the board of management. They shall affix their signatures to a management endorsement, stating whether

- 1) the annual report has been presented in accordance with the requirements provided for by legislation and any requirements provided for by the articles of association or by agreement, and
- 2) the annual report gives a true and fair view of the association or divisions' assets and liabilities, financial position and results for the year

(2) If the management has added supplementary reports to the annual report, the members of the board of directors and the board of management shall state in the management endorsement whether the report gives a true and fair view in accordance with generally accepted guidelines for such reports.

(3) Even if a member of the management disagrees with the annual report in full or in part or has objections to the annual report being approved with the contents decided upon, said member is not entitled to omit to sign the annual report. However, such member of the management may state his or her objections giving specific and adequate grounds in connection with his or her signature and the management endorsement.

58.-(1) The annual report shall give a true and fair view of the association's assets and liabilities, financial position and results for the year.

(2) If the application of the regulations of this Act or regulations issued pursuant to section 68 is not sufficient to give a true and fair view in accordance with in subsection (1), further disclosure shall be made in the annual report.

(3) If, in special cases, the application of the regulations set out in this part of this Act or the application of regulations issued pursuant to section 68 conflicts with the requirement of subsection (1), such regulations shall be derogated from so that the requirement can be met. Any such derogation shall be disclosed in the notes for each year, giving specific and adequate grounds and indicating the effect, including, if possible, the effect in terms of amounts, of the derogation on the assets and liabilities, financial position and the results of the association.

59.-(1) In order for the statutory parts of an annual report to give a true and fair view in accordance with section 58, the provisions of subsections (2) and (3) must be complied with.

(2) The annual report shall be prepared so as to support users of financial statements in their financial decisions. Such users are private individuals, undertakings, organisations and public authorities, etc., whose financial decisions must normally be expected to be affected by an annual report, including present and prospective depositors, creditors, employees, customers,

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alliance partners, the local community, authorities providing government grants, and fiscal authorities. As a minimum, the decisions in question concern:

- 1) investment of the user's own resources,
- 2) the management's administration of the funds of the association, and
- 3) the distribution of the funds of the association.

(3) The annual report shall be prepared so as to disclose information about matters which are normally relevant to users, cf. subsection (2). The information disclosed must also be reliable in relation to users' normal expectations.

60.-(1) The annual report shall be prepared in accordance with the basic assumptions set out below:

- 1) It must be prepared in a clear and understandable manner (clarity).
- 2) The substance of transaction rather than formalities without any real content must be accounted for (substance over form).
- 3) All relevant matters must be included in the annual report unless they are insignificant (materiality). But where several insignificant matters are deemed to be significant when combined, they must be included.
- 4) The operation of an activity is based on a going concern assumption unless it is to be discontinued or it is assumed that it will not be possible to be continued. If an activity is discontinued, classification and presentation as well as recognition and measurement must be adjusted accordingly.
- 5) Any change in value must be shown irrespective of the effect on the assets and income statement (neutrality).
- 6) Transactions, events and changes in value must be recognised when occurring irrespective of the time of payment (accrual basis).
- 7) Methods of recognition and measurement basis must be applied uniformly to the same category of matters (consistency).
- 8) Each transaction, event and change in value must be recognised and measured individually, and individual matters must not be offset against each other (gross presentation).
- 9) The opening balance sheet for the financial year must be equivalent to the closing balance sheet for the previous financial year (formal consistency).

(2) Presentation and classification, method of consolidation, method of recognition and measurement basis as well as the monetary unit applied must not be changed from period to period (actual consistency). However, a change may be made if this results in a more true and fair view being given, or if the change is necessary in order to comply with new regulations in pursuance of an Act or in case of new regulations issued pursuant to section 68.

(3) The provisions in subsection (1), nos. 6-9, and subsection (2) may be derogated from in special cases. In such cases, section 58(3), 2nd clause shall apply correspondingly.

61.-(1) Assets and liabilities shall, unless otherwise provided for pursuant to section 68, be measured at fair value. Assets and liabilities shall be depreciated and revalued in accordance herewith and depreciation and revaluation amounts shall be included in the income statement unless otherwise specified pursuant to section 68.

(2) The fair value shall be determined as the market value of the relevant asset or liability on a well-functioning market. Where such an asset or liability is not traded on a well-functioning

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market, a recognised method shall be employed to calculate the fair value of the relevant asset or liability.

62.-(1) Supplementary reports, for example reports on knowledge and know-how and employee conditions (knowledge accounts), environmental issues (green accounts), the social responsibility of the association (social accounts), and ethical objectives and follow-up to same of the association (ethical accounts), shall give a true and fair view in accordance with generally accepted guidelines for such reports. Such reports shall meet the quality requirements in section 59(3) and the basic assumptions set out in section 60(1) and (2), subject to the special terms required by the nature of the case.

(2) The methods and measurement basis used for the preparation of the supplementary reports shall be disclosed in the reports.

63.-(1) The accounting year shall be the calendar year.

(2) The first accounting period may comprise a period which is shorter or longer than 12 months, subject however to a maximum of 18 months.

(3) The association shall ensure that any subsidiaries have the same accounting year as the association unless this is not possible due to circumstances beyond the control of the association and the subsidiary.

64. Recognition, measurement and disclosure in monetary units shall be denominated in Danish kroner (DKK) or in euro (EUR). The Danish FSA may, in regulations issued pursuant to section 68 stipulate that these amounts shall be stated in other foreign currencies relevant to the association or association's group, respectively.

65. The annual report shall be audited by the external auditors of the association, cf. section 71. Such audit shall not apply to the supplementary reports included in the annual report, cf. section 62.

66.-(1) The annual report shall, in the form presented to and approved by the board of directors, be submitted in duplicate to the Danish FSA without undue delay after the meeting of the board of directors at which the annual report was finally approved.

(2) The external auditors' audit book comments and the audit book comments from the chief internal auditor shall be submitted to the Danish FSA at the same time as the annual report is submitted pursuant to subsection (1).

67.-(1) The audited and approved annual report shall be submitted to the Danish FSA in triplicate without undue delay after final approval. The annual report shall be received by the Danish FSA no later than 4 months after the end of the accounting year.

(2) The annual report submitted shall as a minimum include the compulsory elements and the full auditors' opinion. Where the undertaking wishes to publish supplementary reports as specified in section 62, such reports shall be submitted with the compulsory elements of the annual report, so that the compulsory elements and the supplementary reports jointly form a single document, designated as the "årsrapport" (annual report).

(3) The Danish FSA shall forward one of the copies specified in subsection (1) to the Danish Commerce and Companies Agency, where the annual report shall be available to the public in accordance with the regulations laid down by the Agency in this regard.

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(4) Upon request, the association shall make available the latest audited annual report and the latest half-yearly statement free of charge.

68.-(1) The Danish FSA shall lay down more detailed regulations on the annual report, including regulations on the recognition and measurement of assets, liabilities, revenue and expenditure, presentation of the income statement and balance sheet, and requirements regarding notes and the management's review.

(2) The Danish FSA shall also lay down regulations on consolidated financial statements, including regulations on when the annual report shall include consolidated financial statements.

(3) The Danish FSA may lay down regulations on the preparation and publication of interim statements covering shorter periods than the annual report.

69. In order to ensure that the annual reports of associations are in accordance with the regulations of this part of this Act and the regulations issued in pursuance of section 68, the Danish FSA may

- 1) provide guidance,
- 2) take action against violations, and
- 3) order that errors be corrected and that violations be remedied.

70. The associations shall regularly submit accounts to the Danish FSA in accordance with formats and guidelines in this respect prepared by the Danish FSA.

71.-(1) The associations shall have at least one auditor who is a state-authorized public accountant. The Danish FSA may in exceptional cases appoint an additional auditor. This auditor shall act on the same terms and in accordance with the same regulations as the auditors elected by the general meeting.

(2) The auditors of an association shall also be the auditors of the subsidiaries of said association.

(3) The Danish FSA may dismiss an auditor who is deemed clearly unfit to perform his duties and instead appoint another auditor, cf. subsection (1), who shall act until a new auditor can be elected.

(4) On a change of auditors, the association and the auditor shall submit separate accounts of the change to the Danish FSA where the change is caused by special circumstances.

(5) The Danish FSA may order the auditors and the chief internal auditor to give information about an association or the subsidiaries of associations.

(6) The Danish FSA may order that an extraordinary audit be carried out of an association or the subsidiaries of such associations. The association may be ordered to pay for such audit. The Danish FSA shall approve the size of the fee.

(7) The provisions laid down in sections 82-85 of the Companies Act on the audit shall, subject to the necessary changes, apply to investment associations and special-purpose associations.

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(8) The board of directors may not permit that the chief and deputy chief internal auditors perform audit tasks in undertakings outside the group, cf. section 35(1). Neither may the board of directors permit that chief and deputy chief internal auditors perform work other than audit tasks within the association or group. In special cases, the Danish FSA may grant exemptions from the 1st clause.

(9) The board of directors may not permit, cf. section 35(1), the chief and deputy chief internal auditors to assume duties that mean that they come into conflict with provisions on legal capacity corresponding to those that apply to external auditors in the "lov om statsautoriserede og registrerede revisorer" (state-authorised public accountants and registered public accountants act).

