

## **MEMORANDUM**

3 May 2018  
Ref. LS  
File no. 529-0002

The Board of Directors and the Executive Board of  
Danske Bank A/S

Sent by e-mail  
cc Danske Bank's auditors

### **Danske Bank's management and governance in relation to the AML case at the Estonian branch**

This report contains the Danish Financial Supervisory Authority's (the Danish FSA's) assessments of the role of Danske Bank's management and senior employees in the AML case at the bank's Estonian branch. The Danish FSA has thus assessed whether the rules on management and control of the bank and other relevant Danish rules have been complied with.

The Danish FSA has not, however, assessed compliance with rules on measures to prevent money laundering (AML measures). This is so because, pursuant to EU regulation, the Estonian FSA supervises compliance by branches in Estonia with those rules.

The decision has been submitted to the governing board of the Danish FSA.

The assessments are based on the material that the Danish FSA has received from the bank and from former Executive Board members and on the bank's reply to questions from the Danish FSA. The inspection was begun following stories in the media about the Azerbaijani case in September 2017. The process regarding material and replies is further described in section 3 below.

In its description relating to the knowledge, actions and omissions of individual persons, the Danish FSA has balanced, on the one hand, the consideration that the individuals have an interest in not being assessed independently in connection with a case to which they are not a party with a party's authorities and, on the other hand, the need for the basis for orders and reprimands issued to the bank to be sufficiently clear, also in view of the societal implications of the case.

Technically, some payments were executed via the bank's central systems in Copenhagen. But as customer relations and all other matters relating to the execution of the transactions according to the bank were the responsibility of the branch in Estonia, the technical execution of the transactions is not considered further in this decision.

The bank's Board of Directors and Executive Board have stated that the bank has launched two investigations and that until the investigations have been completed, the Board of Directors' and the Executive Board's replies to specific questions about past activities in Estonia will necessarily be incomplete.

The Danish FSA has assessed whether there are grounds for bringing actions under the fit and proper rules against the bank's current members of management and staff. On the available basis, the Danish FSA does not consider that there are sufficient grounds for bringing such actions.

The bank's ongoing investigations may bring new information to light, which may lead to new assessments and supervisory reactions.

The report is divided into the following sections:

1. Substance of the case and the Danish FSA's assessments
2. Orders and reprimands
3. The Danish FSA's review of material and replies from the bank
4. Complaint instructions

The inspection gives rise to eight orders and eight reprimands. However, the Danish FSA recognises that the bank has made various improvements in the AML and compliance areas in recent years.

The bank has stated that it has increased the number of employees working with AML in the first and second lines of defence from less than 200 to 550 last year and nearly 900 today. Among other things, the bank has also expanded and updated internal AML training, worked to strengthen the compliance culture and made considerable investments in IT in the area.

### **1. Substance of the case and the Danish FSA's assessments**

Danske Bank has historically not lived up to its obligations in the AML area. This was the conclusion of the Danish FSA's inspection of the area in respect of the bank's Danish activities in 2012. The inspection now made of the role of the bank's management and governance in relation to the AML case at the Estonian branch has uncovered more serious problems. The problems identified relate in particular to the Estonian branch.

The majority of Danske Bank customers with relations to the Moldova case (the Russian Laundromat Case), which surfaced in the media in March 2017, became customers of the Estonian branch in the years 2011-2013. In the period up until June 2012, the bank's current CEO was the person on the Executive Board responsible for the branch. Subsequently, the head of Business Banking as a new member of the Executive Board took over the responsibility.

The branch had high earnings on Russian and other non-Baltic customers (non-resident customers), whose total volume of payments through the branch was very considerable. For example, 35% of the profit in the branch in 2012 was generated by Russian customers, who made up 8% of the customer base. Up until June 2013, employees at the bank considered having the bank initiate similar businesses with non-resident customers in the branch in Lithuania, but the Executive Board rejected these plans. In July 2013, following a dialogue with the bank, one of the Estonian branch's two correspondent banks for USD payments terminated its cooperation with the branch due to concerns about the branch's non-resident customers.

From the end of 2012 to November 2013, Danske Bank did not have a person responsible for AML activities as required by the Danish Anti-Money Laundering Act. The Danish FSA was not notified of this until February 2018 and then as a result of the Danish FSA's supplementary questions. The Board of Directors and the Executive Board have stated that in practice, the head of Group Compliance & AML, who reported to the bank's CFO, was the person responsible for AML activities.

The bank had and has organised its management using three so-called lines of defence. The first line of defence is the business itself, which must ensure correct, legal and expedient operations. The second line of defence is a risk management function that is to identify and mitigate risks and a compliance function that is to check compliance with rules. Finally, the third line of defence is the internal audit department, which monitors whether the first and second lines of defence identify the problems. Management receives reporting from the three lines of defence on an ongoing basis.

The Board of Directors and the Executive Board have stated that when assessing the Board of Directors' and the Executive Board's work and the volume of written material that the members of the two boards receive, it should be taken into consideration that the branch in Estonia accounts for only a small part of the total business and total risks. They have argued that because of this, management must to a large degree rely on the defence systems in place to function. When information about the business and the

effectiveness of defence systems of a worrying nature comes to light, management attention must, however, increase.

At the end of 2013, the branch's assets made up about 0.5% of the group's total assets, while profit before impairments made up about 2.0% of group profit before impairments for the year 2013.

In respect of the Estonian branch, there were deficiencies in all three lines of defence. The first line of defence at the branch did not focus on efficiently combating money laundering despite the significant number of high-risk, non-resident customers. This was not identified by the first line of defence at Business Banking in Copenhagen, which received a number of reports stating that the branch complied with the rules. The second-line integration of the Baltic units into the Group's risk management, including monitoring and reporting, was weak. AML at the branches in the Baltic countries was not mentioned as a compliance risk in the bank's management reporting. The third line internal audit formed part of Group Internal Audit (GIA). The integration of the branch's internal audit department with GIA was also inadequate.

