

*This document is an English translation of the original Danish text. In the event of discrepancies between the original Danish text and the English translation, the Danish text shall prevail*

**Finanstilsynet [the Danish Financial Supervisory Authority – "FSA"]**

Gl. Kongevej 74 A, DK-1850 Frederiksberg C

Telephone +45 33 55 82 82 Telefax +45 33 55 82 00 [Finanstilsynet@ftnet.dk](mailto:Finanstilsynet@ftnet.dk)

**Interpretation of section 152c(3) of the Danish Financial Business Act (FiL)**

*The FSA has decided that authorisation to apply SDOs [Danish covered bonds] issued by a mortgage bank as cover assets may be granted in specific cases in accordance with section 152c(3) based on which a credit institution may issue SDOs. The FSA decision is dated 14 September 2007.*

**Particulars of case**

A Danish credit institution applied for FSA authorisation to apply SDOs issued by a mortgage bank as cover assets subject to section 152c(3) of FiL for SDOs issued by the applicant credit institution.

**Legal framework**

Under section 33a and b of the Danish Mortgage-Credit Loans and Mortgage-Credit Bonds etc. Act ("LRR"), Danish mortgage banks may obtain authorisation in accordance with section 16a(1) of FiL to issue SDOs. Under section 16a(1) of FiL, both commercial and mortgage banks ("credit institutions") may obtain authorisation to issue SDOs. SDOs may be funded by the asset types and on the terms stipulated in section 152c(1)(i) and (iii)-(vii) and (3), cf section 33b(1) of LRR.

In accordance with section 152c(1)(vi), bonds or debt instruments issued by credit institutions (with an FSA credit rating of 1) in EU countries or countries with which the EU has entered into an agreement are eligible as security for the issuance of SDOs within a limit of 15% of the nominal value of issuers' outstanding SDOs.

Furthermore, in accordance with section 152c(1)(vii), other non-subordinate claims with credit institutions (with an FSA credit rating of 1) in EU countries or countries with which the EU has entered into an agreement are eligible as security for the issuance of SDOs within a limit of 15% of the nominal value of issuers' outstanding SDOs.

In accordance with section 152c(3) of FiL, the FSA may allow the SDO-issuer institution, within a limit of 20% of the outstanding SDOs, to apply other assets as security for the issuance of SDOs or lay down other limits to the assets concerned than those set out in (1), if in accordance with CRD (Directive 2006/48 on the right to take up or carry on business as a credit institution (redrafted)).

According to the relevant CRD provision, Annex VI(68 d), the following assets are eligible as SDO cover assets:

Loans secured on preferred units issued by FCCs or corresponding securitisation vehicles that are subject to the legislation of a member country and which perform securitisation of lending secured on residential property provided that at least 90% of their assets (the securitisation vehicles) consist of mortgages falling within 80% of the value of the mortgaged properties, and provided that units issued by these securitisation vehicles fall under an FSA credit rating of 1.

CRD contains an equivalent provision governing commercial property, Annex VI(68e), but subject to an LTV limit of 60%/70%.

*This document is an English translation of the original Danish text. In the event of discrepancies between the original Danish text and the English translation, the Danish text shall prevail*

Up to 31 December 2010, the 20% limit of CRD, Annex VI(68 d), shall not apply provided that these asset types are rated AAA, cf CRD, Annex VI(68), second-last paragraph. This period may be extended by the Commission, cf CRD, Annex VI(68), second last paragraph.

In the FSA's opinion, the 15% limit of section 152c(1)(vi) and (vii) applies to both paragraphs collectively, cf (vii) third sentence.

In the FSA's opinion, section 152c(1) and (3) applies separately, and SDO cover assets in pursuance of (3) are not included in the determination of the 15% limit of (1).

In the FSA's opinion, a Danish mortgage bank may, by virtue of its nature as a specialised institution, be considered to perform a type of securitisation and the other terms of CRD, Annex VI(68 d), have been fulfilled as regards mortgage banks issuing SDOs. It is therefore not deemed to be in conflict with the Directive to consider a mortgage bank to be a "corresponding securitisation vehicle".

In accordance with CRD, Annex VI(68 d), however, it is a condition that at least 90% of the cover assets of the series in question in the mortgage bank issuing the SDOs in question consist of mortgages secured on residential property both at the time of the lodging of the bonds as SDO cover assets of the credit institution and on a current basis.

Any exceeding of the 90% requirement will therefore require supplementary security from the credit institution to the extent that the credit institution, in accordance with section 152c(3), has provided SDOs issued by a mortgage bank as security for its own SDO issue. In this context, it is irrelevant to the credit institution whether the mortgage bank has provided supplementary security for its SDOs if such supplementary security does not consist of mortgages on residential property within 80%.

An FSA credit rating of 1 may be attributed to all Danish credit institutions and thus also mortgage banks, subject to authorisation under FiL, cf the Danish Executive Order on Capital Adequacy, Annex 3(viii)-(xi), cf(1).

In the FSA's opinion, (68d) of the Directive requires an independent AAA rating of the asset (the mortgage bank's SDOs) provided as security for part of the credit institution's issuance of SDOs before the 20% limit of the Directive may be exceeded.

In the FSA's opinion, authorisation under section 152c(3) in addition to compliance with CRD requires that bondholders of a credit institution are provided with approximately the same security as if the loans had been granted by the same credit institution. This corresponds to the condition for granting authorisation in accordance section 20(3) of LRR. In this context, the FSA attaches importance to the credit institution being the sole creditor in relation to the series concerned in the mortgage bank, save hybrid core capital, cf section 132 of FiL and senior debt, cf section 33e of LRR.

#### **Decision/basis**

Overall, the FSA may in accordance with CRD allow SDOs issued by a mortgage bank to form part of the cover pool behind the SDO issue of a credit institution, cf section 152c(3) of FiL.

In the FSA's opinion, authorisation under section 152c(3) in addition to compliance with CRD requires that bondholders of the credit institution are provided with the same security as if the loans had been granted by the same credit institution.

*This document is an English translation of the original Danish text. In the event of discrepancies between the original Danish text and the English translation, the Danish text shall prevail*

When a credit institution has obtained authorisation under section 152c(3), it may include up to 100% of SDOs issued by a mortgage bank provided that the mortgage bank's SDOs have a AAA rating. This part of the authorisation is limited to end-2010 and is subject to Commission assessment of the scheme before end-2010. If the SDOs of the mortgage bank do not have a AAA rating, they will be subject to a 20% limit.

Authorisation in accordance with section 152c(3) must be applied for specifically by individual issuers.