(10) The Danish FSA shall lay down provisions on audit proceedings in investment associations and special-purpose associations and in the subsidiaries of such investment associations and special-purpose associations, including provisions on internal audit and on the performance of systems audits at shared computer bureaus.

72. An external auditor and a chief internal auditor shall immediately notify the Danish FSA of matters which are of material importance to the continued operation of the association or a division, including matters which may be observed by the auditors while performing their audit in undertakings with which the association is closely linked, an investment management company or the depositary.

Appropriation of the profit for the year

73.-(1) The profit (net income) of an association or a division shall either be distributed to the members by way of dividend or be appropriated to increase the capital in accordance with the provisions of the articles of association to that effect, cf. however section 10(1), no. 27. The association or the division shall pay dividends at least once a year or, in the event of appropriations, inform the members of the size of the appropriated amount.

(2) The general meeting in associations or divisions paying dividends which invest their assets in bonds may, according to the provisions of the articles of association to that effect, decide that the amount distributed according to subsection (1) shall be carried forward in full or in part for distribution in subsequent accounting years.

VII. Prospectuses and publication of issue and redemption price

Part 11

Prospectuses

74.-(1) When offering units for sale, an association shall make public complete and simplified prospectuses for the entire association or for each division or group of divisions in the same association.

(2) The Danish FSA shall lay down provisions regarding the information to be included in the complete and simplified prospectuses and regarding updating of prospectuses.

(3) The significant part of the complete and simplified prospectuses shall be kept up to date on an ongoing basis.

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(4) The Danish FSA shall receive the complete and simplified prospectuses and amendments hereto no later than the day following publication.

(5) The Danish FSA may order the association to amend the complete and simplified prospectuses if said prospectuses do not comply with the provisions laid down by the Danish FSA regarding the content of prospectuses.

75.-(1) Any invitation to buy units in an association or division shall contain information on the complete and simplified prospectuses and on how the general public can obtain a copy or access to them.

(2) The simplified prospectus shall be made available free of charge to anyone considering buying units in an association or division.

(3) The complete and simplified prospectuses shall be made available free of charge upon request.

76. The simplified prospectus of an investment association may, in unchanged condition except translation, be used as a part of said investment association's marketing in all countries within the European Union and in countries with which the Community has entered into an agreement for the financial area.

Publication of issue and redemption prices and other significant matters

77.-(1) Investment associations and special-purpose associations shall publish the issue price and the redemption price at least twice a month. Special-purpose associations, which are not open for issue and redemption shall, at the request of a member, state the net asset value.

(2) The Danish FSA may permit the publication referred to in subsection (1), 1st clause to take place once a month only.

(3) At every subscription or redemption of units, the issue or redemption price shall be stated.

77a. Before three weekdays, the association shall publish information about suspension or postponement of redemption of units, change of depositary or investment management company, amendments to fee rates in relation to the investors, and about changes to other significant matters.

VIII Intervention in or cessation of associations or divisions

Part 12

Merger, demerger and transfer of divisions from one association to another

78.-(1) A decision to merge two or more associations, two or more divisions of the same association, or an association and a division, and a decision to demerge an association or a division hereof, as well as a decision to wind up or dissolve an association or a division hereof shall not be valid until the Danish FSA has approved such merger, demerger, winding up or dissolution.

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(2) The provisions applying to limited companies regarding merger and demerger in the Companies Act shall apply correspondingly to associations and their divisions. However, said associations shall, on their own accord, make such merger or demerger public in the Danish Official Gazette in accordance with section 158(1) of the Companies Act.

(3) The Danish FSA may permit a division of an association to be transferred to another association.

79. Investment associations and divisions hereof may only be converted or demerged to other investment associations.

Withdrawal of authorisation and cessation

80. The Danish FSA may withdraw the approval of an association if said association requests it.

81.-(1) If an association does not meet the asset requirement of section 4(7) or section 5(7), and if said association has not raised the capital required prior to the time limit set by the Danish FSA, the Danish FSA shall withdraw the approval.

(2) Furthermore, the Danish FSA may withdraw the approval of an association or a division, if

- 1) the association or division no longer fulfils the conditions in part 3 of this Act for obtaining approval,
- 2) the association or division commits gross or repeated violation of the regulations of this Act or of regulations issued pursuant to this Act,
- 3) the activities of the association or the division are not commenced within 12 months after approval has been granted, or
- 4) the association or division does not carry out its activities for a period of more than 6 months.

82.-(1) When the Danish FSA, under section 80 or 81, withdraws the approval of an association or division, the association or division shall be wound up.

(2) Unless otherwise provided by law, a resolution to wind up an association or division shall be passed by the general meeting and implemented by liquidation. The Danish FSA may fix a time limit for the adoption of such a resolution. If the time limit is exceeded, the Danish FSA may decide that the association is to enter into liquidation.

83. The provisions concerning dissolution applying to limited companies shall, with the necessary adjustments, apply correspondingly to associations covered by this Act and divisions hereof. No derogations from section 123 of the Companies Act shall be allowed.

84.-(1) The Danish FSA may, however, permit a different form of winding up or dissolution of an association or division provided that the association presents a winding-up scheme and the depositary states that it will assume liability for debt due and not due as well as debt in dispute.

(2) Before winding up according to subsection (1), the management of the association shall forward a statement to the Danish FSA showing that all debts have been paid. If the association or the division is liable to tax, a statement shall also be attached from the customs

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and tax authorities showing that there is no outstanding tax or duties payable by the association or division.

85. The Danish FSA may, if regard for the interests of the members or creditors of the association speaks in favour hereof, appoint a liquidator who, together with the person or persons elected by the general meeting, shall carry out the liquidation, cf. section 83.

85a. Sections 233, 234(1)-(3), 235, 238 and 240 of the Financial Business Act shall, with the necessary changes, also apply to associations.

86. The provisions of this Act regarding the powers of the Danish FSA, and regarding the obligations of the associations towards the Danish FSA shall apply correspondingly to associations in the process of dissolution.

IX Investment associations' placement of funds and liquidity, etc.

Part 13

Instrument regulations for investment associations

Securities and money-market instruments

87.-(1) An investment association or a division may invest in securities and money-market instruments which

- 1) have been admitted to listing or trading on a regulated market, cf. section 3, no. 13, or
- 2) have been admitted to listing or trading on another regulated market, cf. section 3, no. 14.

(2) If the markets mentioned in subsection (1) are situated in a country which is not a member of the European Union or in a country with which the Community has not entered into an agreement for the financial area, said markets shall either be approved by the Danish FSA or be mentioned in the articles of association of the investment association in order for the association or division to be permitted to invest in securities and money-market instruments listed or traded in such markets.

(3) An investment association or a division may invest in newly issued securities, provided that

- 1) the terms of issue include a promise that application will be made for admission to listing on a stock exchange or on another regulated market which is officially recognised, is open to the public and operates regularly. If the stock exchange or the market is situated in a country which is not a member of the European Union or in a country with which the Community has not entered into an agreement for the financial area, the choice of stock exchange or market shall, however, be subject to approval by the Danish FSA, or it shall be provided for in the investment association's articles of association that the association invests in securities listed on the relevant stock exchange or market, and
- 2) authorisation for listing is secured within a year of issue.

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(4) An investment association or division may invest in other money-market instruments than the ones mentioned in subsections (1) and (2) if the issue or issuer of said money-market instruments is regulated with a view to protecting investors and savings and if said money-market instruments are

- 1) issued or guaranteed by a central, regional or local authority or central bank in a country within the European Union or in a country with which the Community has entered into an agreement for the financial area,
- 2) issued or guaranteed by a non-Community country or, in case of federations, their federal states,
- 3) issued or guaranteed by a public international body in which one or several of the Member States participate,
- 4) issued or guaranteed by undertakings subject to supervision and situated in a zone A country or in a country with which the Community has entered into an agreement for the financial area,
- 5) issued by a bond-issuing institution established in pursuance of special legislation and situated in a country within the European Union or in a country with which the Community has entered into an agreement for the financial area, or
- 6) issued by issuers whose securities are traded on a market mentioned in subsection (1).

(5) An investment association or division may invest up to 10 per cent of its assets in securities or money-market instruments other than those referred to in subsections (1)-(4).

Deposits

88.-(1) An investment association or division may, as part of its investment strategy, deposit funds in a credit institution that has its registered office in a zone A country or in a country with which the Community has entered into an agreement for the financial area. Such deposits shall

- 1) be made on terms of demand, or
- 2) require a notice of withdrawal of no more than 12 months and be subject to terms of agreement that facilitate immediate withdrawal.

(2) An investment association or division may have ancillary liquid assets.

Derivative financial instruments

89.-(1) An investment association or division may invest in derivative financial instruments including similar cash-settled instruments which are traded on the markets mentioned in section 87(1) and (2) as well as derivative financial instruments traded OTC.

(2) In addition to the conditions mentioned in subsection (1), the following shall apply to derivative financial instruments traded OTC:

- 1) the counterparties are to be institutions subject to supervision and belonging to those categories approved by the Danish FSA,
- 2) the derivative financial instruments are to be measurable on a daily basis in a reliable and verifiable manner, and

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- 3) that the derivative financial instruments are to be negotiable at any time, and that they are to be liquid.