Several documents show how management in Copenhagen did not integrate the Estonian branch in the bank's risk management and control systems, but instead allowed the branch to operate with significantly different risk exposure and to a large extent, the branch itself conducted controls. This appears, for example, from a comment made by the head of Baltic Banking on Audit Letter of 1 April 2014 from GIA. GIA stated that

*“Group Risk Management has confirmed that the exception allowing Estonian Branch to grant FX lines to non-residents solely on cash collateral is not in force since the approval of Group Credit Policy in May 2013.”*

The head of Baltic Banking had the following comment:

*“Estonian branch was let to know about new Credit Policy (from May 2013) only on 29 October and with notion that it is not for the circulation/implementation. New draft policies for BB/Baltics have now arrived (31/3/2014) but still wait for formal implementation. Further, the credit staff here has not been informed that the exemption not to have financial statements has been revoked.”*

The reason for his comments on the credit policy was that the bank's Executive Board had previously permitted the Estonian branch, on the basis of cash collateral, to establish foreign exchange lines for non-resident customers without having any knowledge about the individual customer's financial situation. Yet it was a condition that the branch made an extended due diligence investigation of the customer in relation to the customer's companies and ownership structures. This appears from GIA's audit report of 10 March 2014.

In addition, the branch's second and third lines of defence were organised in such a way that in practice, they reported to the branch CEO and thus were not sufficiently independent.

The bank's Board of Directors and Executive Board argue in their reply to the Danish FSA that such a simultaneous breakdown of all three lines of defence is a risk that must be considered to have low probability from a management perspective.

However, because of inadequate independence, the organisation was ineffective. The subsequent increase in resources allocated to the compliance area also shows that the bank increased its AML efforts too late.

In 2007 and 2009, the Estonian FSA conducted AML inspections, but the Board of Directors and the Executive Board have stated that they are not aware of the extent to which the conclusions of these reports have reached management in Copenhagen.

The termination by one of the branch's two correspondent banks of its cooperation with the Estonian branch in July 2013 due to concerns over the non-resident portfolio led to a review of the activities at

the branch. The review was performed by the Estonian/Baltic management and involved employees from the head office in Copenhagen. The review led to Danske Bank's Executive Board and the employees involved expecting a decision to reduce the non-resident portfolio, however, the Executive Board did not make any decisions about changes to the activities prior to the receipt of a whistleblower report in December 2013.

The correspondent bank was replaced by another bank, which already acted as correspondent bank for other parts of the Danske Bank Group.

In December 2013, senior employees at the bank received a whistleblower report about AML issues in relation to a customer in the Estonian branch's non-resident portfolio, that is, Russian and other non-Baltic customers.

The whistleblower, who held a key position at the branch, underlined that he felt he had no option but to approach senior group employees directly because the credibility of the branch could be questioned:

*"It is not appropriate to raise these issues within the branch due to their serious nature, that it is unclear at what level in the branch there was knowledge of the incident and because of a general problem regarding confidentiality in the branch."*

Specifically, the case involved a company incorporated in the UK as a limited liability partnership company (LLP). The whistleblower stated that during the summer of 2012, he became aware that the customer was providing false information about balance sheet items etc. to the UK Companies House, the UK equivalent of the Danish Business Authority. At the close of the annual financial statements at the end of May 2012, the customer had stated that the company was a "dormant" company. In fact, the company had deposits of USD 965,418 with the branch at the end of May 2012 and had an extensive transaction history.

The whistleblower stated that he had disclosed this information to the account manager and to the compliance officer at International Banking, who both worked at the branch, and who would arrange for the matter to be rectified. The company had to submit an adjusted report. The branch head of International Banking was on holiday, but the whistleblower briefed him on his return.

In his report, the whistleblower stated that he recently discovered that the adjusted report was clearly erroneous too since the adjusted accounting figures showed cash holdings of about USD 25,000 and not the amount of USD 965,418 deposited in the account at the end of May 2012. Among other things, it was this information that led the whistleblower to submit his whistleblower report.

The whistleblower himself emphasised the following problems:

- *"The bank knowingly continued to deal with a company that had committed a crime (probably there is some tax fraud here too)*
- *An employee of the bank co-operated with the company to fix the 'error'*
- *The bank continued dealing with the company even after it had committed another crime by submitting amended false accounts*
- *The bank in the first place managed to open an account for a dormant company - quite an achievement."*

He summed it up as follows:

- *"The bank may itself have committed a criminal offence*
- *The bank can be seen as having aided a company that turned out to be doing suspicious transactions (helping to launder money?)*
- *The bank has likely breached numerous regulatory requirements*
- *The bank has behaved unethically*
- *There has been a near total process failure."*

Despite knowledge of the customer's incorrect financial reporting, the branch maintained the customer relationship for more than one year. According to the whistleblower, it was not until September 2013 that the branch's AML unit decided that the customer relationship had to be terminated and reported to the local authorities because of the potential risk of money laundering, which it was.

The whistleblower wrote as follows in this respect:

*"I asked the Deputy Head of International Banking, [omitted], what the reason for the closure was. He said that it was due to:*

- *suspicious payments just under compliance control limits*
- *the bank not knowing properly who the beneficial owners were - apparently it was discovered that they included the [omitted]*
- *the beneficial owners having been involved with several Russian banks that had been closed down in recent years.*

*(I doubt it will be formally documented as such though)."*

Subsequently in January 2014, the whistleblower made accusations in relation to three other customers of the branch, and he later submitted extensive descriptions of significant issues at the branch, including issues relating to the branch management and business model.

