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S267 - D34838

**Guidelines on certain aspects of the MiFID compliance function requirements –
consultation response to the European Securities and Markets Authority
prepared by the Danish specialised mortgage banks**

1. General remarks

The Danish specialised mortgage banks, represented by the Association of Danish Mortgage Banks and the Danish Mortgage Banks' Federation, welcome the opportunity to comment on ESMA's draft guidelines on responsibilities of the compliance function.

As we represent the interest of covered bond issuers in Denmark, we have focused our reply and only answered the questions related to covered bond issuers (relevant parts of the paragraphs in the consultation paper dealing with questions 3, 4, 5, 9 and 13).

Q3: Please provide your comments (with reasons) on any or all aspects of this guideline on reporting obligations of the compliance function.

In our opinion the procedure mentioned in **para 24, p. 9, and para 26, p. 25** (provision of compliance function reports to the competent authorities), can prove unsuitable for the work and reporting functions of the compliance function.

Competent authorities should of course be given access to a compliance report covering e.g. an area under current investigation. However, the mentioned paragraphs could seem to suggest that compliance reports as a general rule are to be sent to both senior management and the competent authorities. If so this would in effect create a whistle blower system and it is probably unavoidable that the compliance function to some extent would take into account that the report is not only destined for senior management but also for the competent authorities. This will in turn impede the efforts of the compliance function to be seen as an active team player and support in developing a compliance culture within the organisation – e.g. by emphasizing the advantages of a high level of investor protection in relation to new products.

Q4: Please provide your comments (with reasons) on any or all aspects of this guideline on the advisory obligations of the compliance function.

In relation to **para 26, p. 10, and para 29, p. 25** dealing with the issue of training, we do agree that the compliance function can point out a need for training and possibly either perform the training itself or support other units in performing it. However, it is important not to word this as an absolute demand but only as a possibility since it must remain the prerogative of the firm in question to choose the organizational set-up for training in relation to MiFID.

Para 33, p. 10, and para 36, p. 26, contains a demand that the compliance function "should regularly be involved in all relevant correspondence with competent authorities." We agree that the compliance function should be informed about all relevant correspondence with competent authorities but it must be left to the firm in question to decide whether the contact

to the authorities is best handled by the compliance function or by other entities, e.g. the legal affairs unit.

Q5: Please provide your comments (with reasons) on any or all aspects of this guideline on the effectiveness of the compliance function.

With reference to the requirements of expertise mentioned in **para 40, p. 12, and para 44, p. 27**, we view it as a crucial point that the compliance function at all times possess a high level of expertise within the areas it is set out to cover. It should however be possible to co-ordinate within the organisation which compliance staff members should possess the highest level of expertise within each field. It must be the responsibility of the compliance officer to ensure that the necessary level of competence is available.

Q9: Please provide your comments (with reasons) on any or all aspects of this guideline on Article 6(3) exemptions.

In our view the introduction of **para 50, p. 14, and para 57, p. 30** (the demand that the compliance function should generally not be combined with the legal unit etc.), under the section "Exemptions" is likely to create more doubt than clarity. It would be more obvious for the paragraph to be placed under the preceding section "Independence of the compliance function" or under the following section "Combining the compliance function with other functions".

On a general level we find it important to stress that the compliance function, including its organisation and staff, must be adapted to the individual firm, its business model, field of operation and organization while of course respecting the aims, roles and tasks of the compliance function. The guidelines should therefore leave the necessary space for the senior management to set up the framework for the compliance function in the firm in question. The management must be able to establish a solution that is both suitable and efficient and takes into account the desired results. Furthermore, the management must be able to organise the compliance function in a cost-efficient way that allows the best possible use of the relevant expertise at hand in the firm.

Q13: Do you agree that competent authorities should also assess whether amendments to the organisation of the compliance function are required due to changes in the scope of the business model of the investment firm, and where such amendments are necessary, monitor whether these amendments have been implemented?

With regard to **para 65, p. 17, and para 75, p. 32**, on the licensing or approval of compliance officers, it should be left to the individual firm to decide whether a nominated compliance officer is sufficiently qualified for the job.