(3) The Danish FSA shall lay down more detailed regulations regarding the access of investment associations and divisions to invest in derivative financial instruments and regarding instruments that may be underlying assets to the derivative financial instruments that an investment association or division is permitted to invest in.

Units in other associations, divisions or investment undertakings

90.-(1) An investment association or a division may invest in units in

- 1) other Danish investment associations or the divisions of such associations, cf. however subsection (3),
- 2) investment undertakings with their registered offices in a country within the European Union or in a country with which the Community has entered into an agreement for the financial area, and which have been approved in pursuance of Council Directive 85/611/EEC (UCITS Directive),
- 3) Danish special-purpose associations or the divisions of such associations, and
- 4) investment undertakings with their registered offices in a zone A country or in a country with which the Community has entered into an agreement for the financial area, and
 - a) the object of which is, from a wide circle or from the general public, to receive funds which, in accordance with a principle of risk-spreading, are placed in securities in accordance with the regulations in this part of this Act and with the placement regulations in part 14 of this Act,
 - b) whose units are to be repurchased or redeemed directly or indirectly with funds deriving from the assets upon the request of any participant,
 - c) which provides their participants with protection corresponding to the protection of members of an investment association, and which, without cover, meet the requirements of the provisions of the Council Directive 85/611/EEC (UCITS Directive) pertaining to separate asset management, borrowing, lending and trading in securities and money-market instruments, and
 - d) which publish an annual report as well as a half-year report.

(2) An investment association or division may only invest in units in the associations, divisions and investment undertakings mentioned in subsection (1) if these, according to their articles of association or fund regulations, are not allowed to place more than 10 per cent of their assets in units in associations, divisions and investment undertakings.

(3) A division may invest no more than 20 per cent of its assets in each of the other divisions of the association.

Mortgages

91.-(1) An investment association or division may invest in registered mortgages in Danish real property in so far as such mortgages, at the time of acquisition, are either secured within 80 per cent of the market value of the property or are secured by a guarantee.

(2) An investment association or division holding registered mortgages of the type mentioned in subsection (1) may, in the event of breach of the mortgage, temporarily take over the

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mortgaged property through compulsory sale. The investment association shall report any takeover of real property to the Danish FSA.

(3) The Danish FSA shall lay down more detailed regulations regarding approval of guarantees, determination of market value and calculation of prior mortgages.

General limitations

92.-(1) An investment association may not enter into agreements reducing the liquidity of the instruments in which the association or one of its divisions has placed assets.

(2) An investment association may neither acquire precious metals nor certificates representing them.

Part 14

Placement regulations for investment associations

Securities and money-market instruments

93.-(1) An investment association or division may, in securities and money-market instruments issued by a single issuer or by issuers in the same group, invest no more than

- 1) 5 per cent of the assets of the association or division. This limit may, however, be increased to 10 per cent of the association or division's assets if the total value of investments exceeding 5 per cent does not exceed 40 per cent of the total assets of the association or division,
- 2) 25 per cent of the assets of the association or division in bonds issued by KommuneKredit, Danish mortgage-credit institutions and similar credit institutions approved by a country within the European Union or by a country with which the Community has entered into an agreement for the financial area, when said institutions have been included in a list prepared by the Commission. If an association or division invests more than 5 per cent of its assets in such bonds issued by the same issuer or by issuers in the same group, the total value of such investments may not exceed 80 per cent of the value of the assets, or
- 3) 35 per cent of the association or division's assets in securities or money-market instruments issued or guaranteed by
 - a) the Danish government or another zone A country,
 - b) countries with which the Community has entered into an agreement for the financial area, or
 - c) a public international body in which one or several of the Member States participate provided that the securities have been approved by the Danish FSA.

(2) While complying with the individual placement limits in subsection (1), an investment association or division may, however, invest up to 20 per cent of its assets in securities and money-market instruments issued by issuers in the same group.

(3) In cases of investments under subsections (1) and (2), section 102-104 shall apply.

94.-(1) The placement limit in section 93(1), no. 3 may be derogated from if the portfolio consists of the securities or money-market instruments mentioned in section 93(1), no. 3,

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subparagraphs a-c from no less than six different issues and if said securities or money-market instruments from the same issue do not exceed 30 per cent of the total assets of the association or division.

(2) If the option mentioned in subsection (1) is exercised, the investment association or division may not invest in other instruments issued by the same issuer or by issuers in the same group.

95.-(1) Notwithstanding the placement limits set in section 93, an investment association or division may invest up to 20 per cent of its capital in assets or bonds issued by the same issuer or issuers in the same group if such investments, according to the articles of association of said association, are intended to copy specific share or bond indexes which are approved by the Danish FSA for this purpose.

(2) The Danish FSA may approve a share or bond index if

- 1) it has a sufficiently varied composition,
- 2) it constitutes a suitable benchmark for the market it refers to, and
- 3) it is made public in a suitable manner.

(3) The Danish FSA may authorise that the limit in subsection (1) is increased to 35 per cent of the assets of the association or division when this is justified on the basis of unusual market conditions. Investments up to this limit shall only be permitted for one issuer.

(4) No later than one month following changes to the index replicated, an association or division shall adapt its portfolio of shares or bonds to said changes. If the index replicated by the association or division ceases to exist, the association shall, within six months, either carry out changes to its articles of association so that they replicate a new index, or request the Danish FSA for permission to wind up.

(5) In cases of investments under subsections (1) and (3), sections 103 and 104 shall apply.

Deposits

96.-(1) An investment association or a division may invest no more than 20 per cent of its assets in one credit institution or in credit institutions in the same group.

(2) Section 102 shall apply with regard to deposits under subsection (1).

Derivative financial instruments

97.-(1) An investment association or division may invest in derivative financial instruments which are traded on the markets mentioned in section 87(1) and (2) as well as derivative financial instruments traded OTC if the exposure in the underlying assets of the derivative financial instruments and direct investments in the same assets do not, in total, exceed the placement limits pursuant to section 93.

(2) The placement limits mentioned in subsection (1) shall not apply when an investment association or division invests in derivative financial instruments based on an index approved in pursuance of section 95(2).

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(3) In cases of investments under subsections (1) and (2), sections 103 and 104 shall apply correspondingly. Furthermore, section 102 shall apply to investments under subsection (1).

98.-(1) If an investment association or division invests in derivative financial instruments traded OTC, the counterparty risk on the contract counterparty may not exceed

- 1) 10 per cent of the assets of the association or division if the counterparty is a credit institution that has its registered office in a zone A country or in a country with which the Community has entered into an agreement for the financial area, or
- 2) 5 per cent of the association or division's assets in other cases.

(2) In cases of investments under subsection (1), section 102 shall apply.

99. The Danish FSA shall lay down more detailed regulations regarding the calculation of risk in connection with derivative financial instruments.

Units in other associations, divisions or investment undertakings

100.-(1) An investment association or a division may invest no more than 20 per cent of its assets in one association, division or investment undertaking mentioned in section 90, cf. however section 90(3).

(2) Investments in associations, divisions or investment undertakings mentioned in section 90(1), nos. 3 and 4 may constitute no more than 30 per cent of the assets of the investment association or division.

(3) In cases of investments under subsection (1), section 103 shall apply correspondingly.

101. When an investment association or division invests in units in associations, divisions or investment undertakings mentioned in section 90, the portfolios of instruments of said associations, divisions or investment undertakings shall not be included in the calculation of the placement limits for the investment association or division's own portfolio of instruments.

General limitations

102.-(1) The investments of an investment association or division under section 93(1), no. 1 and sections 96-98 may not exceed a total of 20 per cent of the total assets of said investment association or division when the instruments have been issued by the same issuer or by issuers in the same group.

(2) If the investment association or division invests in pursuance of section 93(1), no. 2 or 3, the limit in subsection (1) shall be increased to 35 per cent of the total assets of the investment association or division. However, investments under section 93(1), no. 1 and sections 96-98 may still not exceed a total of 20 per cent of the total assets of said investment association or division.

103.-(1) An investment association or division may not acquire shares with voting rights in a single limited company which give said investment association the possibility to exercise significant influence over said limited company.

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(2) Several investment associations and special-purpose associations sharing the same board of directors or investment management company may not be in a position to exercise significant influence on a single limited company.

(3) An investment association or division may not acquire more than

- 1) 10 per cent of the shares without voting rights from a single issuer,
- 2) 10 per cent of the bonds from a single issuer,
- 3) 10 per cent of the money-market instruments from a single issuer,
- 4) 25 per cent of the units from a single association, division or investment undertaking mentioned in section 90.

(4) The limit laid down in subsection (3), nos. 2-4 shall not apply at the acquisition if, at that time, it is not possible to calculate the gross amount for the bonds or the money-market instruments or the net amount for the securities issued.

104. The limits stipulated in section 103 shall not apply to:

- 1) securities and money-market instruments issued or guaranteed by
 - a) the Danish government or a zone A country,
 - b) a country with which the Community has entered into an agreement for the financial area, or
 - c) a public international body in which one or several of the Member States participate provided that the securities have been approved by the Danish FSA.
- 2) Registered mortgages on Danish real property as mentioned in section 91(1).
- 3) Shares in companies which solely carry out investment management, consulting or marketing activities and only if this is done on behalf of the relevant investment associations, special-purpose associations, approved restricted associations and hedge associations.