After the whistleblower report, the Danske Bank Group's internal audit department (GIA) conducted several AML audits at the branch in the first six months of 2014, and these audits confirmed significant AML deficiencies as pointed out by the whistleblower. In the audit letter of 7 February 2014, GIA thus had these conclusions, among others:

- Some customers had companies that existed for less than two years in order to be able to avoid submitting financial statements.
- The corporate structures were complicated with activities in countries of the former Soviet Union and companies in other countries, including tax havens.
- The beneficial owners of companies that were customers of the branch were not known by the bank, or were known but not registered in the relevant systems of the branch.
- Branch management stated that the reason for the lack of identification of the beneficial owners was that the customers could experience problems if Russian authorities requested information.
- The branch cooperated with nine unregulated Russian intermediaries on customers' payments out of Russia. In this connection, as part of the transactions, the branch bought Russian bonds and entered into foreign exchange transactions with the intermediaries.

In the period after the whistleblower report, there were several indications that members of the management and/or employees of the branch were colluding with non-resident customers in criminal activities or, at least, knew of such activities. The bank did not, however, investigate this, and there were no managers or employees who were dismissed or relocated because of such a suspicion.

In consequence of the whistleblower report and GIA's Audit Letter of 7 February 2014, on the same day, the bank established a work group consisting inter alia of two members of the Executive Board, the head of GIA and the person responsible for compliance and AML. The work group immediately decided to shut down the cooperation with Russian intermediaries and not to accept any new non-resident customer relationships until an independent assessment of the area had been made. However, the customer relationships of the existing non-resident customers continued for some time.

On the basis of GIA's audit of a limited number of customers, the work group decided to launch an investigation by an external third party. [Omitted] therefore audited the branch's AML procedures from

February through April 2014. The consultancy firm's report identified 14 critical deviations and 9 significant deviations between branch practice and applicable rules/best practice.

The head of Business Banking, who was responsible for the Estonian branch on the Executive Board, informed the Executive Board and Board of Directors of the observations made by GIA and the consultancy firm. The slides he had had prepared for the Board of Directors meetings significantly toned down the AML issues, but the Board of Directors and the Executive Board have stated that it should be taken into account that the slides were neither shared nor used. According to minutes from meetings of the Board of Directors and the Board of Directors' Audit Committee as well as the Executive Board, there were no comments of significance to his presentation nor to the more critical assessments of AML in the Baltic countries in the audit report and reporting from Group Compliance & AML. However, at a meeting, a member of the Board of Directors emphasised the need for close monitoring in regions such as the Baltic countries and Russia and that the bank should adopt a positive approach towards whistleblowers. Members of the Board of Directors and the Executive Board have also stated that there were comments of significance not mentioned in the minutes.

In May 2014, the bank was going to engage an external company to examine and conclude on the whistleblower's accusations of considerable problems at the branch. However, three Executive Board members involved assessed that an internal examination would be sufficient, and it was to a large degree carried out by the person responsible for AML activities who was also head of Group Compliance & AML.

According to the material received by the Danish FSA, the investigation was of a general nature. There was thus significant information from the whistleblower that the person responsible for AML activities or others failed to follow up on or did not sufficiently follow up on, and as of today, the Board of Directors and the Executive Board do not have an overview of how the report was handled. The Danish FSA finds, among other things, that it is worthy of criticism that the bank did not follow up on all of the whistleblower's statements about the customers of the Russian intermediaries.

On the basis of the material received, it is not possible to assess whether the whistleblower himself was involved in illegal or other unwanted activity at the branch to any wider extent, and whether, for this or other reason, he wanted to pass on incorrect information. It quickly turned out, however, that he was right in respect of some of his serious accusations. There is also nothing in the material to show that the bank suspected at the time that he wanted to provide incorrect information. Consequently, the head of Business Banking, as the Executive Board member responsible for the branch, as member of the work group and as one of the contact persons of the whistleblower, should have ensured that follow-up was better and that a better overview was acquired.

It was the branch itself that followed-up on GIA's and the consultancy firm's comments with a review of the knowledge at the branch about the non-resident customers and their activities. It should have been a more extensive investigation, and it should not have been carried out by the branch itself.

At the request of the bank's CEO, the person responsible for AML activities in May 2014 prepared a plan to give the AML area a lift at the Baltic units. The plan was presented to the Executive Board by the head of Business Banking and the bank's CFO, who was also the person on the Executive Board responsible for compliance and AML activities. The plan and the branch's own review did not solve the significant problems at the branch.

In March 2014, GIA had given a series of recommendations that were to be applied by the branch in the review of the non-resident portfolio. The consultancy firm had given similar recommendations in April 2014. At a new audit in June 2014, when the review of the customers was ongoing at the branch, GIA, however, came across a number of customers who, despite having been reviewed and reassessed by the branch according to GIA's recommendations, should not have been accepted as continuing customers of the branch. According to the bank's Board of Directors and Executive Board, the branch's review, completed towards the end of 2014, led to the termination of 853 customer relationships.

In a GIA draft audit report of 10 March 2014, GIA recommended an investigation into earlier transactions made by the customers of the branch. That recommendation was not included in the final version of the audit report. The bank did not initiate an investigation into the transactions until September 2017, and did not until November 2017 initiate an investigation into the course of events and into whether managers or staff had sufficiently lived up to their responsibilities. In December 2017, the bank hired a law firm to handle and supervise the investigations. The work of investigating the non-resident customers and transactions is carried out by the bank's Compliance Incident Management Team and the head of the team, who took up the position with the bank on 1 January 2018.

