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The Supervisory Board and
the Executive Board of
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MINISTRY OF BUSINESS AND GROWTH DENMARK

Decision on further liquidity requirements for Danish SIFIs, including Jyske Bank

The Danish Financial Supervisory Authority (SFA) hereby makes a decision pursuant to S152(4) of the Danish Financial Business Act on determination of a further liquidity requirement for Jyske Bank at consolidated level.

In addition, the Danish FSA has today made a decision on a further liquidity requirement for all Danish SIFIs. In these decisions, the Danish FSA has considered the various business models and activities of the institutions to the effect that the requirement is made in the most appropriate manner.

This means that, in addition to the requirement of a Liquidity Coverage Ratio (hereinafter the LCR requirement) pursuant to article 412 of Regulation (EU) No. 575/2013 of 26 June 2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms (hereinafter CRR), the Jyske Bank Group shall meet the LCR requirement in Jyske Bank's significant currencies, cf. S152(4) of the Danish Financial Business Act. Significant currencies shall mean the currencies which an institution shall report separately to the national supervisory authorities pursuant to article 415(2) of CRR, provided always that Norwegian kroner (NOK) and Swedish kronor (SEK) are exempted from this.

The reason for not making an LCR currency requirement in NOK and SEK is that liquid assets denominated in DKK are broadly recognised in both the Norwegian as well as the Swedish market. Therefore, it is the assessment of the Danish FSA that sufficient liquidity in SEK and NOK can be generated on the background of liquid assets denominated in DKK.

The LCR currency requirement shall not be met in Jyske Bank's reporting currency, DKK. On the background of Jyske Bank's reports, the requirement at consolidated level shall presently apply to EUR. The requirement will be gradually implemented after which Jyske Bank as at 1 October 2016 shall meet the above-mentioned requirement by 60%, as at 1 April 2017 by 80%

and as at 1 October 2017 by 100%. The gradual implementation of the LCR currency requirement takes effect in connection with the first reporting of LCR in the new reporting form adjusted in relation to the Commission Delegated Regulation (EU) No. 2015/61 of 10 October 2014 to supplement Regulation (EU) No. 575/2013 with regard to the liquidity coverage requirement for credit institutions (hereinafter the LCR regulation).

Thereby, the Danish FSA determines the part of Jyske Bank's outgoing net cash flows in significant currencies, which can be met in a stress period by holding assets not denominated in the relevant significant currency, to 0%, cf. article 8(6)(2) of the LCR regulation, provided always that Swedish kronor and Norwegian kroner are exempted from this decision, cf. above. However, Swedish kronor and Norwegian kroner are still subject to article 8(6)(1) of the LCR regulation, which stipulates that credit institutions shall have appropriate matching between the holding of liquid assets and outgoing net cash flows.

Legal basis

Pursuant to S152(4) of the Danish Financial Business Act, the FSA can determine a further specific liquidity requirement for a financial institution or a group of financial institutions with similar risk profiles, which considers special liquidity risks in the financial institution or in groups of financial institutions and for systemic liquidity risks. As a result of the provision, the FSA can impose stricter requirements of liquidity reserves or financial structure on a single institution or on groups of institutions if it is assessed to be necessary to consider the liquidity risks of the institution or institutions, including systemic liquidity risks. The FSA has the same option in respect of mortgage credit institutions pursuant to S153(3) of the Danish Financial Business Act.

Whether an institution or a group of institutions should be subject to a further specific liquidity requirement rests on a specific assessment of the circumstances of the relevant institution(s). When assessing this, importance is attached to the institution's specific business model, circumstances relating to the institution's operational liquidity management, cf. S.71 and circumstances relating to the institution's risk management, cf. S.344(3). Moreover, allowance is made for systemic liquidity risks, by which is understood liquidity risks threatening the integrity of the financial markets in Denmark.

The provisions of S.152(4) in the Danish Financial Business Act implement articles 103, 104(1)(k) and 105 of Directive 2013/36/EU of 26 June 2013 of the European Parliament on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV).

Pursuant to article 105 of CRD IV, the competent authorities shall when determining a suitable level of liquidity requirements assess whether it is necessary to introduce a specific liquidity requirement to allow for the liquidity risks to which an institution is or may be exposed. The assessment is made on the background of these issues:

a) the institution's particular business model;
b) the institutions' schemes, processes and mechanisms that are described in section II of CRD IV, especially article 86;
c) the results of the control and assessment that have been carried out pursuant to article 97;
d) the systemic liquidity risk that threatens the integrity of the financial markets in the relevant member state.

Pursuant to article 412 of CRR, institutions must hold liquid assets of which the total size covers outgoing cash flows less incoming cash flows in stress situations over a period of 30 days (LCR requirement).

