

**To: EBA**

Copenhagen, 20 December 2013

**EBA consultation paper on Draft RTS on derogations for currencies with constraints on the availability of liquid assets (CP/2013/39)**

Dear Sir or Madam,

The Association of Danish Mortgage Banks (Realkreditrådet), The Danish Bankers Association (Finansrådet) and the Danish Mortgage Banks' Federation (Realkreditforeningen) appreciate the opportunity to comment on the draft regulatory technical standard on derogations for currencies with constraints on the availability of liquid assets.

**General remarks**

We do not agree that use of derogations should imply additional fees or haircuts. The derogations are not a special privilege giving certain jurisdictions or institutions an undue advantage. They are necessary compensatory measures without which compliance with the LCR would be rendered impossible in some cases. In particular, the ability to obtain higher returns in some jurisdictions than in others does not by itself justify the imposition of extra fees or other burdens and restrictions

If it did, institutions with access to high yielding government bonds would also have to be penalized for “unfairly” earning high returns on their LCR compliant liquid assets. We do not favor this and in general, we do not believe that creating a level playing field should mean that all market conditions need to be equalized

Furthermore, the additional cost would complicate monetary policy as money market rates will become more volatile.

Given that use of derogations is very much a national issue, we do not believe that it is necessary to require a stricter supervision of banks using derogations. Putting a cap on the use of derogations at the micro level (individual banks) would impose a distortion in the market for liquid assets. It would be more appropriate to let national authorities monitor the use of derogations at the macro level allowing them to intervene if the total use of derogations significantly exceeds the estimated shortage of liquid assets.

## **Answers to specific questions**

**Question 1: Do you agree with the proposed notification mechanism, its contents and timelines? If not, why not, and what should be altered?**

No comments.

**Question 2: Are the steps to prevent the unnecessary use of a derogation clearly described? Do you see these steps as appropriate? If not, why not, and what should be altered? Are there any additional specifications that could clarify the assessments under paragraphs 1 and 2 of Article 3?**

We find that the scope of these requirements is unclear. At the public hearing on this CP on 19 November 2013, the EBA stated that the use of derogations would not require specific approval. Instead, national authorities would be able to impose additional requirements under Pillar II if an institution had not made a sufficient effort to reduce the need for derogations. Furthermore, it was our impression that the EBA did not expect that national authorities should initially intervene in institutions' business models, but at least understand the basis of their liquidity needs.

The proposal seems to unduly introduce stricter prudential requirements on liquidity management in the currency areas in question, simply because there is a shortage of LCR-compliant liquid assets.

Instead, national authorities should react if they deem the cash management under a given business model in an institution to be unsatisfactory, regardless of whether or not there is shortage of assets.

**Question 3: Are the workings and conditions of derogation A clearly described? Do you see these steps as appropriate? If not, why not, and what should be altered?**

No comments.

**Question 4: What criteria would you regard as useful for evaluating the historical evidence as mentioned in paragraph (4a) of Article 4?**

No comments.

**Question 5: Is the additional 8% haircut on foreign-currency-denominated assets held under derogation A appropriate? If not, why not, and what alternative treatment would you propose?**

No comments.

**Question 6: Are the workings and conditions of derogation B clearly described? Do you see these steps as appropriate? If not, why not, and what should be altered?**

It does not make sense to impose a penalty on the use of collateral that is not classified as liquid assets. Money market rates reflect the marginal lending or deposit rates set by central banks. Imposing higher rates on some types of collateral would distort monetary policy. The existence of multiple rates depending on the liquidity position of the banking system would create problems, in particular in exchange rate targeting regimes, where the monetary policy rates often have to be set within narrow intervals.

**Question 7: Is the proposal to limit the total use of the derogations by an institution to the relevant shortage percentage in the annex of the draft ITS containing a list of currencies with constraints on the availability of liquid assets under Article 419(4) CRR clearly described? If not, why not, and what further matters should be included? Do you see these stipulations as appropriate? If not, why not, and what should be altered?**

We do not find the proposal to limit the total use of derogations appropriate. Rather than setting constraints at the micro level, the use of derogations should be supervised by the appropriate national authorities with the possibility of taking additional steps towards the institutions using derogations if the total use of derogations exceeds the total estimated shortage of liquid assets.

Capping the use of derogations based on a macro perspective may also have unintended consequences on the market for liquid assets. A macro level shortage of liquidity reflects a range of individual institution (micro) level shortages. Institutions with little or no shortage will have a cost incentive to retain their holdings of liquid assets, as they are capped and therefore scarce. This will further reduce the availability of liquid assets, i.e. increase the amount of locked-up liquid assets, thus increasing costs for institutions with a greater-than-average shortage.

The proposal to limit the use of derogations by imposing both a price and a supply regulation is worrying. A supply limitation would, by itself affect the price of liquid assets. But it might also lead to sudden cliff effects for institutions - particularly if the frequency of recalculation of the estimated shortage of liquid assets is irregular.

**Question 8: Do you agree with the above analysis of the cost and benefit impact of the proposals?**

No comments.

**Question 9: Please provide any evidence or data that would further inform the analysis of the likely cost and benefit impacts of the proposals.**

No comments.

Yours sincerely

Jan Knøsgaard

**Association of Danish Mortgage Banks**

Martin Kjeldsen-Kragh

**Danish Mortgage Banks' Federation**

Morten Frederiksen

**Danish Bankers Association**