In March and June-July 2014, the Estonian FSA conducted AML inspections at the branch and was very critical in its reporting. From the translation made by the bank of the Estonian FSA's preliminary report, it appears, among other things, that the Estonian FSA in its hearing of the bank in September 2014 concluded that the branch

- systematically accepted customers sharing many characteristics which caused suspicion of money laundering
- showed inadequacies in relation to identification of the origin of the customers' funds and accepted that it could not live up to its obligation to obtain this information
- contrary to the rules had made customers terminate their business relationships without notifying the Estonian Financial Intelligence Unit (FIU), a body equivalent to the Danish Public Prosecutor for Serious Economic and International Crime (SØIK)
- focused more on its earnings than on its obligations pursuant to AML rules, even though the branch operated in an extremely high-risk customer segment concerning AML risks
- did not comply with its own AML guidelines and wrongfully assessed that this was in compliance with legislation

Against this background, on 25 September 2014, a senior employee sent an e-mail to other senior employees at Group Legal and Group Compliance & AML:

*"The executive summary of the Estonian FSA letter is brutal to say the least and is close to the worst I have ever read within the AML/CTF area (and I have read some harsh letters). Besides being harsh, the letter also has a slight sarcastic tone, which is not a good sign (this may be the translation)."*

*I know we have a meeting on Friday, but I would like to check with you already now if business plan to notify/inform [omitted] and [omitted]. I believe this should be done asap and preferably by business them selves. If not I of course will inform them.*

*[Omitted]and I will discuss next steps from an AML perspective (further controls/remediation) and the need to send someone down there to support, however if just half of the executive summary is correct, then this is much more about shutting all non-domestic business down than it is about KYC procedures. I know this is in progress, but we should move much faster than 100 customer groups per month."*

The Estonian FSA's draft report was discussed at an Executive Board meeting on 7 October 2014. Among the participants were the bank's CEO, CRO and CFO, the head of Business Banking, the head of Group Legal and the new person responsible for AML activities and head of Group Compliance & AML. The minutes of that meeting include the following paragraph:

*"The Bank has recently received a drafted report from the Estonian FSA where they point out significant challenges regarding non-resident customers. According to [omitted], there was no cause for panic as the findings have been addressed in the ongoing process improvement. [Omitted] will travel to Estonia and assist the Estonian organisation."*

As with GIA's and the consultancy firm's observations, the Estonian FSA's critical conclusions were thus still toned down in the minuted discussions of the Executive Board and in written internal reporting to the Board of Directors.

In the bank's annual AML report for the period from October 2013 to September 2014, Group Compliance & AML underlined the AML challenges faced by the bank, for example in Estonia. The report was submitted to the Board of Directors' Audit Committee on 24 October 2014 and to the Board of Directors on 28 October 2014. The report stated the following about the AML issues in Estonia:

*“Internal Audit has issued audit reports in 2014 related to the Baltic countries requiring immediate efforts to improve the quality of especially the processes for non-resident customers. In cooperation with local management Group AML will initiate efforts to ensure that improvements and alignment to Group standards will be obtained. This work has started in Estonia in late August 2014. Furthermore Danske Bank, Estonia has most recently received a drafted report from the Estonian FSA, where they point out significant challenges regarding non-resident customers.”*

*“In the beginning of 2014 Internal Audit issued critical AML reports in the Baltic countries, especially related to Estonia and Lithuania. These reports revealed that there are still major issues to be solved outside the scope of the AML/KYC project. The audit recommendations will be handled on an ongoing basis along with the findings from a Gap analysis performed by [omitted] in Estonia in April 2014 on non-resident customers. Furthermore, an alignment of the Group solutions outside the Nordic countries and UK is now being prepared as a separate task along with a comprehensive Gap analysis of the existing procedures compared to the “Best-in-Class” requirements. Group AML has performed the first review in Estonia and drawn up an agreed plan together with local management of relevant improvements and alignment needed. The next step will be to perform a Gap-analysis in Lithuania and Latvia.”*

*“The Estonian FSA has completed an inspection on the topic “Analysis of the activities of the FIU contact person”. A drafted report was received in September 2014 and an extract has now been translated into English. The drafted report is very critical and confirms the findings reported by Internal Audit and [omitted] regarding non-resident customers. The inspection is based on the facts as per 31 December 2013 and therefore do not take into account the work performed in 2014.”*

The Baltic strategy was discussed in general terms twice by the Board of Directors in 2014. The bank's earnings in Estonia were high due to very high earnings on the non-resident portfolio with very low capital expenditure. The low capital expenditure was due to the fact that the credit risk associated with the non-resident portfolio was very low, among other things because a large part of the business volume was made up of payments and the fact that customers provided collateral in the form of deposits.

The profit before impairment charges from the non-resident portfolio in Estonia in 2013 made up DKK 325 million, equivalent to 99% of the profit before impairment charges in Estonia and 77% of the total profit before impairment charges in the Baltic units. The non-resident portfolio provided a return on allocated capital (ROAC) of 402% on the customer segment and a total ROAC for the branch of 60%. For the branches in Lithuania and Latvia, in 2013, the ROAC was 16% and 7%, respectively.

In the material used for the presentation by the Executive Board to the Board of Directors of the strategy, it was proposed to scale down this part of the business as a result of the money laundering risk associated with the segment, and a reduction of the non-resident portfolio was begun. The reduction in earnings as a result of this was expected to be significant.

At the strategy seminar in June 2014, the bank's CEO indicated to the Board of Directors that a speedy close-down of the Baltic activities would reduce the value in case it was to be sold without indicating that this was not a relevant consideration in relation to the non-resident portfolio. (“Further, [omitted] found it unwise to speed up an exit strategy as this might significantly impact any sales price.”) Also, it was not drawn to the Board of Director's attention that it was important, in view of the major issues regarding AML handling, to close down the non-resident portfolio quickly and report suspicious transactions to the relevant authorities.

The minutes of meetings of the Board of Directors and the Board of Directors' Audit Committee show that the board members were interested in the branch's earnings, while the minutes have not recorded any comments on the significant AML challenges. Thus, in all of 2014, no comments of significance

from members of the Board of Directors and of the Audit Committee on AML at the Estonian branch are recorded in the minutes of their meetings, neither when information about AML issues at the branch was presented in long-form audit reports, in reports from Group Compliance & AML, or in presentations from the Executive Board. As mentioned above, however, at a meeting, a member of the Board of Directors emphasised the need for close monitoring in regions such as the Baltic countries and Russia and that the bank should adopt a positive approach towards whistleblowers. Members of the Board of Directors and the Executive Board have also stated that there were comments of significance not mentioned in the minutes.