105.-(1) The limits mentioned in section 87(5), section 90(3) or in this part of this Act may be exceeded when such transgressions are due to reasons the investment association or division has no control over, or when the investment association or division uses subscription rights attached to instruments included in the assets of the investment association or division.

(2) If the limits mentioned in section 87(5), 90(3) or in this part of this Act are exceeded for reasons mentioned in subsection (1), and if such transgressions are not reduced before 8 days after the transgression, the investment association shall immediately notify the Danish FSA in this respect. In this case, the Danish FSA may exceptionally permit that such transgression is reduced over a longer period of time if this is in the interest of the members.

X Special-purpose associations' placement of funds and liquidity, etc.

Part 15

Placement associations

106.-(1) A placement association or division may invest its funds in instruments in accordance with the regulations laid down in parts 13 and 14 when it, simultaneously, makes investments as mentioned in subsections (2) and (3).

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(2) A placement association or division may, without the restrictions laid down in section 93, invest its funds in securities issued by

- 1) the Danish government or a zone A country,
- 2) a country with which the Community has entered into an agreement for the financial area,
- 3) a public international body in which one or several of the Member States participate provided that the securities have been approved by the Danish FSA, or
- 4) KommuneKredit, Danish mortgage-credit institutions and similar credit institutions approved by a country within the European Union or by a country with which the Community has entered into an agreement for the financial area, when said institutions have been included in a list prepared by the Commission.

(3) A placement association or a division may not, however, place more than 30 per cent of its assets in securities issued by a single issuer covered by subsection (2), no. 4.

Money-market associations

107.-(1) A money-market association or division may only invest its funds in money-market instruments in accordance with the regulations laid down in section 87. A money-market association or division may also have ancillary liquid assets.

(2) A money-market association or division shall not be entitled to invest more than 30 per cent of its assets in money-market instruments issued by the same issuer.

(3) The limit mentioned in subsection (2) shall not apply to money-market instruments issued by the issuers mentioned in section 93(1), no. 3.

Funds of funds

108.-(1) A fund of funds may invest the funds received in units in investment associations, money-market associations, placement associations and SME associations or in units in divisions of said associations. Furthermore, it may place its funds in the foreign investment undertakings and divisions hereof mentioned in sections 11 and 16, when such undertakings make investments as the associations mentioned in the 1st clause.

(2) A fund of funds or division shall not be entitled to invest more than 75 per cent of its assets in one association or foreign investment undertaking or divisions hereof. The fund of funds may place no more than 20 per cent of its assets in units in SME associations.

SME associations

109.-(1) An SME association shall primarily invest its funds in shares in unlisted small and medium-sized limited companies and limited liability companies.

(2) No more than 10 per cent of the assets may, at the time of investment, be invested in unlisted shares issued by the same company. However, an SME association may, regardless of the restrictions mentioned in the 1st clause, invest its assets through bodies that exclusively invest the funds received in shares in unlisted small and medium-sized limited companies and

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limited liability companies provided that, at the time of investment, no more than 10 per cent of the assets of the body may be invested in shares issued by the same company.

(3) The limit laid down in subsection (2) may, however, be exceeded when the SME association exercises subscription rights attached to securities included in the association's assets. However, the association may at no time have more than 10 per cent of its assets invested in shares subscribed by exercising subscription rights in companies where the association has already, by exercising its subscription rights, invested more than 10 per cent of its assets.

(4) An SME association or division may also invest its funds in instruments in accordance with the regulations laid down in parts 13 and 14 of this Act.

(5) When companies in which an SME association has invested its funds pursuant to subsection (1) become listed on a stock exchange, the SME association may, irrespective of the provision in section 92(1), enter into an agreement reducing its liquidity. The duration of such an agreement may not exceed one year. Section 93(1), no. 1 shall not apply to these investments. The SME association shall, however, bring its portions of listed shares as mentioned in the 1st clause into accordance with section 93(1), no. 1 within reasonable time and no later than one year after expiry of an agreement as mentioned in section 92(1) or, if such an agreement does not exist, one year after the listing.

(6) The provisions of section 103 regarding significant influence shall also apply to investments made by SME associations in both listed and unlisted shares, including if such investments are made by the bodies mentioned in subsection (2).

(7) The Danish FSA shall lay down regulations regarding the association's obligation to provide information, including the information which the association is required to provide concerning the companies in which its assets are placed.

SME associations

109a. SME associations may temporarily carry out other activities to secure or settle previous investments that are not insignificant or with a view to participate in restructuring of unlisted limited companies and limited liability companies in which said SME association has made investments that are not insignificant. The SME association shall inform the Danish FSA in this respect.

Common regulations for special-purpose associations

110.-(1) The limits mentioned in sections 106(3), 107(2) and 108(2) may be exceeded when such transgressions are due to reasons the special-purpose association or division has no control over, or when the special-purpose association or division exercises subscription rights attached to instruments included in the assets of the special-purpose association or division.

(2) If the limits mentioned in this part of this Act are exceeded for reasons mentioned in subsection (1), and if such transgressions are not reduced before 8 days after the transgression, the special-purpose association shall immediately notify the Danish FSA in this respect. The Danish FSA may, in exceptional circumstances, permit that such transgression is reduced over a longer period of time if this is in the interest of the members.

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XI Restricted associations, hedge associations and other collective investment schemes

Part 16

Restricted associations

111.-(1) Undertakings which do not aim at a wide circle or the general public may be approved by the Danish FSA as restricted associations to carry out activities which involve

- 1) from one or several members of the association or a division hereof, to receive funds which, in accordance with a principle of risk-spreading, are placed in securities in accordance with the regulations in parts 13-15, cf. however subsections (2)-(4), and
- 2) redeeming a member's share of the assets with funds derived therefrom in accordance with provisions in the articles of association in this respect.

(2) An approved restricted association which invests as funds of funds, cf. section 108, may also

- 1) place its funds in the units of other approved restricted associations or in units of divisions of such associations, and
- 2) invest up to 10 per cent of its assets in securities or money-market instruments other than those referred to in section 87(1)-(4) in shares in [limited partnerships](#) and in units in bodies that primarily invest in [unlisted shares](#), if said body was approved pursuant to the regulations hitherto in force regarding [innovation associations](#).

(3) An approved restricted association which invests as placement associations, cf. section 106, may also invest up to 20 per cent of its assets directly or indirectly in US mortgage-credit bonds.

(4) An approved restricted association may, alone or together with one or more investment associations, cf. section 4, special-purpose associations, cf. section 5, approved restricted associations, cf. subsection (1), or hedge associations, cf. section 114a(1) and (2), own an investment management company, cf. section 3, no. 4, which solely carries out management, investment or marketing activities and solely on behalf of the relevant association(s).

(5) Approved restricted associations may only carry out the activities mentioned in subsections (1)-(4).

(6) An association seeking approval under subsection (1) shall have assets of no less than DKK 10 million.

(7) The instruments of a restricted association, cf. section 3, no. 1, shall be entrusted to and safekept separately for said association with a depositary approved by the Danish FSA, cf. section 3, no. 5. The depositary shall be a bank with its registered office in Denmark or a corresponding foreign credit institution with a branch in Denmark and with its registered office in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area.

112.-(1) The Danish FSA may approve associations as restricted associations, when

- 1) the foundation of the association is legal,
- 2) the requirements in section 111 have been fulfilled,

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- 3) the members of the board of management of the association meet the requirements of sections 31 and 32,
- 4) the Danish FSA has approved the association's choice of investment management company which must have adequate experience with the type of association applying for approval,
- 5) the Danish FSA does not have any remarks to the articles of association of the association,
- 6) the Danish FSA has approved the depositary chosen by the association,
- 7) the minimum asset requirement of the association is either subscribed at the first general meeting, or an unconditional guarantee is provided by a bank or insurance company for subscription of units up to the minimum amount of no less than DKK 10 million, cf. section 111(6), and
- 8) subsection (2) has been met.

(2) An application for approval under section 111 shall contain all information necessary for assessment by the Danish FSA of whether the conditions in subsection (1) have been met.

(3) In the event that the Danish FSA rejects an application for approval, the association shall be notified no later than 6 months following receipt of the application or, if the application is incomplete, no later than 6 months after the association has submitted the information necessary to make a decision. In any case, a decision shall be made no later than 12 months after receipt of the application. Where the Danish FSA has not, within 6 months after receipt of an application for approval, issued a statement regarding the application, the association may bring the matter before the courts.

(4) Approved restricted associations, cf. section 111, shall notify the Danish FSA of establishment or termination of divisions.

(5) Once the Danish FSA has approved a restricted association, the Danish Commerce and Companies Agency may carry out the necessary registrations.

113. Sections 3, 6, 30-32 and 39-42; parts 8-10; sections 74-76, 80-82, 86; and parts 13-15 and 18-20 shall apply correspondingly to approved restricted associations, cf. section 111.

114.-(1) The general meeting of restricted associations shall make resolutions regarding merger, demerger and dissolution in liquidation or in another manner than liquidation of the association and appoint a liquidator or person in charge of the winding-up.