The Commission has been authorised to lay down detailed rules relating to the LCR requirement, cf. article 460(1) of CRR. The Commission made use of this authority when issuing the LCR regulation.

Pursuant to article 8(6) of the LCR regulation, the affected institutions shall ensure an adequate match of currency betwen the institutions' holdings of liquid assets and the institutions' outgoing net cash flows. Moreover, article 8(6), item 2 of the LCR regulation enables the competent authorities to require that the institutions reduce any currency mismatch by limiting the institutions' ability to to hold liquid assets in one currency to cover outgoing net cash flows in another currency.

However, the competent authorities may only limit the currency mismatch for the reporting currency or for a currency that may be subject to separate reporting pursuant to article 415(2) of the CRR, also referred to as significant currencies.

When determining the level of the limitations for currency mismatches that may be applicable pursuant to this subarticle, the competent authorities must as a minimum allow for the following:

1. Whether or not the credit institution is able to carry out the following:
    a. to use the liquid assets to generate liquidity in the currency and the jurisdiction in which the outgoing net cash flows occur;
    b. to exchange currencies and raise funds in foreign FX markets in stress situations corresponding to the stress period of 30 calendar days described in article 4 of the LCR regulation;

c. to transfer liquidity surpluses from one currency to another and across jurisdictions and legal entities within the business group in stress situations corresponding to the stress period of 30 calendar days described in article 4 of the LCR regulation.

2. The impact from sudden negative movements in the exchange rates of existing mismatch positions and the effectiveness of currency hedging.

Finally it is pointed out in article 8(6) that any limitation to currency mismatches introduced pursuant to article 8(6) shall be considered a specific liquidity requirement, cf. article 105 of CRD IV.

Drawing up of the LCR currency requirement

When calculating the LCR currency requirement, the FSA made a number of assessments as to how the LCR currency requirement is to be determined as, in this way, it wanted to allow for a number of inexpedient factors that are discussed in detail below.

When determining the LCR currency requirement, the cap restrictions for high quality liquid assets (HQLA) are removed. Therefore it is not required that 30% of the liquidity buffer consists of level 1 assets covered by article 10(1)(a-e) and (e) for some currencies. The FSA is of the opinion that the liquidity buffer is sufficiently differentiated in the overall LCR requirement, and therefore the same strict differentiation will not be imposed in connection with the LCR currency requirement.

The overall LCR requirement allows netting of derivatives entered into with a counterparty, provided that a bilateral netting agreement has been concluded, as well as of FX derivatives for which payment of the principal falls due on the same day. When calculating the LCR currency requirement, the FSA has found it expedient that netting can also be used in connection with derivatives inflows and outflows. However, surplus derivatives inflows can only be used to cover other outflows within the normal LCR limits, i.e. subject to the 75% cap. Therefore, the gross amounts of derivatives inflows and outflows must still be reported while, when calculating the LCR currency requirement, derivatives inflows and outflows will be netted. This handling of derivatives is in line with the method of Finansinspektionen (the Swedish FSA) applied to LCR requirements in EUR and USD and makes it possible that Danish SIFIs can still act as intermediaries for Danish pension funds and business enterprises' currency hedging.

At this point in time, no exact determination method has been established in Europe for an "adverse market scenario" in connection with the LCR calculation. Therefore the FSA finds it appropriate that when calculating LCR outflows in a foreign currency, the item termed "additional collateral in adverse market scenario" in LCR is disregarded.

The FSA will reconsider whether "adverse market scenario" is to be added to the LCR currency requirement when final Regulatory Technical Standards (RTS) are available.

The LCR regulation does not give equal treatment to repo and reverse repo transactions in respect of inflow and outflow in the determination of LCR. The FSA finds that the most appropriate treatment of these transactions is a symmetrical treatment, so that the LCR currency requirement calculates cash flows relating to repo transactions in a foreign currency in the same way in respect of inflows as well as outflows. This is done by multiplying the cash leg of the transaction by the relevant inflow or outflow factor corresponding to the haircut stated in the LCR regulation for the collateral used in the repo transaction.

Reasons

Due to the size and the importance of SIFIs, it may have far-reaching negative consequences for households, businesses and the economy in general if a SIFI gets into trouble. Therefore there are special risks associated with SIFI's and therefore generally these institutions are subject to stricter requirements than other institutions.

The single European liquidity requirement, the LCR requirement, which is defined in the CRR and took effect on 1 October 2015 will be phased in gradually in Denmark until 2018. However, the LCR requirement applies fully (100%) to Danish SIFIs as of 1 October 2015. The general LCR requirement must be met for all currencies as a whole, and only to a limited extent does the requirement allow for any imbalances in the institutions' net cash outflows in specific currencies. Please see article 8(6) of the LCR regulation.