After having initially attempted to improve AML measures at the Baltic units, including the branch's review of customers in 2014, the Executive Board decided to close down the non-resident portfolio, potentially by selling all or some of it. The intention was for the Board of Directors to make a decision, but in connection with the Board of Directors' other decisions in October 2014 regarding the strategy for the Baltic units, the decision regarding the non-resident portfolio was deferred until January 2015 at the latest, that is, one and a half years after the termination by one of the branch's correspondent banks of its business relations with the branch and more than a year after whistleblower report.

In January 2015, the Board of Directors did not make a decision, but noted the Executive Board's expected close down of the part of the non-resident portfolio that related to customers who did not have personal or business-related links to the Baltic countries. Another year passed before, in January 2016, the close down was completed despite being accelerated in the third quarter of 2015 as a result of pressure from the Estonian FSA and another correspondent bank's termination of its cooperation with the branch due to concerns over the branch's non-resident customers.

It took more than one and a half years from the whistleblower report until the branch management was replaced after pressure from the Estonian FSA. According to information received by the Danish FSA, the choice of the new branch CEO was made without the Board of Directors or the Executive Board taking into consideration his previous activities in relation to the non-resident portfolio and despite the fact that he had worked together with the other members of the former branch management. This should be viewed in light of the fact that it was standard procedure at the bank that decisions regarding branch CEOs were made without involving the Board of Directors or the full Executive Board.

According to the material received by the Danish FSA, the bank's CRO was aware that the bank could be under an obligation to inform authorities in Estonia, Denmark and the UK. But the person responsible for AML activities did not consider it necessary to provide such information.

The bank did not provide information to the Danish FSA until January 2015, when the bank expected that the Danish FSA would be informed of the Estonian FSA's critical assessments.

At least four members of the bank's Executive Board, the head of Business Banking and the bank's CRO, CFO and CEO each had received information saying that there were problems in Estonia, including that it was not only a question of deficient processes, but that there were also suspicious customers. A review at the branch of the knowledge about the customers and their activities was launched, but the branch's own follow-up proved inadequate. Thus, the bank failed to initiate an adequate investigation into the extent of suspicious transactions and customer relationships due to the inadequate handling of AML at the branch in order to contain the damage and notify the authorities, which was also not done in connection with the consultancy firm's investigation in February-April 2014.

It does not appear from the material received by the Danish FSA that any further considerations were made as to whether the bank might be under an obligation to investigate the extent of suspicious transactions or customer relationships and notify the authorities. There was, however, as previously mentioned, a recommendation for an investigation in a draft audit report from GIA, but the recommendation was not included in the final version of the audit report of March 2014.

The lack of considerations also applies to the person responsible for AML activities, who was also head of Group Compliance & AML, to the head of Group Legal and to the person responsible for these areas

at Executive Board level. Thus, they had no documented considerations of how the bank could best contribute to mitigating the consequences of its involvement in the potential criminal activities of customers.

In April 2017, the bank hired [omitted] to investigate why the bank's controls had failed. However, the investigation did not cover the extent of suspicious transactions and customer relations. It is the Danish FSA's assessment that there is a discrepancy between the mandate issued to the company and the company's reporting to the bank after the investigation. The mandate thus required a detailed analysis of what went wrong in terms of AML at the branch in Estonia, however, the report became forward-looking and generalised.

As mentioned, it was not until September 2017 that the bank initiated an investigation into the extent of suspicious transactions and customer relationships due to the insufficient handling of AML at the branch, and in December 2017, the bank retained an external law firm to handle and supervise the investigation, that is, not until four years after the whistleblower report and after external pressure on the bank.

In May 2015, one of the branch's two correspondent banks informed the bank that it no longer wanted to assist in transactions with British companies controlled by the branch's Russian customers.

The other of the two correspondent banks terminated its cooperation with the branch in September 2015 due to concerns over the branch's non-resident customers. In that connection, a senior employee from the correspondent bank in question assessed that out of ten non-resident customers from the Estonian branch, the correspondent bank would be comfortable only with servicing one given the customers' characteristics. The employee also warned Danske Bank against Moldovan customers and customers transferring money to Moldova. The Danish FSA has not received material showing that Danske Bank investigated those of its customers that had relations to Moldova on the basis of this. The bank has stated that it was not until spring 2017, following the root cause analysis made by [omitted] for the bank, that the bank became aware that customers and transactions from the branch's non-resident portfolio were included in a published report on the Russian Laundromat of August 2014.

At the hearing on the Panama Papers in the Danish Parliament's Fiscal Affairs Committee in April 2016, the bank's preliminary investigations had uncovered only seven customers with companies registered by the Panamanian law firm Mossack Fonseca, and that all seven customers had come from other banks subsequent to the customers' contact with the law firm. The bank later had to state that the Estonian branch had had more than ten times as many customers with companies established by Mossack Fonseca.

GIA's and the consultancy firm's examinations in January to April 2014 showed significant AML problems, but the bank did not inform the Danish FSA of the problems. This should be viewed in light of the fact that in 2012 and 2013, the Estonian FSA contacted the Danish FSA about possible AML issues at the branch, and that senior employees of Group Legal and Group Compliance & AML therefore sent detailed descriptions of the branch's AML measures to the Danish FSA. In early 2014, it should have been clear to some Executive Board members and other senior employees that the business procedures were not followed and that the bank's detailed information from 2012 and 2013 to the Danish FSA and the Estonian FSA therefore was misleading. It must also have been clear to them that this was an area of significance to the supervisory authorities.

Group Compliance & AML, the person responsible for AML activities, Group Legal and the bank's CFO, who was the person on the Executive Board responsible for the area, did not themselves initiate adequate activities in relation to AML in Estonia, neither before nor after the whistleblower report in December 2013. They only monitored investigations made by GIA, the consultancy firm and the branch's own review of the portfolio.