(2) The board of directors and the investment management company shall notify the Danish FSA that the general meeting has made a resolution regarding merger, demerger, liquidation or winding-up in another manner than liquidation and who has been appointed as liquidator or appointed to carry out winding-up in another manner than liquidation. Such notification shall be accompanied by the minutes of the general meeting and any winding-up scheme for inspection.

(3) When the merger, demerger, liquidation or winding-up has been completed, the investment management company shall submit two copies of the financial statements of the merger, demerger, liquidation or winding-up audited by the external auditors of the association and, in cases of liquidation or winding-up in another manner than liquidation, a statement from the board of directors of the association and the manager of the investment management company stating that all debts have been paid. The Danish FSA shall forward one of the copies of the financial statements of the merger, demerger, liquidation or winding-up to the Danish Commerce and Companies Agency.

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Part 16a

Hedge associations

114a.-(1) Undertakings shall be subject to approval by the Danish FSA as hedge associations in order to carry out activities which have as their object:

- 1) to receive funds from a wide circle or from the general public, without the undertaking being covered by section 4 or section 5
- 2) to place their funds in liquid funds, including currency, cf. section 3, no. 1(e), or in instruments as mentioned in annex 5 of the Financial Business Act, in accordance with the risk policy and risk profile of the association, cf. section 114a(1), and
- 3) to redeem a member's share of the assets with funds derived therefrom.

(2) Undertakings which do not aim at a wide circle or the general public may be approved by the Danish FSA as hedge associations to carry out activities which involve

- 1) from one or several members receiving funds, without the undertaking being covered by section 111,
- 2) placing their funds in liquid funds, including currency, cf. section 3, no. 1(e), or in instruments as mentioned in annex 5 of the Financial Business Act, in accordance with the risk policy and risk profile of the undertaking, cf. section 114d(1), and
- 3) redeeming a member's share of the assets with funds derived therefrom.

(3) A hedge association may, alone or together with one or more investment associations, cf. section 4, special purpose associations, cf. section 5, approved restricted associations, cf. section 111, or hedge associations, cf. subsections (1) and (2), own an investment management company, cf. section 3, no. 4, which solely carries out management, investment or marketing activities and solely on behalf of the relevant association(s).

(4) Hedge associations may only carry out the activities mentioned in subsections (1) and (2). Undertakings approved under subsection (1) or subsection (2), shall have exclusive right to use the word »hedgeforening« (hedge association) in their names. Other undertakings may not use names or expressions that may create the impression that they are hedge associations.

(5) Hedge associations shall be under an obligation to use the word »hedgeforening« in their name.

(6) An association seeking approval under subsection (1) or subsection (2) shall have assets of no less than DKK 25 million. Intangible assets may not be included in the total assets for this purpose.

(7) The funds of a hedge association shall be entrusted to and kept separately for said association with a depositary approved by the Danish FSA, cf. section 3, no. 5. Said depositary shall be a bank with its registered office in Denmark or a corresponding foreign credit institution with a branch in Denmark and with its registered office in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area.

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114b. Activities specified in section 114a(1) or activities which are in the process of being approved under section 114a(2) shall be organised in the form of an association. Members of the association shall be any owner of a share of the association's assets.

114c.-(1) The Danish FSA shall approve hedge associations when

- 1) the foundation of the association is legal,
- 2) the requirements in sections 114a and 114b are fulfilled,
- 3) the members of the board of directors and the board of management of the association meet the requirements of sections 31 and 32, and have adequate experience with the type of association applying for approval, or, if the board of directors has not employed a board of management, when the Danish FSA has approved the association's choice of investment management company, the management of which must have adequate experience with the type of association applying for approval,
- 4) the Danish FSA has approved the articles of association of associations covered by section 114a(1), or the Danish FSA has not had any comments to the articles of association of associations covered by section 114a(2),
- 5) the Danish FSA has approved the depositary chosen by the association, and which must provide sufficient financial and professional security that it is capable of performing its duties,
- 6) the activity plan, the risk management, organisation, procedures as well as administrative conditions of the association are appropriate,
- 7) there are no close links, cf. section 3, no. 16, between the applicant and other undertakings or persons that could complicate performance of the tasks of the Danish FSA,
- 8) legislation in a country outside the European Union with which the Community has not entered into an agreement for the financial area regarding an undertaking or person with whom the applicant has close links will not complicate performance of the tasks of the Danish FSA,
- 9) the assets of the association, which are required to be no less than DKK 25 million, are subscribed at the first general meeting, or an unconditional guarantee is provided by a bank or insurance company for subscription of units up to the minimum amount of no less than DKK 25 million,
- 10) the association has its head office and registered office in Denmark, and
- 11) subsection (2) has been met.

(2) An application for approval under section 114a shall contain all information necessary for assessment by the Danish FSA of whether the conditions in subsection (1) have been met.

(3) The Danish FSA shall reject the application for approval if, for legal reasons, the association is prevented from marketing its units in Denmark, including reasons arising from provisions in its articles of association.

(4) In the event that the Danish FSA rejects an application for approval, the association shall be notified no later than six months following receipt of the application or, if the application is incomplete, no later than six months after the association has submitted the information necessary to make a decision. At all events, a decision shall be made no later than 12 months after receipt of the application. Where the Danish FSA has not, within six months after receipt of an application for approval, issued a statement regarding the application, the association may bring the matter before the courts.

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114d.-(1) A hedge association or a division shall lay down its risk policy and risk profile in the articles of association. The articles of association shall, further, give information on issue and redemption of the units of the members, cf. also section 114f(1).

(2) The board of directors of the hedge association shall determine the risk framework of the association and its divisions. The complete and simplified prospectuses of the association shall contain information on such risk framework, and information on when the association or a division can issue and redeem units in the association or the division. Issue and redemption shall be possible at least once a month.

(3) Hedge associations shall publish the net asset value of the association or of divisions at least once every fortnight.

(4) A hedge association shall, no later than eight working days after the board of directors has decided upon changes in the risk framework of the association or of a division, notify registered members about the changes. The changes shall not take effect before the members of the association or of the division have had the opportunity to redeem their units.

(5) The Danish FSA may lay down more detailed regulations regarding hedge associations' disclosure of information as well as regulations regarding hedge associations' calculation of risks.

114e.-(1) A hedge association shall observe the risk framework specified for the association or for the division by the board of directors of the association on the basis of the provisions laid down in the articles of association regarding investment policy and risk profile.

(2) If a hedge association exceeds any of the risk frameworks specified in the articles of association or by the board of directors, notice thereof shall without delay be submitted to the Danish FSA together with a report on the background for exceeding the risk framework and a description of how the association intends to avoid similar incidents in the future.

(3) In the event that the risk framework is exceeded, the risk shall immediately be reduced to a level within the risk framework specified. In special cases, the Danish FSA may lay down a time limit for reducing the risk. Where the risk is not reduced within such time limit laid down by the Danish FSA, the Danish FSA may withdraw the approval of the hedge association.

(4) The registered members of the association or the division shall be informed of all cases of exceeding the risk framework specified in the articles of association or by the board of directors. The articles of association shall specify how such information shall be given. Information shall be given within eight working days after the risk framework was exceeded.

114f.-(1) Section 3; section 6(2)-(4); section 8; section 10(1), nos. 1-27; sections 17-42, 44, 46 and 47; section 48(1), (5) and (6); section 49; parts 9 and 10; sections 74-76 and 78-86; and parts 18-20 shall, with the necessary changes, also apply to hedge associations covered by section 114a(1).

(2) Section 3; section 6(2)-(4); sections 8, 30-32, 39-42, 44, 46 and 47; section 48(1), (5) and (6); section 49; parts 9 and 10; sections 74-76, 80-82, 86; and parts 18-20 shall, with the necessary changes, also apply to hedge associations covered by section 114a(2).

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Other collective investment schemes

115.-(1) Other collective investment schemes shall be defined as investment schemes receiving funds from a wide circle or from the general public without being covered by sections 4, 5, or 114a, where the investors bear the market risk, and mainly investing their funds in the instruments mentioned in annex 5 of the Financial Business Act. The Danish FSA may decide that an investment scheme mentioned in the 1st clause which mainly invests its funds in the instruments mentioned in part 13 of this Act must be converted into an investment association or special-purpose association.

(2) The investment schemes mentioned in subsection (1) shall be managed by investment management companies, banks or investment companies which will be responsible for offers for sale of units in the collective investment scheme to investors and which will issue documentation to investors for their units in the collective investment scheme and keep a register of the investors participating in the scheme.

(3) The collective investment scheme shall be described in a set of regulations containing

- 1) information regarding the collective investment schemes
 - a) name,
 - b) legal form,
 - c) payment of fees to the company administrating the collective investment scheme,
 - d) framework for placement of funds,
 - e) possible participation in an investor guarantee scheme,
 - f) description of the risks associated with participating in the scheme,
 - g) information regarding the investors' rights, and
 - h) information regarding the regulations applying to issue and redemption and to sale of units,
- 2) information regarding the assets that the funds are placed in and the principles for recognition and measurement of the assets, own funds and liabilities of the investment scheme,
- 3) the principles for recognition and measurement of the net asset value of the units and of the costs of entering and leaving the scheme,
- 4) information regarding presentation of accounts and audit,
- 5) information regarding reporting to investors,
- 6) information regarding any winding-up schemes for the collective investment scheme, and
- 7) information regarding how and by which notice the investors will be informed of changes to the terms mentioned in nos. 1-6.

