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

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 certain aspects of the MiFID suitability requirements.

As we represent the interest of covered bond issuers in Denmark, we have focused our reply to the questions related to covered bond issuers. In this respect we would like to pass on the following remarks of a general nature.

The exemption from the requirements of MiFID, article 19.

The proposed ESMA-guidelines will be issued in order to clarify the application of certain aspects of the current MiFID-directive (2004/39/EC), e.g. the application of the suitability requirements in article 19 (4).

In this respect we would like to draw the attention to the current article 19 (9):

"In cases where an investment service is offered as part of a financial product which is already subject to other provisions of Community legislation or common European standards related to credit institutions and consumer credits with respect to risk assessment of clients and/or information requirements, this service shall not be additionally subject to the obligations set out in this Article."

In the Danish mortgage model a mortgage loan is funded through the issuance of bonds. Therefore in our market the relevant form of advice to the client is advice concerning the "lending" and not the underlying "funding". All the necessary suitability tests of the consumer are carried out in the first phase in relation to the lending and there is no need for the underlying funding (the bonds) to be covered by the MiFID rules on investment advice.

The Danish legislation to a large extent makes financing through a mortgage bank subject to similar rules as in the Consumer Credit Directive (2008/48/EC). In addition to this the area is covered by the European standards in the European Code of Conduct on Home Loans which is the precursor for the coming European Standardised Information Sheet (ESIS) in the proposed Mortgage Credit Directive (COM (2011) 142 final). In Denmark ESIS is already a part of the financial legislation.

The Danish model is therefore covered by the exemption in article 19 (9) and thus not subject to the requirements of that article. We therefore assume that we will not be covered by the new proposed ESMA-guidelines either.

On the contrary, in a market like the Danish an added application of the requirements in article 19 would not serve a logical purpose in relation to the clients and it would represent a potentially substantial administrative burden.

We are aware that the European Commission in the proposed revision of the MiFID directive (COM (2011) 656 final) suggests a partly change to this exemption in the new articles 24-25.

In our opinion this would represent no added value for the Danish market and would instead lead to unintended administrative burdens for both consumers and banks. The Danish Consumer Council agrees with our concerns and the lack of added value for the Danish consumers. We have therefore raised the issue with the Commission in order to find an alternative solution.