Among other things, they did not consider, as they should have, looking into how the bank could best mitigate the consequences that its involvement in customers' potential criminal activities could have

had, including by examining the need for further reporting of suspicious transactions to the relevant authorities.

Neither did they question the first line of defence's failure to investigate or handle managers and employees involved in the case.

The Chief Audit Executive failed to ensure that the Executive Board provided adequate written reporting on AML at the branch to the Board of Directors and the Board of Directors' Audit Committee, nor did he make the Board of Directors and the Audit Committee aware of the insufficiencies of the reporting.

Thus, potential problems were not adequately reported to the bank's Board of Directors and also were not reported to the Danish FSA.

During 2017, the bank has several times provided information or material about the case to the Danish FSA. As a result of inadequate information being provided to the Danish FSA, the Danish FSA has found it necessary to enquire more than once regarding the same issues in order to receive an adequate reply and to enquire about the bank's knowledge of further cases. This applies, for example, to the statement of 16 October 2017, when the Danish FSA wrote to the Board of Directors and the Executive but received a reply signed by two senior employees. In a few cases, the bank has failed to provide relevant information for which the Danish FSA has asked.

The Danish FSA's review of the case has shown that the Board of Directors', the Executive Board's and the bank's other decision-making processes have not been sufficiently documented through comprehensive written decision-making memos, minutes of discussions and minutes of decisions. Furthermore, assessments of compliance risks have not been sufficiently included in or been given adequate importance in the decision-making processes.

The absence of sufficiently documented decision-making processes has contributed to the bank's Board of Directors and Executive Board not being able to answer questions from the Danish FSA on a number of issues but have referred to the need for further internal investigations. By virtue of the normal discharge of management's responsibilities and tasks, the Board of Directors or the Executive Board ought to have had the information necessary or be able to obtain such quickly. This applies in particular in a case that has attracted considerable external attention since early 2017, and in respect of which the bank has thus had plenty of time to gain an overview of key elements.

The bank's reporting procedures, decision-making processes and corporate culture have failed to ensure that the problems with the non-resident portfolio were sufficiently identified and handled in a reassuring manner. This applies to both the period up until the close down in early 2016 as well as the period since the beginning of 2017.

The bank's management has not ensured sufficient focus on the compliance area and transparency of the issues, nor has it ensured a timely and reassuring handling of potential issues of complying with legislation.

Management's priorities and means of conduct have damaged the credibility and reputation of the bank. Considering the bank's systemic significance and international presence, the reputation of the Danish sector of financial institutions may be damaged as well.

The Danish FSA's review gives rise to eight orders and eight reprimands as stated in section 2 below.

The Danish FSA finds it particularly worthy of criticism

- that there were such significant deficiencies in all three lines of defence at the Estonian branch that customers had the opportunity to use the branch for criminal activities involving vast amounts;

- that it was not until September 2017 that the bank initiated an investigation into the extent of suspicious transactions and customer relationships as a result of the insufficient handling of AML at the branch, that is, more than four years after the termination by one of the branch's correspondent banks of its correspondent bank relations and almost four years after the whistleblower report;
- that with the exception of the termination of the cooperation with Russian intermediaries, the bank deferred the decision to close down the part of the non-resident portfolio that related to customers who did not have personal or business-related links to the Baltic countries until January 2015, and that the close down was not completed until January 2016;
- that the bank's governance in the form of internal reporting, decision-making processes and corporate culture failed to ensure that the problems of the non-resident portfolio were sufficiently identified and handled in a satisfactory way, including by reporting suspicion of criminal activities to relevant authorities. This applies to both the period up until the close down in early 2016 as well as the period since the beginning of 2017;
- that the bank did not inform the Danish FSA of the identified AML issues, even though in early 2014, it should have been clear to some Executive Board members and other senior employees that the information previously provided by the bank to the Danish FSA and the Estonian FSA in 2012 and 2013 was misleading and that it should have been clear to them that the supervisory authorities focused on the area;
- that the bank's information to the Danish FSA since the beginning of 2017 has been inadequate.

Consequently, the case has uncovered serious weaknesses in the bank's governance in a number of areas. On this basis, the Danish FSA finds that the bank is exposed to significantly higher compliance and reputational risks than previously assessed.

In collaboration with the other supervisory authorities involved in supervising the banking group, the Danish FSA will assess the size of a Pillar II increase in solvency need by taking into account the compliance and reputational risks. It is a first estimate on the part of the Danish FSA that as a minimum, a Pillar II add-on should amount to DKK 5 billion, equivalent to approx. 0.7% of the REA (risk exposure amount) at the end of 2017.

## **2. Orders and reprimands**

The Danish FSA's assessments of Danske Bank's management and governance in relation to the AML case at the Estonian branch give rise to the orders and reprimands listed below. The rules referred to in the orders and the reprimands are listed at the end of this section.

### **Orders:**

The Danish FSA issues the following orders to the bank:

- 1) With reference to section 71(1) of the Danish Financial Business Act and section 2 of the Executive Order on Management and Control of Banks etc., the Danish FSA orders the Board of Directors and the Executive Board to strengthen the Executive Board's governance with regard to competencies in the compliance area and at the same time ensure that on the Executive Board, the area responsibilities for compliance are sufficiently independent of business and profitability interests.
- 2) With reference to section 124(1)-(2) of the Danish Financial Business Act, the Danish FSA orders the Board of Directors and the Executive Board to reassess the bank's and the banking group's solvency need in order to ensure an adequate internal capital coverage of compliance and reputational risks as a result of weaknesses in the bank's governance.
- 3) With reference to section 71(1) of the Danish Financial Business Act and section 17(1) of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA orders the Board of Directors and the Executive Board to ensure that when there is suspicion of the bank's managers or employees colluding with customers in criminal activities or knowing of customers' criminal activities, the bank conducts adequate investigations and takes the

suspicion into consideration on an ongoing basis when allocating tasks to these managers or employees.

