Realkreditrådet
ASSOCIATION OF
DANISH MORTGAGE BANKS

Copenhagen 24 January 2014

To: EBA

Submitted via: www.eba.europa.eu

Consultation paper on draft RTS own funds part IV multiple dividends and differentiated distributions under CRR

Dear Sir or Madam,

The Association of Danish Mortgage Banks (Realkreditrådet) welcomes the opportunity to comment on the EBA draft RTS on Own Funds part IV.

Our member banks are all specialized mortgage banks, who were originally mutuals. Our member banks are now all organized as Joint stock companies based on a changes in the Danish financial legislation in the late 1980s, where the mortgage mutuals all changed to Joint stock companies. The main owners of our member banks are still mutuals, but the credit institutions cannot use the mutuals rules due to the fact that the mutuals themselves do not qualify as credit institutions.

General comments

First of all we think that the proposed model for JS companies does not meet the objective of avoiding a disproportionate drag on capital. On the contrary the model could result in a larger drag on own funds due to the fact that an institution might have to increase substantially the pay out to holders of instruments with voting rights in order to be able to pay out a market conform dividend to holders of instruments with no/fewer voting rights

Instead of fulfilling the objective of the technical standard the model makes it very difficult to have several classes of shares.

In our opinion regimes imposed to instruments with multiple dividends should not undermine the attractiveness of such instruments for shareholders. In particular those institutions active within restricted regional markets and with a limited investor base could be largely affected in a negative way.

In general we think that the RTS should be drafted more clearly and use the same definitions as used in the CRR text. It will make it easier to understand the text and to avoid legal uncertainty.

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Answers to specific questions

<u>Question 1:</u>

How do you assess the suggested limits of 125% under Article 7b(1)(a) and 105% under Article 7b(1)(b) for joint stock companies (or non-joint stock companies where applicable)?

For non listed joint stock companies, who according to national legislation are treated as mutuals with regard to the above, but according to CRR are treated as joint stock companies, the ownership structure would make it advantageous to have two classes of shares to gain market access to CET1-capital to fulfill increased capital requirement and to have an instrument for conversion of ADT1. The voting instruments would be held by the owner (the mutual) – who is interested in having influence on the joint stock company, while the other CET1-investors would be interested in having a market related dividend.

We strongly invite EBA to consider a certain measure of flexibility in the application of the limits, in particular, the EBA should consider the use of the proposed quantitative limits only when the distributions are above a certain threshold cf proposal below.

Further it should be kept in mind that the holders of voting instruments can always decide to distribute retained earnings, i.e. the main aim to hinder a drag on capital is not hindered.

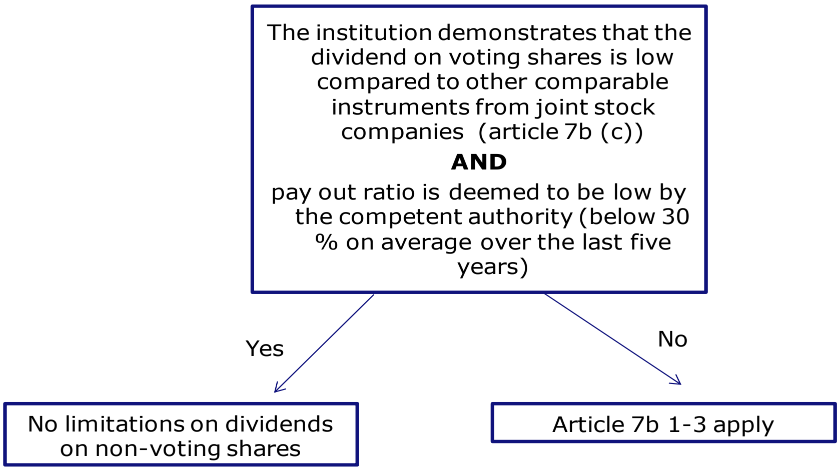
It is not fully clear on which basis the calculation of the thresholds (Art. 7b(1)(a),(b)) for multiple dividends should be carried out: whether on the nominal amount or on the number of shares. We understand, that the nominal amount should be taken into consideration, but we would invite EBA to draft this provision more clearly in the text of the draft RTS. The proposed calculation method focusing on the number of instruments is quite unclear. It should be clarified that the nominal value is the basis for calculation as the number of voting and non-voting instruments could differ due to different nominal values and denominations.

Therefore we seriously doubt that investors will find such instruments attractive within the current market conditions.

Finally, EBA should take into account that the strict criteria imposed raise level playing field issues, as a disproportionate drag on fund is possible also on a single class of voting shares with no multiple dividends. In particular, joint stock companies with one class of shares would enjoy a competitive advantage as they would not have to abide to any specific limit on their ordinary shares.

To fulfill the objective of limiting the possibility of a drag on own funds the pay-out ratio should be of relevance for JS as it is for NJS companies. If a joint stock company fulfils article 7b 5. (c) and (d) for non-joint stock companies it should also not be obliged to adhere to the quantitative limits required for joint stock companies in article 7b 1 to 3 as illustrated in figure 1.

Figure 1



Such a treatment should be allowed if the joint stock company has a low dividend on voting instruments compared to other JS companies and a low total payout ratio on all shares. In this case, the limits should not apply to the dividend payments on instruments (both voting and non-voting).

The amended model will better protect the CET1 of the institution than the model proposed in the consultation paper. Since a company with high pay-out ratio will be given a disincentive to have several classes of shares the use of several classes will be limited in practice for joint stock companies. The limit on 30% on total payout ratio ratio will ensure that the issuance of a CET1 instruments with no voting rights and higher dividend will be small. Thus a limit on the share of no voting instruments of total CET1 instru-ments will be a implicit by the rule. However, a further safeguard could be that the competent authority yearly review the nominal value of the different CET1 instruments and takes action against the company if necessary.

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We remain at your disposal for any questions or requests for additional information regarding any of the comments set out in our response.

Best regards

Mette Saaby Pedersen

Department Manager

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