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CESR
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CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive (Addendum to the Consultation Paper) December 2002

Realkreditrådet has taken a closer look at CESR's Addendum to the Consultation Paper of December 2002 and should like to put forward its comments seen from the point of view of the Danish mortgage banks. Based on the activities of the mortgage banks, emphasis has been put on commenting the information requirements that are made in regard to debt securities, whereas Realkreditrådet has not decided on the demands in regard to equity securities.

1. Prospectuses for "debt securities"

Since the Danish mortgage bank use tap (daily, to the widest possible extent) issuance of bonds to fund their lending activities, the mortgage banks wish to make use of the possibility outlined in Article 5, paragraph 4, para b of the Prospectus Directive to issue a "base prospectus".

Realkreditrådet has noted that the CESR's hearing document, items 169 to 176 about base prospectus is mentioned that due to lack of time it has not been possible to put forward an actual proposal for the contents of the base prospectus. At the same time it is mentioned that the demands on the contents of the base prospectus will to a large extent depend on the demands made on other prospectuses. In addition, CESR is of the opinion that the information provided to the public should in principle not be different based on the issuance form alone. Realkreditrådet agrees to this latter point.

2. Danish mortgage banking

The activity of the Danish mortgage banks – the granting of loans against a registered mortgage on real property based on the issuance of mortgage bonds – is subjected to very detailed legislation.

The lending activity of the Danish mortgage banks is of such a considerable volume that the mortgage banks provide more than 60 per cent of the Danish credit market, measured as outstanding credits to households and non-financial institutions. The close connection between the lending of the mortgage banks and the funding through the issue of mortgage bonds means that the Danish mortgage bond market is the second largest in Europe. The

outstanding volume of Danish mortgage bonds amounted to Euro 180bn at the end of 2001, corresponding to the Danish GDP.

The legislative regulation of the mortgage credit activity is relatively restrictive and serves to reduce the risk of the mortgage banks in various ways. One major objective is to ensure a high quality of the bonds, which fund all the mortgage loans.

The elements contained in the legislative regulation, are:

- Maximum loan limits for the individual property categories.
- Prudent procedures for the assessment of the value of the mortgages.
- A balance principle, which excludes market risks arising from mismatch between funding and lending for the mortgage banks.
- Maximum maturities for the mortgage loans.
- Preferential position for bond holders in connection with bankruptcy.

Based on the comprehensive legislative regulation to which the Danish mortgage banks and hence also the issuance of bonds is subjected as well as the supervision exercised by the Danish Financial Supervisory Authority, Realkreditrådet is of the opinion that it must be possible to make sure that a number of the information requirements regarding the description of the rules in force made in the prospectus can be met with by referring to the relevant Acts and their related Executive Orders, rather than a detailed description of the said rules in the prospectus.

In the following comments on the annexes to the consultation paper that are relevant to the Danish mortgage banks, such references will be made in connection with information requirements comprised in this group.

3. Comments to annexes

Annex (2) Proposals for the Banks Registration Document Building Block

Realkreditrådet finds that it is appropriate to have special rules for prospectuses for debt securities issued by credit institutions.

In relation to item I.A. "Responsibility for the prospectus or certain parts of them" it is underlined that when it is a "legal person", who issues the prospectus, the responsible part is the company itself – and not the managers/members of the executive committee, who have made the decisions. It is thus the Danish mortgage banks who have the responsibility.

In the description of item II. "Risk Factors", Realkreditrådet finds that it should be possible to meet this information requirement by describing the security that characterises the Danish mortgage credit system.

It should be made possible that the information requirements in item III.A. "History and development of the Issuer" and item III.C. "Principal activities" can be met by referring to the annual report and accounts of the mortgage bank in question, if the said publication already contains the information in question.

Realkreditrådet finds it important that item III.B. about future investments does not specify demands that information should be given about future investments when such demands go beyond the information provided in the annual report and accounts and in stock market announcements. Additional information would not be relevant seen in relation to the issuance of mortgage bonds.

The information requirements in item I.V.A on "Trend information & profit forecasts" are too comprehensive in the opinion of Realkreditrådet. This demand ought to be met by referring to the annual report and accounts of the mortgage bank in question.

Information about "Board Practices" in item V.C is not relevant for the investor's assessment of the mortgage bonds issued.

As regards information in item VI.B. on "Related Party Transactions", Realkreditrådet believes that the information concerning large shareholders and transactions with related parties or unusual transactions should correspond to the information that is already provided in the annual report and accounts and in stock market announcements. Furthermore it is important that no demand for information is made, where such information can be directly related to individual persons.

The demands in item VII.A. as to "Consolidated Statements and Other Financial Information" are likely to be met by reference to the already drawn up accounts.

Item V.III.C. "Documents on display" sets the scene for a demand that there should be access to all documents referred to in the registration document. Realkreditrådet assumes that access should only be given to documents to which specific reference is made and which form a whole together with the prospectus itself.

Annex L "Securities Note: Debt Securities Schedule"

In general we should like to point out that some of the information requirements cannot be answered to in a meaningful way for mortgage bonds, which are issued on tap.

In relation to item II.A. "Offer Statistics" it is eg impossible to provide information about the "total amount of issue/offer" in the prospectus. This means that this information can only be provided after the issue has taken place.

It should be possible to leave out Item III. "Key information about the issuer" from the prospectus for Danish mortgage bonds since these rules are laid down in the special legislation, cf the above section about Danish mortgage banking.

In item VI.C. there are demands as to information about the taxation of investors. If detailed tax guidance is proposed Realkreditrådet must discountenance as it falls outside the mortgage banks' normal guidance function. It is practise today that information is given that interests on the bonds are stated to the tax authorities and no tax deducted at source is levied.

Annex 8 "Proposal for Additional information to be included in the Debt Securities Note Building Block"

It should be possible to leave out Item III. C "Risk factors" from the prospectus for Danish mortgage bonds since these rules are laid down in the special legislation, cf the above section about Danish mortgage banking.

Annex 10 "Proposal for the Asset Backed Securities – Securities Note"

If any of the Danish mortgage banks' issues of mortgage bonds should be required to live up to the demands made to the prospectus for asset backed securities, Realkreditrådet would like to add its comments to this in the following.

It should be possible to leave out item B.2.1. to B.2.16 and item D.1.4 in annex 10 of the prospectus for Danish mortgage bonds, since these rules are laid down in the special legislation, cf the above section about Danish mortgage banking.

Other comments

With reference to item 44 in CERS's Addendum to the Consultation Paper it should be noted that Realkreditrådet is of the opinion that the proposed rules should also apply to non-EU banks that wish to have securities listed on an EU stock exchange.

To item 49 we wish to comments that information about solvency ration as calculated in the latest interim report may be shown.

Finally we wish to point out in relation to item 57 that Realkreditrådet agrees with CERS's comment in item 56.

Yours sincerely

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