- 4) With reference to section 71(1) of the Danish Financial Business Act and sections 3(vi) and 8(3) of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA orders the Board of Directors and the Executive Board to strengthen the bank's governance in order to ensure accurate and timely reporting of potentially problematic cases to the Board of Directors and the Executive Board.
- 5) With reference to section 71(1) of the Danish Financial Business Act and sections 2 and 14(1) of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA orders the Board of Directors and the Executive Board to strengthen the bank's governance in order to ensure that the basis for decisions as well as discussions at meetings and decisions made are sufficiently documented and that sufficient attention is given to the bank's compliance with applicable legislation.
- 6) With reference to section 71(1) of the Danish Financial Business Act and section 2 of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA orders the Board of Directors and the Executive Board to assess management at the Estonian branch.
- 7) With reference to section 347(1) of the Danish Financial Business Act, the Danish FSA orders the Board of Directors and the Executive Board to ensure that the bank provides adequate information to the Danish FSA.
- 8) With reference to sections 71(1) and 347(1) of the Danish Financial Business Act, the Danish FSA orders the Board of Directors and the Executive Board to strengthen their governance in order to ensure sufficient involvement in written replies to enquiries from the Danish FSA to the Board of Directors or the Executive Board.

By 30 June 2018, the board of directors and the executive board must submit a written report to the FSA stating how the bank has ensured compliance with the orders.

Any relevant documentation must be enclosed.

When GIA has reviewed whether the orders have been observed, GIA must inform the Danish FSA of this and provide relevant documentation.

### **Reprimands:**

The Danish FSA issues the following reprimands to the bank.

- a) With reference to section 71(1) of the Danish Financial Business Act and section 8 of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA issues a reprimand in respect of the bank's Executive Board not performing its responsibilities to a sufficient extent when it
  - failed to ensure sufficient focus on AML for high-risk customers at the branch in Estonia and monitoring of the branch at Business Banking in Copenhagen
  - failed to ensure integration of compliance and AML of the Baltic units into the Group functions and to ensure sufficient quality
  - failed to ensure adequate follow-up on the allegations made by the whistleblower and to ensure investigation into suspicions of the bank's employees colluding with customers in criminal activities or knowing of customers' criminal activities and relocation of employees under suspicion
  - failed to ensure that the Danish FSA was informed of the matter until January 2015
  - failed to adequately notify the Board of Directors of the severity of the case and ensure a prompt close down of the part of the non-resident portfolio that related to customers who did not have personal or business-related links to the Baltic countries.
- b) With reference to section 71(1) of the Danish Financial Business Act and section 3 of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA issues a reprimand in respect of the Board of Directors not performing its responsibility to a sufficient extent when it

- failed, at meetings of the Board of Directors and of the Board of Directors' Audit Committee, to discuss the bank's legislative compliance at the branch in Estonia on the basis of reporting from GIA and Group Compliance & AML or to ensure that such discussions were recorded in the minutes
  - failed to ensure a sufficiently prompt close down of the part of the non-resident portfolio that related to customers who did not have personal or business-related links to the Baltic countries on the basis of reporting received by the Board of Directors from GIA and Group Compliance & AML, and in view of the lack of a decision from the Executive Board (see reprimand a))
- c) With reference to section 24 (1) of the Danish Executive Order on Auditing Financial Undertakings etc. as well as Financial Groups, the Danish FSA issues a reprimand in respect of the Group Internal Audit not ensuring the necessary integration and quality of internal audit in the Baltic units prior to the whistleblower report and for not making the Executive Board ensure that the Board of Directors and the Board of Directors' Audit Committee received adequate reporting of AML in the branch after the whistleblower report, and for not drawing the Board of Directors' and the Audit Committee's attention to the inadequacies.
  - d) With reference to section 25(2) of the then applicable Danish Anti-Money Laundering Act, section 17(1) and (2) of the Danish Executive Order on Management and Control of Financial Companies, and section 71(1) of the Danish Financial Business Act, the Danish FSA issues a reprimand in respect of Group Compliance & AML and Group Legal not sufficiently performing their responsibility in connection with AML at the Estonian branch in the period prior to the whistleblower report and in relation to mitigating the consequences of the inadequate efforts in connection with AML.
  - e) With reference to section 25(2) of the then current Danish Anti-Money Laundering Act, the Danish FSA issues a reprimand in respect of the bank failing to appoint a person responsible for AML activities from the end of 2012 until 7 November 2013, and for only informing the FSA about this on 7 February 2018 after the Danish FSA had asked the Board of Directors and the Executive Board.
  - f) With reference to section 71(1) of the Danish Financial Business Act and section 18(1) of the Danish Executive Order on Auditing Financial Undertakings etc. as well as Financial Groups, the Danish FSA issues a reprimand concerning the inadequacies in all three lines of defence at the Estonian branch up until the whistleblower report in December 2013.
  - g) With reference to section 71(1) of the Danish Financial Business Act and section 2 of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA issues a reprimand in respect of the bank not replacing the management in Estonia until more than one and a half years after the whistleblower report.
  - h) With reference to section 71(1) of the Danish Financial Business Act and section 2 of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA issues a reprimand in respect of the Board of Directors and the Executive Board not ensuring adequate and timely investigations into conditions at the branch to mitigate the consequences of inadequate AML measures and form a general overview of what had happened. Not until four and a half years after one of the correspondent banks' termination of its correspondent bank relations, four years after the whistleblower report, two and a half years after another correspondent bank's termination of its correspondent bank relations and after external pressure did the bank launch an investigation into the extent of suspicious transactions and customer relations resulting from the inadequate handling of AML measures at the branch.

The Board of Directors and the Executive Board must no later than 30 June 2018 provide the Danish FSA with a written response detailing what the reprimands have resulted in.

### **Legal basis**

The orders and the reprimands refer to the following rules in the Danish Financial Business Act, the Danish Executive Order on Management and Control of Banks etc. (the Danish Executive Order on Management), the Danish Executive Order on Auditing Financial Undertakings etc. as well as Financial

Groups, and the Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism (the Danish Anti-Money Laundering Act) applicable until June 2017.

