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REPLY TO THE DANISH FINANCIAL SUPERVISORY AUTHORITY'S DISCUSSION PAPER ON THE FIT & PROPER REGULATIONS

Danmarks Nationalbank does not specifically address the individual aspects of the Fit & Proper regulations highlighted in the Danish Financial Supervisory Authority's discussion paper. On a more general basis, Danmarks Nationalbank finds it essential to maintain the owners' and management's full responsibility for the sound operation of a credit institution. The EU Fit & Proper regulations give the member states a certain degree of flexibility. In Danmarks Nationalbank's view, no Danish rules or practices generally expanding the Danish Financial Supervisory Authority's Fit & Proper tasks relative to the current regime should be implemented.

The Danish Financial Supervisory Authority has published a discussion paper raising a number of questions regarding advantages and disadvantages of potential amendments to existing rules and the Danish Financial Supervisory Authority's practice in relation to the assessment of the fitness and propriety (Fit & Proper) of members of the management board and certain key persons. The Fit & Proper regulations form part of the overall requirements for the governance and management of credit institutions pursuant to CRD IV.

The discussion paper should be seen in the light of the current revision of the EBA's guidelines on the Fit & Proper assessment conducted with a view to further harmonisation of supervisory practices within the EU. Danmarks Nationalbank finds it positive that the Danish Financial Supervisory Authority invites interested parties to present their views on the development of regulation in this area.

Overall, Danmarks Nationalbank notes that it is essential to ensure that, in practice, the Danish Financial Supervisory Authority's Fit & Proper assessments do not reduce the owners' incentive to consider the governance and risk management of the institution. Hence, there must be no doubt as to the basic corporate governance principles:

It is the institution's responsibility to appoint and employ the right members of the management body. It is the management's responsibility to safeguard the owners' interests and to ensure that the institution is always robust and viable and does not incur risks that the management cannot assess. Under the two-tier Nordic governance model, the board of management is responsible for the day-to-day management of the institution, while the board of directors holds the overall strategic responsibility and must be able to challenge the decisions of the board of management in a qualified way. For owners, investors and supervisors, the accuracy of the institution's reports, such as financial statements, risk reporting etc., is essential.

Together with the EU regulations on owners and creditors bearing the losses in all cases if the institution is no longer viable, these corporate governance principles provide the basis for credit institutions actually being operated as private responsible enterprises.

Therefore, it is important to attach importance to proportionality and specific assessments in the Fit & Proper assessments of the supervisory authorities. The practice in Denmark should be in accordance with the European guidelines and thus support harmonised supervisory practices within the EU (the single rulebook). However, Danmarks Nationalbank does not find it necessary to implement Danish rules or practices expanding the Danish Financial Supervisory Authority's Fit & Proper tasks relative to the current regime.

Danmarks Nationalbank notes that the growing focus on detailed regulation of governance and management of the institutions may have the unintentional consequence that the board of directors concentrates more on meeting the formal requirements than on assuming its strategic responsibility.

From a general perspective, Danmarks Nationalbank finds that the structure of a robust trans-European regulatory framework for credit institutions comprises three main elements that are key to ensuring financial stability and which should therefore, first and foremost, be in place:

Requirements should be set to ensure 1) that the institutions' capital adequacy is robust and appropriate; 2) that they have sound liquidity management and stable financing; and 3) that they may ultimately be resolved without considerable negative consequences for financial stability and the economy.

Yours sincerely,

Karsten Biltoft