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1 October 2010  
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Doc no: 13645882-1A

Dear Sirs,

**PROPOSAL TO ENSURE THE LOSS ABSORBENCY OF REGULATORY CAPITAL AT THE POINT OF NON-VIABILITY (THE "PROPOSAL")**

We refer to the above mentioned proposal contained in a paper produced by the Basel Committee on Banking Supervision (the "Committee") in August 2010 (the "Paper"). In the paper, the Committee requested comments on the proposal. We have set out below our comments.

By way of background, Kromann Reumert is one of Denmark's leading law firms with one of the largest banking and finance and banking regulatory teams in the Nordic region. We are legal advisers to a substantial number of Danish banks and, in 2009, we advised the Danish government on the injection of hybrid capital into Danish banks under which a total of 43 banks received capital injections from the Danish State.

In the course of our activities, we have had the opportunity to review in detail contractual arrangements entered into by a significant number of Danish banks in respect of non-core Tier I and Tier II capital. We are also legal advisers to investors in subordinated bank debt. We therefore feel suitably qualified to provide the comments on the proposal contained in this letter.

Please note that the views expressed in this letter, are, however, those of this firm and do not necessarily reflect the views of our clients.

**Mandatory Conversion of non-core capital to Equity**

Danish company law currently restricts the ability of banks to undertake share issues which would impact the operation of some aspects of the proposal - most notably the ability of an institution to issue shares for debt.

For example, in order to qualify as a convertible instrument under Danish law, the conversion requires the signature of each bondholder - it is arguably not sufficient that this be given through a Security Trustee or Security Agent unless the actual bondholder at the time of the event has given the Agent in question a specific power of attorney to deal with the conversion.

Given that subordinated debt tends to be issued to a large number of investors through the Euro-clear system, it would seem to us highly unlikely that these requirements could be met. Any bondholder which had not consented to the conversion would thus be entitled to continue to act as a debt holder rather than shareholder which would appear to defeat the purpose of the proposal.

Accordingly, this issue would need to be dealt with through legislative change and adequate grandfathering needs to be put in place.

#### **Impact on Tier II capital**

We are concerned that the implementation of the proposals may affect the availability of Tier II capital which would appear to be affected at levels below that of a "gone concern" (see comments on the term "non viable" below). Tier II capital plays an important role for a number of Danish banks and we are concerned that these institutions may have difficulties refinancing Tier II capital should the proposals be accepted.

#### **Definition of and concept of "internationally active" banks**

A key aspect of the Proposal is the concept of an "internationally active" bank. Although the term is not defined, it would seem to us that the vast majority of Danish banks should probably not fall into this category. Accordingly it is not clear whether a regulatory authority could thus extend this term to incorporate all Danish banks.

We are also concerned that there is an implication that an internationally active bank is more or less likely to receive a state injection of capital or equivalent support. We do not see the necessity for the distinction and believe that it has the potential to create an uneven playing field for banks. For example, if there is a price differentiation between non core capital which has the conversion or write down features and existing non core capital, then banks who are "internationally active" could argue that they have been unfairly disadvantaged as they may have to pay a premium for this type of capital.

This is particularly so as being internationally active is not necessarily a criterion upon which the Danish State will decide to intervene by injecting capital or providing "equivalent support". The fact is that the State may choose to do so in circumstances where a bank does not fall within the definition of being internationally active.

In Denmark we have a tradition for treating all banks equally regardless of size and this was the case with the capital injections which were offered to all banks in Denmark depending on their ability to meet certain criteria. Accordingly, the payment of the premium may be unnecessary.

We do not see the use of the distinction between banks that are internationally active or not as being helpful in a country such as Denmark. This is particularly so if it is necessary to amend existing company law to permit the conversion in the first place.

#### **Meaning of "equivalent support"**

We are not clear whether the term "equivalent support" would include support such as the injection of hybrid Tier I capital as done under by the Danish Government in 2009.

This uncertainty would need to be dealt with.

#### **Exercise of the discretion of the relevant Financial Supervisory Authority**

In so far as we can see from the proposal, the relevant financial supervisory authority is required to make two discretionary determinations under the Proposal. The first is whether a bank is an internationally active one and the second is whether the bank is non viable at the critical moment (presumably) prior to that the capital injection or other equivalent support.

No tangible criteria are set out for what constitutes being "non-viable".

We appreciate the difficulty in giving such a provision any more definitive meaning and the need for flexibility. We do believe though that such uncertainty could lead to a form of regulatory arbitrage between those who apply the standard more or less vigorously.

#### **Priority of ordinary share capital and other tier I instruments**

We have some concern over the priority of ordinary share capital and non-core Tier I instruments.

We understand that upon the satisfaction of a trigger event, non-core Tier I instruments will have to be written off or converted into share capital. As you are aware, non-core Tier I instruments in most scenarios rank senior to ordinary share capital, but we understand that this seniority will not be recognised in the event of a state injection as described in the Proposal. We are concerned that some non-core Tier I investors would see this feature as significantly increasing their risk when investing in internationally active banks, especially where these are of systemic importance, and that such non-core Tier I investors will therefore require higher yields on non-core Tier I instruments or even abstain from investing in non-core Tier I instruments.

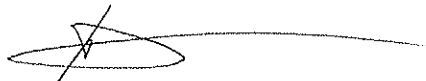
Any such trend would result in internationally active banks having higher funding costs or potentially being unable to raise non-core Tier I instruments on acceptable terms.

**Taxation Treatment of Mandatorily Convertible Bonds**

To the extent that bonds be issued which contained contractual terms which permitted conversion into equity, we believe that a special tax clearance would be needed from Danish tax authorities to ensure that interest coupons could continue to be tax deductible.

We would be happy to provide you with any further information on this response or any of the issues raised herein, should you so require.

Yours faithfully,  
KROMANN REUMERT



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