(4) If the collective investment scheme's offer for sale of units is not covered by part 12 of the Securities Trading, etc. Act, it shall be described in a document on the offer for sale.

(5) The Danish FSA shall lay down detailed regulations on the matters mentioned in subsections (3) and (4).

(6) The Danish FSA may order an investment management company, an investment company or a bank managing a collective investment scheme covered by this provision to amend the documents mentioned in subsections (2)-(4) when it is in the interest of the investors.

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(7) If the company which, pursuant to subsection (2), manages a collective investment scheme, has made mistakes in its calculation of the issue or redemption price which have led do a deviation of 0.5 per cent or more, said company shall ensure that the investors affected be notified of the mistake, and publish information about the mistake. Within three weekdays after the mistake was discovered, the company shall commence correcting the mistake and report the matter to the Danish FSA. The report to the Danish FSA shall contain a report of the background for the mistake and a description of how the company intends to avoid similar mistakes in future.

(8) The Danish FSA may lay down more detailed regulations regarding the reporting obligations of the companies mentioned in subsection (7) as regards mistakes in calculations of issues and redemption prices of 0.5 per cent or more.

XII Supervision etc.

Part 18

Supervision, duty of confidentiality, time limits and fees

116.-(1) The Danish FSA shall supervise compliance with this Act and regulations laid down pursuant to this Act except for section 34(1) and (2) as well as the articles of association of the association. The Danish Commerce and Companies Agency shall supervise compliance with section 8(1) and (3). The Danish Securities Council shall, together with the Danish FSA, check that the regulations regarding financial information in annual reports and interim financial statements laid down in sections 55-65 and in regulations laid down in pursuance of section 68 are observed by associations that have issued securities admitted for listing or trading on a stock exchange, or whose securities are traded on an authorised market place, cf. section 83(2) and (3) and section 83b of the Securities Trading, etc. Act. In this connection, the Danish Securities Council shall perform the authorities laid down in section 69.

(2) The Minister for Economic and Business Affairs may lay down more detailed regulations for the procedures of the Danish FSA in accordance with the provisions laid down in Community law.

117. The Danish Financial Business Council shall assist in supervisory matters concerning investment associations, special-purpose associations and other collective investment schemes as well as restricted associations with the powers vested in the Danish Financial Business Council pursuant to section 345 of the Financial Business Act.

118. The Danish FSA shall examine the circumstances of associations. This shall include reviews of regular reports and inspections of individual associations.

(2) Following an inspection of an association, a meeting shall be held, including as participants the undertaking's board of directors, board of management or investment management company, the external auditor, and the chief internal auditor, unless such inspection exclusively concerns clearly demarcated areas of activity within said association. At said meeting, the Danish FSA shall announce its conclusions regarding the inspections.

(3) Following an inspection visit, significant conclusions shall be submitted in the form of a written report to the association's board of directors, board of management, the external

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auditor, and the chief internal auditor. Said persons shall confirm having been made aware of said report by signing it, whereupon the report shall be returned to the Danish FSA.

119.-(1) Associations shall submit such information to the Danish FSA as is necessary for its activities. The Danish FSA may, at any time, and on presentation of appropriate identification, and without a warrant, be entitled to access to the association with a view to making inspections and gathering information.

(2) Section 347(3) of the Financial Business Act shall also apply to supervision by the Danish FSA in pursuance of this Act.

(3) The Danish FSA may ask for any information, including accounts, accounting records, printouts of books, other business records, and electronically stored data deemed necessary for the activities of the Danish FSA or deemed necessary for deciding whether a natural or legal person is covered by the provisions of this Act.

(4) The Danish FSA may collect information pursuant to subsections (1)-(3) for use by the authorities mentioned in section 123(5), nos. 13 and 14.

120.-(1) The Consumer Ombudsman may institute legal proceedings on prohibitions and orders regarding actions contrary to honest business principles and good practice, cf. section 18. The provisions of section 13(1) and section 14(1) of the Marketing Practices Act shall apply correspondingly to legal proceedings instituted by the Consumer Ombudsman in pursuance of this provision.

(2) The Danish FSA may order that matters which are contrary to section 18 shall be rectified. In this connection the Danish FSA may carry out inspection visits of branch offices of management companies and investment firms.

121.-(1) The Danish FSA may order that an association remove a member of the board of management within a time limit specified by the Danish FSA, if conditions covered by section 31(2) exist.

(2) If the association does not remove the member of the board of management before expiry of the time limit, the Danish FSA may withdraw the license of the association, cf. section 81(2), no. 1.

122. The Danish FSA may independently or in collaboration with other authorities carry out such investigations as are appropriate to promote transparency of associations and publish the results of such investigations.

123.-(1) Employees of the Danish FSA shall be subject to liability under sections 152-152e of the Criminal Code to keep secret any information they receive in the course of their supervisory duties. The same shall apply to persons performing services as part of the operations of the Danish FSA, and experts acting on behalf of the Danish FSA. This shall also apply after the termination of the employment contract or any other contract.

(2) Consent from the individual who the duty of confidentiality aims to protect shall not entitle employees of the Danish FSA or experts acting or having acted on the behalf of the Danish FSA to divulge confidential information.

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(3) The provision stipulated in subsection (1) shall not prevent the Danish FSA from divulging, on its own initiative, confidential information in the form of summaries, insofar as neither the individual association nor its members are identifiable.

(4) Confidential information may be disclose during civil legal proceedings, where an association has been declared bankrupt, and provided such information does not concern member relationships or third parties where said members or third parties are or have been involved in attempts to save the association.

(5) The provision of subsection (1) shall not prevent confidential information from being divulged to:

- 1) The Danish Securities Council and the Financial Business Council.
- 2) Other public authorities, including the prosecution and the police, in connection with the investigations and legal prosecution of for criminal offences covered by the Criminal Code or the supervision legislation.
- 3) The Minister concerned as part of his superior supervision.
- 4) Administrative authorities and courts hearing decisions made by the Danish FSA.
- 5) The Ombudsman of the Danish Parliament.
- 6) A parliamentary commission set up by the Danish Parliament.
- 7) Courts of inquiry set up by law or in accordance with the "lov om undersøgelseskommissioner" (courts of inquiry act).
- 8) The standing committee of the Danish Parliament regarding the general financial circumstances of an association as part of the parliamentary supervision of administration with respect to associations which are in suspension of payments or under bankruptcy proceedings where state guarantees or funds are granted for the winding-up of said association.
- 9) Members of the Public Accounts Committee and the National Audit Office of Denmark.
- 10) The bankruptcy court and other authorities participating in liquidation, bankruptcy proceeding or similar procedures regarding the association, as well as persons responsible for the statutory audit of the accounts of the association, provided that such recipients of information need said information to perform their duties.
- 11) Danmarks Nationalbank (Denmark's central bank) and foreign central banks as well as the European Central Bank, provided that such information is required by said banks in their capacity as authorities within the field of monetary policy or provided that such information is required by said banks for their monitoring of payment systems.
- 12) An institution which carries out clearing proceeding for securities or money, provided that such information is required to ensure that said institution reacts duly to non-compliance potential non-compliance within the market where said institution is responsible for clearing proceedings.
- 13) Financial supervisory authorities in other countries within the European Union and countries with which the Community has entered into an agreement for the financial area which are responsible for the supervision of investment undertakings, financial undertakings, finance institutions, or the capital markets and bodies involved in the liquidation and bankruptcy proceedings of financial undertakings and investment undertakings or in other similar procedures, and persons responsible for carrying out statutory audits of the accounts of the investment undertaking provided that these recipients of information need it to perform their duties.
- 14) Financial supervisory authorities in countries outside the European Union or countries with which the Community has not entered into an agreement for the financial area which are responsible for the supervision of investment undertakings, financial undertakings, finance institutions, or the capital markets and bodies involved in the liquidation and bankruptcy proceedings of financial undertakings and investment

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undertakings or in other similar procedure, and persons responsible for carrying out statutory audits of the investment undertaking, cf. however subsections (9) and (10).

- 15) The Supervisory Authority on Auditing and the "Disciplinærnævnet for Statsautoriserede og Registrerede Revisorer" (the disciplinary board for state-authorized public accountants and registered public accountants).

(6) All those receiving confidential information from the Danish FSA under subsections (4) and (5) shall fall under the duty of confidentiality mentioned in subsection (1) with regard to said information.

(7) Confidential information received by the Danish FSA may only be used in the course of its supervisory duties, to impose sanctions, or where appeals are made against the decision of the Danish FSA to a higher administrative authority or where such a decision is brought before the courts of law.

(8) Access to issue confidential information to the standing committee of the Danish Parliament under subsection (5), no. 8 shall be limited to documents in cases which have been established in the Danish FSA after 16 September 1995.