The potential net outflow in foreign currencies of the SIFIs under stressed market conditions may be of such an extent that possible actions available to the relevant Danish authorities may be limited. Therefore it is important that the SIFIs have sufficiently robust business models capable of handling liquidity risks in periods of stress.

In continuation of the above outline, the FSA assesses that the SIFI's liquidity risks in significant currencies may entail a systemic risk for Denmark. Therefore it is necessary that this specific systemic liquidity risk is addressed by the Danish SIFI's. The FSA assesses that the most appropriate way of addressing this is to require that, in addition to the general LCR requirement, the SIFIs in Denmark must also meet a specific further LCR requirement in respect of the individual SIFIs significant currencies. On the basis of this decision, the SIFIs in Denmark must meet a requirement of a LCR of 100% in respect of significant currencies. The FSA assesses that, in consequence of the requirement following the decision, the systemic liquidity risks resulting from the SIFIs currency exposures will be reduced.

By defining a specific liquidity requirement for SIFIs, due to which outgoing net cash flows in significant currencies must be covered by holding a sufficient amount of assets in the same currency, allowances are made for the systemic liquidity risks that may threaten the integrity of the financial markets.

It is the assessment of the FSA that the systemic liquidity risks due to the SIFIs' exposures in significant currencies cannot to a sufficient degree be offset by the SIFIs' holdings of liquid assets in other currencies than the currency in which the outgoing net cash outflows occur. Under stressed market conditions, it may be most difficult or absolutely impossible for the institutions to generate liquidity in a currency on the basis of liquid assets denominated in another currency in spite of any currency hedging mechanisms. On that basis, the FSA finds it necessary that SIFIs in Denmark maintain liquid holdings denominated in the same currencies as their significant currencies. In this way, the SIFIs reduce any dependence on currency from Danmarks Nationalbank, the central bank of Denmark.

Also, it is assessed that the considerable systemic liquidity risks relating to net cash outflows in significant currencies cannot to a sufficient degree be handled by the SIFIs schemes, processes and mechanisms in relation to management and control of the SiFIs.

The FSA finds that the SIFIs will have the possibility of transferring any liquidity surplus across jurisdictions and legal entities within the same business group. Therefore, the specific liquidity requirement shall solely apply at a consolidated level according to article 11(3) of CRR, cf. art. 2(3) of the LCR regulation.

Non-compliance with the LCR currency requirement

The FSA assess that non-compliance with the LCR currency requirement will basically constitute a less serious violation than non-compliance with the requirement pursuant to the LCR regulation.

In the event of non-compliance with the LCR currency requirement, where the legal requirement is still met, the FSA will initially request the financial institution to give an account of the situation, including proposals of how to rectify the situation.

In this respect, focus will be that that the institution either as quickly as possible re-establishes sufficient liquidity in the currency in which the institution is short of highly liquid assets or that it reduces its exposure in this currency so that the institution again complies with the LCR currency requirement.

Where the FSA assesses that the situation may be attributed to the institution's inappropriate reliance on the FX market, the FSA will consider whether a comment on risk or an actual order is called for.

In the event of a stressed situation, the assessment is that it will be in line with the intentions of the LCR rules that the an institution is allowed to apply its currency LCR buffers while endeavouring to re-establish its liquidity position.

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How to file a complaint

The decision of the FSA can, no later than four weeks after the decision has been received, be brought before the Danish Commerce and Companies Appeal Board *by email* to the address ean@erst.dk or *by post* to Dahlerups Pakhus, Langelinie Allé 17, Postboks 2000, DK-2100 København Ø, tel. +45 41 72 71 45, cf. S.372(1) of the Danish Financial Business Act.

It follows from S.7 of the Danish Executive Order on the Commerce and Companies Appeal Board of the Danish Ministry of Business and Industry that a fee of DKK 4,000 is payable for filing a complaint with the Commerce and Companies Appeal Board. If the complaint pertains to circumstances not relating to the complainant's present or future commercial relations, the fee is, however, DKK 2,000. Pursuant to S.15(4) of the above Executive Order, the Commerce and Companies Appeal Board or the Chairman can on its behalf make a decision about full or partial repayment of the fee paid if the complaint is sustained in part or in full. The fee will be repaid if the complaint is rejected.

Publication

Pursuant to S.(354 a(1) of the Danish Financial Business Act, reactions on the part of the FSA's Governing Board shall be published stating the name of the business. In this respect, it is pointed out that the FSA assesses that there is nothing to prevent publication of the decision, cf. S354 a(4) of the Danish Financial Business Act.

A copy of this letter is sent to the external auditor of Jyske Bank.

Yours sincerely,

Kristian Vie Madsen
Deputy Managing Director

Anne-Sofie Reng Japhetson
Chief of Section