

Committee of European Securities Regulators
11-13 avenue de Friedland
F- 75008 Paris

16 July 2009
/ph

MiFID complex and non-complex financial instruments for the purposes of the Directive's appropriateness requirements - Reply to Consultation Paper CESR/09-295

Dear Sir/Madam,

We refer to your consultation paper of 14 May 2009 with reference number CESR/09-295 and would like to thank you for giving us the opportunity to contribute to the consultation.

Focus of this response

Our response will focus on covered bonds in the form of Danish mortgage bonds¹.

Danish Mortgage Bonds in general

1. The Danish mortgage credit market is characterized by transparency, competition and stability.
2. Surveys have shown that consumers are well-informed about the various types and features of mortgage products that exist on the market, all of which have been on the market for a considerable amount of time.
3. In 2008 issuance and sale of Danish mortgage bonds amounted to approx. DKK 750bn (approx EUR 100bn).

¹ Danish mortgage bonds include mortgage bonds (ROs), covered mortgage bonds (SDROs) and covered bonds (SDOs)

4. Danish mortgage bonds are issued by Danish mortgage banks and traded publicly. It is an integral part of the way virtually all consumers finance their purchase of residential properties. 60 % of all loans granted by Danish mortgage banks, and funded by mortgage bonds, regard private residential properties.
5. Bonds are secured by loans up to a maximum of 80% of the value of a private residential property, with the borrower's property mortgaged as collateral for the loan.
6. Loans are financed by the issuance of covered bonds by the mortgage bank, subject to specific legislation, with the loans retained on the issuing mortgage banks' balance sheet during the life of the loan.
7. The majority of existing mortgage bonds take the form of fixed rate, fixed annuity bonds, redeemable by the borrower. They can also take the form of or fixed rate bullet bonds, adjustable rate redeemable bonds with a maximum rate, and adjustable rate irredeemable bonds without maximum rates.

Danish Mortgage Bonds in relation to MiFID's complex / non-complex categories

We would like to stress that the Danish mortgage bonds are characterized as non-complex for the following specific reasons:

1. Danish mortgage bonds are included in the definition of non-complex products in MiFID. The definition is in article 19 (6), first indent, in directive 2004/39, where bonds are directly mentioned in the article.
2. The Danish Financial Supervisory Authority, which is responsible for the interpretation and implementation of MiFID in Denmark, has confirmed that Danish mortgage bonds are classified as non-complex products. We refer to the enclosed letter of 16 October 2008.
3. We agree with the last sentence in section 61 of the Consultation Paper which reads as follows:

CESR is also of the opinion that mortgage bonds issued by a credit institution under the conditions stated by Article 5 (4) (b) of the Prospectus Directive should also be considered to be non-complex instruments (see recital 13 of the implementing regulation of the Prospectus Directive).

4. We believe that such instruments are wholly excluded from the scope of Art.19 of MiFID, under Art. 19(9) of the Level 1 Directive, and we refer to confirmed interpretation discussions involving the Member States and the Commission before MiFID was implemented. Therefore, the MiFID appropriateness requirements should continue not to apply to these instruments (in Denmark named realkreditobligation, SDO or SDRO).

5. Danish mortgage bonds also qualify as non-complex bonds pursuant to the implementing provisions in article 38 in Level 2 directive 2006/73. Danish mortgage bonds do not fall within any of provisions mentioned in article 38 (1). It is a very characteristic of Danish mortgage bonds that they are publicly traded and hence very easy to sell and purchase. Pricing data is obtainable in real time, continuously. These features further emphasize the transparency of Danish mortgage bonds.

* * *

Again we thank you for giving The Association of Danish Mortgage Banks the opportunity to provide input to the consultation.

Yours sincerely,

Peter Holm

./. About The Association of Danish Mortgage Banks

*Letter of 16 October 2008 from the Danish FSA - Finanstilsynet - to Realkreditrådet
(Association of Danish Mortgage Banks)*

About The Association of Danish Mortgage Banks

The Association of Danish Mortgage Banks is the trade association for the majority of Danish mortgage banks, representing 56 pct of the total remaining bond debt volume in DKK (as of end 2008).

Our members grant loans against security in the form of mortgages on real property.

The mortgage loans are based on the issuance of mortgage bonds (ROs), covered mortgage bonds (SDROs) and covered bonds (SDOs).

Six Danish mortgage banks are members of The Association of Danish Mortgage Banks: Nykredit Realkredit A/S, BRFkredit A/S, Totalkredit A/S, DLR Kredit A/S, FIH Realkredit A/S and LR Realkredit A/S.

The total volume of lending granted by Danish mortgage banks - the remaining bond debt - amounted to DKK 2,187 billion (approx EUR 300 billion) at the end of 2008. In 2008 approximately DKK 750 billion worth of Danish mortgage bonds were issued and sold.

The Association of Danish Mortgage Banks is an active member of a number of international organizations and associations such as the European Mortgage Federation (EMF) and the European Covered Bond Council (ECBC).



REALKREDITRÅDET

17 OKT. 2008

J.NR.: *g 2m*

Realkreditrådet
Zieglers Gaard
Nybrogade 12
1203 København K

16 October 2008

Ref. LFO

J.no. 0710-0019

Classification of Danish mortgage bonds as non-complex products

It shall hereby be confirmed that the Danish mortgage bonds are classified as non-complex products under the MiFID regulation in Denmark.

The above mentioned interpretation follows from the Executive Order no. 809 of 29 June 2007 on Investor Protection in connection with Securities Trading

If you have any further questions to this interpretation do not hesitate to contact the Danish Financial Supervisory Authority.

**DANISH FINANCIAL
SUPERVISORY AUTHORITY**
Gl. Kongevej 74 A
DK-1850 Frederiksberg C

Tel +45 33 55 82 82
Fax +45 33 55 82 00
finansstilsynet@ftnet.dk
www.dfsa.dk

**MINISTRY OF ECONOMIC AND
BUSINESS AFFAIRS**

Kind regards,

Louise Földager
Deputy Financial Inspector