(9) Information may only be divulged pursuant to subsection (5), no. 14

- 1) on the basis of an international co-operation agreement, and
- 2) provided that the recipients of said information are, at a minimum, subject to a statutory duty of confidentiality corresponding to the duty of confidentiality pursuant to subsection (1) and that said recipients require said information to perform their duties.

(10) Confidential information from countries within the European Union or countries with which the Community has entered into an agreement for the financial area shall only be divulged pursuant to subsection (5), no. 14 where the authorities submitting said information have granted express permission to do so, and said information shall only be used for the purposes specified by said permission.

123a.-(1) In the matters mentioned in subsection (2), the Danish FSA may make public the name of the association which a decision concerns when the Danish FSA deems it to be of interest to the customers of said association to know the name of said association.

(2) Publication may be effected in matters pertaining to

- 1) violation of the ban against carrying out activities as an investment association without a license, cf. section 4,
- 2) violation of the ban against carrying out activities as a special-purpose association without a license, cf. section 5,
- 3) violation of the ban against marketing foreign units before expiry of the two-month time limit, cf. section 12,
- 4) violation of the ban against marketing foreign units in more detailed situations, cf. section 15,
- 5) violation of the ban against marketing foreign units without a license, cf. section 16,
- 6) orders to rectify matters which are contrary to the regulations on good practice in section 18 and executive orders on honest business principles and good practice issued pursuant to section 18(2), cf. section 120(2),
- 7) violation of the regulations on disclosure of confidential information in section 36,
- 8) violation of the ban in section 49 against charging double fees,

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- 9) violation of the regulation in section 51(1) and (2) on payment of costs in connection with issues of units through a central securities depository,
- 10) violation of the regulations on prospectuses and executive orders on prospectuses, cf. sections 74 and 75,
- 11) violation of the regulations in section 77 on publication of issue and redemption prices,
- 12) violation of the regulations in section 115(3)-(6) stipulating that other collective investment schemes are required to describe said scheme in a set of regulations, and on offers for sale.

(3) Publication of the matters mentioned in subsection (2), no. 6 may moreover be effected despite the association having changed its conduct if the Danish FSA deems that the members of the association still have an interest in knowing the matter.

(4) Publication of the matters mentioned in subsection (2), nos. 3, 4 and 6-12 may not be effected if this would lead to significant damage to the association. Said publication may not contain confidential information on customer relationships.

(5) The Danish FSA may make public the name of the association which a decision concerns two weeks after said association has received notification regarding said decision. If the association decides to bring the matter before the Company Appeals Board within said two weeks, publication may only be effected if the Board does not decide that the appeal is to act as stay of proceedings.

124.-(1) Only the association or foreign investment undertaking against which a decision has been made by the Danish FSA under this Act or regulations laid down in pursuance of this Act shall be considered a party in relation to the Danish FSA, cf. however subsections (2) and (3).

(2) In the instances specified below, persons natural and legal other than the association shall also be considered a party to the decision made by the Danish FSA as regards the parts of the case which concern said person:

- 1) Anyone contravening the prohibition in this Act against operating as an investment association or special-purpose association, cf. section 4(1) and (4), and section 5(1) and (4).
- 2) An association applying for approval as an investment association or a special-purpose association, cf. section 7.
- 3) A member of an association's board of directors or board of management when the Danish FSA refuses to grant a license to the association or withdraws such license, cf. section 7(3) and subsection (1).
- 4) An auditor of an association where the Danish FSA removes said auditor or orders said auditor to provide information on the status and circumstances of the association, cf. section 71(3) and (5), as well as in cases where the external auditors have not met their obligation to provide information to the Danish FSA, cf. section 72.
- 5) Anyone from whom the Danish FSA obtains information in order to decide whether such person shall be covered by the provisions of this Act, cf. section 119(3).

(3) A member of the board of directors, an auditor, a member of the board of management, or other senior employees of an association or a foreign investment undertaking shall also be considered a party where decisions made by the Danish FSA are aimed specifically at said person.

(4) Finally, the Danish FSA may, when instituting proceedings regarding honest business principles and good practice within associations, cf. section 18 of this Act; honest business

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principles and good practice, cf. section 43 of the Financial Business Act; and regarding good securities trading practices, cf. section 3 of the Securities Trading, etc. Act, in exceptional circumstances also assign authorities as party to other persons natural or legal than those specified in subsections (2) and (3). The authorities as party can only be given for such part of the case as is of direct and material importance to the party concerned. The authorities as party shall be given having regard to the protection of confidential information about the undertakings that are subject to supervision.

(5) Status as party and authorities as party according to subsections (2)-(4) shall be limited to matters where the Danish FSA makes decisions after 8 October 1998. With regard to disclosure of confidential information, cf. section 36, status as a party and assigned authorities as party shall be limited to matters where the decision of the Danish FSA is made after 1 February 2004.

125.-(1) The Danish FSA shall submit an annual report on its activities to the Minister for Economic and Business Affairs.

(2) In cooperation with the National Consumer Agency of Denmark, the Danish FSA shall submit an annual report on the status regarding issue of regulations on good practice and regarding experience with application of such regulations to the Minister for Economic and Business Affairs, cf. section 18(2).

126. Section 356 of the Financial Business Act shall apply correspondingly to the employees of the Danish FSA in respect of its activities according to this Act.

127. Investment associations, special-purpose associations, restricted associations and hedge associations subject to supervision under this Act shall pay a fee to the Danish FSA. The fee shall be set pursuant to part 22 of the Financial Business Act.

128.-(1) The time limits fixed in or pursuant to this Act shall take effect from the day following the day when the event triggering the time limit occurred. This shall apply to calculation of time limits involving days, weeks, months and years.

(2) Where the time limit is indicated in weeks, said time limit shall expire on the day in the week when the event occasioning the time limit occurred, cf. subsection (1).

(3) If the time limit is indicated in months it shall expire on the day in the month when the event triggering the time limit occurred, cf. subsection (1). If the day when the event triggering the time limit occurred is the last day of a month, or if the time limit expires on a date which does not exist, the time limit shall always expire on the last day of the month, irrespective of its length.

(4) Where the time limit is indicated in years, said time limit shall expire on the day in the year when the event occasioning the time limit occurred, cf. subsection (1).

(5) If a time limit expires during a weekend, on a holiday, 5 June, 24 December or on 31 December, the time limit shall be extended to the next weekday.

129. The Minister for Economic and Business Affairs shall lay down more detailed regulations on the use of digital communication, including electronic signatures, when exchanging information in accordance with this Act between citizens and undertakings on the one hand and the public administration on the other hand, as well as storage of information.

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Part 19

Provisions concerning delegation and appeals

130. If the Minister for Economic and Business Affairs delegates his powers under this Act to the Danish FSA, the Minister may lay down regulations concerning the right of appeal, including regulations to the effect that appeals cannot be made to another administrative authority.

131. Decisions made by the Danish FSA or the Danish Commerce and Companies Agency under this Act or regulations issued pursuant to this Act may be brought before the Company Appeals Board by the person against whom said decision is directed no later than 4 weeks after the person concerned has been notified about the decision.

Part 20

Penalties

132.-(1) Any person violating the provisions in section 4(1), (4)-(6) and (8); section 5(1), (4)-(6) and (8); section 6(1); sections 17, 19 and 24; section 26(1) and (6)-(8); section 27; section 28(1) and (3); sections 29 and 30; section 31(1), cf. subsection (2), nos. 2 and 3; section 36; sections 39-42; section 43(1); sections 44 and 45; section 48(1), (2) and (6); section 49; section 55(1), 1st clause and (2); section 56(1); section 57(1) and (2) and (3), 1st clause; sections 58 and 59; section 60(1), (2), 1st clause and (3), 2nd clause; sections 61-63; section 64, 1st clause; section 65, 1st clause; section 66; section 67(1) and (2); section 70; section 71(1), 1st clause and (2) and (4); section 72; section 74(1), (3) and (4); section 77(1); sections 77a, 87 and 88; section 89(1) and (2); section 90; section 91(1) and (2); sections 92-94; section 95(1), (4) and (5); sections 96-98; sections 100-104; section 105(2); section 106; section 107(1) and (2); section 108(2); section 109(2), (3), 2nd clause, (4), (5), 2nd clause, and (6); section 109a, 2nd clause; section 110(2); section 111(6) and (7); section 112(4); section 114(2) and (3); section 114a(1), (4), (5) and (7); section 114b, 1st clause; section 114d (1)-(4); section 114e (1) and (2), and (3) 1st clause, and (4); section 115(2)-(4) and (7); and section 118(3), 2nd clause, shall be liable to fines or imprisonment of no more than 4 months unless more severe punishment is incurred under other legislation. Any person violating the provisions in sections 12, 14 and 15; section 16(1), 2nd clause; section 25; section 33, 1st clause; section 34; section 35(1), (2), 1st clause, and (4), (6) and (7); section 37(1), nos. 1-5; and sections 50 and 75 shall be liable to a fine.

(2) Any person not complying with an improvement notice issued by the Danish FSA shall be subject to the penalty mentioned in subsection (1).

(3) In regulations issued pursuant to this Act, fines may be stipulated for any violation of the provisions of said regulations.

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

(5) If a member of the board of directors or board of management of an association omits to take the steps necessary in the event of losses or imminent danger of material losses, such member shall be liable to a fine or imprisonment for up to 4 months unless more severe penalty is incurred under other legislation.

