



## **Misleading Marketing – Investor Protection in connection with Securities Trading**

In a decision of 15 May 2009, the Danish Financial Supervisory Authority (the "DFSA") points out that an investment services company (the "Company") has been using misleading marketing in connection with the marketing of shares in an investment company.

### **The Case**

In April 2009, the DFSA received a complaint about the Company's marketing of shares in an investment company. In the beginning of the year, the Company had recommended purchase of shares in the investment company, including via marketing in an advertisement with the following wording "receive 8% return on investment in Danish bonds".

### **The Legal Background**

Executive Order no. 809 of 29 June 2007 on Investor Protection in connection with Securities Trading (the "Executive Order") applies to Danish securities dealers' activities in Denmark. It appears from Section 8 of the Executive Order that information which could be received by retail customers shall be clear and not misleading. Which information not to be included in this requirement must e.g. be assessed on the used communications and the information to be disclosed, cf. practise note no. 9010 of 8 January 2008 to the Executive Order.

In the Executive Order, it is stated that information on future returns must be based on reasonable assumptions supported by objective data, cf. Section 8(5).

Executive Order Section 9, supplementing the requirements in Section 8, concerns marketing material for retail customers, and the provision implies that information appearing in the securities dealer's marketing material shall be in accordance with the information which the securities dealer provides in connection with a securities transaction.

### **The DFSA's Decision of 15 May 2009**

In this particular case, the DFSA found the Company's marketing misleading, since the marketing material did not provide the investors with a balanced impression of any returns and losses. In its decision, the DFSA emphasises that the Company cannot guarantee a yearly return of 8%. The DFSA assesses that such information should be stated in immediate continuation of adverts and sales booklets.

Finally, the DFSA established that it should have been stressed in the sales literature that it concerned a geared investment in which the investors could stand to loose their entire investment.



## **Previous Decisions by the DFSA**

In DFSA's decision of 26 September 2008, a bank received a reprimand for misleading marketing. In this decision, the DFSA emphasised that the marketing, which was a puff of the bank's positive development, occurred in such a manner that it was suitable for directing the customer's focus from the share purchase, so that the customer did not pay attention to the risks involved with share investments. Such direction of the focus is contrary to the Executive Order Section 8(1). Stating that shareholders in recent years have been rewarded with particularly large returns without stating whether this is a reliable indicator for future returns was also contrary to the Executive Order.

The decision of 15 May 2009 thus seems to comply with the DFSA's prior practise on the area.

## **Consequence of the Decision**

DFSA's decision emphasises that an investment services company must be aware that information in connection with marketing of financial products, according to Section 8(1) of the Executive Order, which is deemed to be received by retail customers, shall be clear and not misleading.

Given the DFSA's latest decision, attention should especially be paid to marketing material concretely being prepared in such a way that retail customers both become aware of the possibilities of return, but also in particular become aware of the risk of losses. In cases where risk bearing investment products are directed towards retail customers, where e.g. a large part of the invested amount may be lost, there is an expanded obligation on the investment services company to inform thereon in the marketing material.

*If you have questions regarding the above or require additional information on misleading marketing within securities trading, please contact attorney Dan Moalem ([dmo@mwblaw.dk](mailto:dmo@mwblaw.dk)) or junior associate Anders Quistgaard ([anq@mwblaw.dk](mailto:anq@mwblaw.dk)).*

The above does not constitute legal counselling, and Moalem Weitemeyer Bendtsen does not warrant the accuracy of the information. With the above text. Moalem Weitemeyer Bendtsen has not assumed responsibility of any kind as a consequence of a reader's use of the above as a basis of decisions or considerations.