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(6) Persons who are connected to an association and who submit incorrect or misleading information on matters pertaining to the undertaking to public authorities, the general public, any company organ, or to investors in said association, or who are guilty of gross or frequent negligence or carelessness which may entail losses for the association shall be liable to a fine or imprisonment for up to 4 months unless more severe penalty is incurred under other legislation.

(7) The period of limitation for non-compliance with the regulations in this Act or regulations issued pursuant to this Act shall be 5 years.

133.-(1) Where the board of directors, board of management, auditor, investment management company, depository or liquidator of an association fails to comply within the proper time with the duties and obligations imposed on them under this Act or regulations laid down pursuant to this Act towards the Danish FSA or the Danish Commerce and Companies Agency, the Danish FSA or the Danish Commerce and Companies Agency, respectively, may impose daily or weekly fines on the persons concerned.

(2) If an association which has issued securities admitted for listing or trading on a stock exchange or whose securities are traded on an authorised market place does not meet its obligations under the provisions of section 55-65 or provisions laid down in pursuance of section 68, the Danish Securities Council may order the relevant association to rectify the matter and to make public amended or supplementary information. If deemed appropriate, the Danish Securities Council itself may make public the relevant information, the order or suspend or remove the securities involved from the listing on a stock exchange or from the admission for trading on an authorised market place.

(3) Any association not complying with an order from the Danish Securities Council or giving incorrect or misleading information to the Danish Securities Council shall be liable to a fine, unless more severe penalty is incurred under other legislation.

(4) The provision of subsection (1) shall apply correspondingly to the Danish Securities Council with regard to the checks by the Danish Securities Council under section 116(1), 3rd clause.

Part 21

Entry into force and transitional provisions

134.-(1) This Act shall enter into force on 1 January 2004.

(2) Sections 55-69 regarding annual reports shall apply for the first time for annual reports and statements of assets covering periods starting on or after 1 January 2005. Annual reports and statements of assets for periods up to and including 31 December 2004 shall be submitted according to the regulations hitherto in force.

(3) At the same time, the Investment Associations and Special-Purpose Associations Act, cf. Consolidated Act no. 658 of 7 August 2002, shall be repealed.

(4) Notwithstanding subsection (3) and section 71(1), the requirement that associations, the certificates of which are listed on a stock exchange, shall have no less than two auditors, cf. section 40(1) in the Investment Associations and Special-Purpose Associations Act, cf.

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Consolidated Act no. 658 of 7 August 2002, shall remain in force for the accounting year commencing 1 January 2004.

(5) The "bekendtgørelse om investeringsforeningers placering af formuen i realkreditobligationer, statsobligationer m.m." (executive order no. 1051 of 17 December 1997 on investment association's placement of funds in mortgage-credit bonds, government bonds, etc.) shall be repealed at the time of entry into force of this Act, cf. subsection (1). The executive orders issued in pursuance of the Investment Associations and Special-Purpose Associations Act, cf. Consolidated Act no. 658 of 7 August 2002 shall remain in force until they are replaced.

135.-(1) The investment associations and special-purpose associations existing at the time of entry into force of this Act shall, no later than 1 January 2005, bring their articles of association up to date with the requirements of this Act.

(2) Amendments to the articles of association, which are necessary in order to bring said articles of association up to date with the regulations of this Act, but which have not been adopted at a general meeting, shall be regarded as legally adopted by the general meeting if the amount of votes cast against said amendments is smaller than that required for a resolution on the dissolution of the association.

(3) Investment associations and divisions hereof, which have been approved before entry into force of this Act and which do not aim at a wide circle of the general public, may, notwithstanding section 79, at a general meeting make resolutions to convert the association into a restricted association. The resolution shall be unanimous.

136.-(1) Other collective investment schemes, cf. section 115, managed by others than investment companies and banks, and which are authorised as securities dealers, cf. section 9 of the Financial Business Act may continue their activities as before provided the Danish FSA is notified before 1 June 2004.

(2) The Danish FSA may lay down regulations regarding the information to be contained in the notification mentioned in subsection (1).

137.-(1) Foreign investment undertakings which, at the entry into force of this Act marketed units directly or indirectly as mentioned in sections 11(1) and 16(1) without a marketing authorisation in accordance with section 71 of the Investment Associations and Special-Purpose Associations Act may continue such marketing as before provided that the Danish FSA is notified before 1 June 2004 of which investment undertakings and units have been marketed.

(2) The Danish FSA may lay down regulations regarding the information to be contained in the notification mentioned in subsection (1).

138. The members of the board of directors who, at the time of entry into force of this Act, have other duties or employments than those permitted under section 26(2) may continue as members of the board of directors until expiry of the period for which they are elected. After such expiry, they shall not be re-electable if they still do not meet the requirements of section 26(2).

139. Notwithstanding the provisions in sections 97-99, an investment association may only use derivative financial instruments according to Executive Order on the Use of Derivative Financial Instruments by Investment Associations, Special-Purpose Associations and

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Innovation Associations until a new executive order is issued in pursuance of section 89(3) of this Act.

140. Investment advisers who, at the time of entry into force of this Act, work as investment advisers to one or more investment associations or special-purpose associations and who are not authorised for or registered with a view to asset management and are not subject to supervision shall, no later than 1 June 2004, either terminate the agreement with the association or submit an application for approval with a view to asset management.

141. This Act shall not apply to Greenland and the Faeroe Islands, but may be brought into force by Royal Decree for these parts of the Realm subject to any variations in their operation necessitated by the specific conditions prevailing in Greenland and the Faeroe Islands respectively.

Act no. 491 of 9 June 2004 contains the following entry into force and transitional provisions:

6.-(1) This Act shall enter into force on 1 January 2005, cf. however subsections (2) and (3).

(2) (Omitted)

(3) Section 1, nos. 4, 7-10, 13, 30, 34, 37 and 41; section 2, nos. 1-3, 12 and 13; section 3, nos. 1 and 2; section 4, no. 5; and section 5 shall enter into force on 1 July 2004.

(4) This Act shall not extend to Greenland and the Faeroe Islands, but may be brought into force by Royal Decree for these parts of the Realm subject to any variations in their operation necessitated by the specific conditions prevailing in Greenland and the Faeroe Islands respectively.

Act no. 1383 of 20 December 2004 contains the following entry into force and transitional provisions:

17.-(1) This Act shall enter into force on 1 January 2005, cf. however subsections (2)-(4).

(2)-(3) (Omitted)

(4) Section 3, no. 6 shall be effective from 1 December 2004.

18.-(1) This Act shall not apply to the Faeroe Islands and Greenland, cf. however subsections (2) and (3).

(2) Sections 1, 3 and 4 may, however, be brought fully or partially into force for the Faeroe Island and Greenland by Royal Decree for these parts of the realm subject to any variations in their operation necessitated by the specific conditions prevailing in Greenland and the Faeroe Islands respectively.

(3) (Omitted)

Act no. 411 of 1 June 2005 contains the following entry into force and transitional provisions:

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6.-(1) This Act shall enter into force on 1 July 2005.

(2) Legal entities and other collective investment schemes, cf. section 115 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act, carrying out activities covered by section 114a(1), of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act, shall no later than 1 January 2006 submit application for approval as hedge association to the Danish FSA. The legal entity concerned may then continue its activities in Denmark without a license until the Danish FSA has made a decision regarding the application.

(3) The Danish FSA may, in connection with the approval of legal entities and other collective investment schemes, which - before 23 February 2005 - were carrying out activities covered by section 114a(1) of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act, and which have filed an application under subsection (2), in special cases grant exemptions from the requirement that the funds of the hedge association is not to total less than DKK 25 million, cf. section 114a(6) and section 114c(1) no. 9 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act.

(4) (Omitted)

7. This Act shall not extend to Greenland and the Faeroe Islands, but may be brought into force by Royal Decree for these parts of the Realm subject to any variations in their operation necessitated by the specific conditions prevailing in Greenland and the Faeroe Islands respectively.

Act no. 1428 of 21 December 2005 contains the following entry into force and transitional provisions:

6. This Act shall enter into force on 1 January 2006.

7. Funds of funds which, before 1 January 2006, have placed funds in units in the foreign investment undertakings and divisions thereof mentioned in sections 11 and 16 in Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act., cf. Consolidated Act no. 768 of 19 July 2005, which do not invest as the associations mentioned in section 108(1), 1st clause in Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act as worded in section 1, no. 15 of this Act may keep such investments, provided the funds of funds report these investments to the Danish FSA no later than 31 March 2006.

8. (Omitted)

9. (Omitted)

10. This Act shall not extend to Greenland and the Faeroe Islands, but sections 1, 3 and 4 may be brought into force by Royal Decree for these parts of the Realm subject to any variations in their operation necessitated by the specific conditions prevailing in Greenland and the Faeroe Islands respectively.

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Bendt Bendtsen

/Henrik Bjerre-Nielsen

Official notes

¹) This Act 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 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 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 L 41, p. 35), Council Directive of 22 March 1989 (Official Journal 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 L 168, p. 7) (reinforcing prudential supervision - the "post-BCCI" Directive).

EXCLUDING MINOR AMENDMENTS