### **The Danish Financial Business Act:**

Section 71(1):

*“ A financial undertaking, a financial holding company and an insurance holding company shall have effective forms of corporate management, including*

- 1) a clear organisational structure with a well-defined, transparent and consistent division of responsibilities,*
  - 2) good administrative and accounting practices,*
  - 3) written business procedures for all significant areas of activity,*
  - 4) effective procedures to identify, manage, monitor and report the risks that the undertaking is or can be exposed to,*
  - 5) the resources necessary for proper carrying out of its activities, and appropriate use of these,*
  - 6) procedures with a view to separating functions in connection with management and prevention of conflicts of interest,*
  - 7) full internal control procedures,*
  - 8) adequate IT control and security measures*
- ... ”*

Section 124(1)-(2):

*“(1) The board of directors and the board of management of a bank or a mortgage credit institution shall ensure that the institution has adequate own funds and has internal procedures for risk measurement and risk management for regular assessments and maintenance of own funds of a size, type and distribution adequate to cover the risks of the institution. These procedures shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the institution concerned.*

*(2) The board of directors and the executive board of a bank or a mortgage-credit institution must, on the basis of the assessment pursuant to subsection (1), calculate the individual solvency need of the bank or mortgage-credit institution. The solvency need shall be calculated as the adequate own funds as a percentage of the total risk exposure. ... ”*

Section 347(1):

*“The financial undertakings, financial holding companies, insurance holding companies, mixed-activity holding companies, suppliers and sub-suppliers shall provide the Danish FSA with the information necessary for the Danish FSA's performance of duties. ... ”*

### **The Danish Executive Order on Management and Control of Banks etc. (the Danish Executive Order on Management):**

Section 2:

*“(1) The board of directors and the board of management, respectively, of the undertakings comprised by section 1(1) shall take measures which are sufficient to ensure that the undertaking is adequately operated. The board of directors and the board of management, respectively, shall further consider what measures are adequate for compliance with the provisions. The adequacy of measures will depend on the business model of the undertaking, including ...*

*(3) The board of directors and the board of management, respectively, of the undertakings comprised by section 1(1)(i)(ii) and (iv) which, pursuant to section 308 or 310 of the Danish Financial Business Act, have been designated as systemically important financial institutions (SIFIs) or global systemically important financial institutions (G-SIFIs) shall in their assessment under (1) take into consideration the maintaining of a stable financial sector when assessing the risk management area ... ”*

Section 3:

*“As part of the overall and strategic management of the undertaking, the board of directors shall*

- 1) make decisions regarding the business model of the undertaking, including objectives for the conditions mentioned under section 2(1), nos. 1-5,
- 2) on the basis of the business model, make decisions regarding the policies of the undertaking, cf. section 4,
- 3) regularly, though at least once a year, make an assessment of the individual and overall risks taken by the undertaking, cf. section 5, including determine whether these risks are acceptable,
- 4) assess and make decisions regarding budgets, capital, liquidity, significant transactions, particular risks and overall insurance conditions,
- 5) assess whether the board of management performs its duties in an adequate manner and in accordance with the risk profile defined, the policies adopted and the guidelines issued to the board of management,
- 6) make decisions regarding the frequency and scope of reports by the board of management and information provided for the board of directors to ensure that the board of directors has thorough knowledge about the undertaking and its risks, and that the reports are otherwise satisfactory for the work of the board of directors,
- 7) regularly, and at least once a year, make decisions regarding the individual solvency need of the undertaking, cf. sections 124(2) and 125(4) and section 126a(1) of the Danish Financial Business Act,
- 8) organise its work such that the management of the undertaking is adequate, cf. annex 6,
- 9) assess whether the undertaking has an adequate publication and communication process, and
- 10) approve the report which the board of management is obliged to prepare with a calculation and assessment of the liquidity position and liquidity risks of the undertaking, cf. section 8(9).”

#### Section 8:

- “(1)The board of management shall be responsible for the day-to-day management of the undertaking in accordance with provisions in legislation, including the Danish Act on Public and Private Limited Companies (the Danish Companies Act) and the Danish Financial Business Act, the policies adopted by the board of directors, cf. section 4, the guidelines issued by the board of directors, cf. sections 6 and 7, and any other oral or written decisions and instructions from the board of directors.
- (2) The board of management shall ensure that the policies and guidelines adopted by the board of directors are implemented in the day-to-day operations of the undertaking.
- (3) The board of management shall, upon request from the board of directors, be obliged to disclose information to the board of directors, as well as information assessed by the board of management to be of significance to the work of the board of directors.
- (4) The board of management shall be obliged to disclose information to the chief risk officer and the person responsible for compliance assessed by the board of management to be of significance to their work.
- (5) The board of management shall have day-to-day managerial responsibility for ensuring that the undertaking only makes transactions for which the board of management and employees, where appropriate, are able to assess the risks and consequences.
- (6) The board of management shall approve the procedures of the undertaking, cf. section 13(1), or appoint one or more persons or organisational entities with the necessary specialist knowledge to do so.
- (7) The board of management shall ensure that instructions are laid down for the initiatives to be implemented in the event of serious operational problems, IT breakdown, other operational problems, as well as the resignation of key employees.
- (8) The board of management shall approve the guidelines of the undertaking for development and approval of new services and products that may impose significant risks on the undertaking, counterparties or clients, including changes to existing products by which the risk profile of the product is changed significantly.
- ...”

#### Section 14(1):

“The board of management shall ensure that the documentation required for the activities of the undertaking is made available ...”

#### Section 17(1)-(2):

*“(1) The undertaking shall have methods and procedures that are suitable to identify and reduce the risk of non-compliance with current legislation applying to the undertaking, market standards or internal regulations (compliance risks).*

*“(2) The undertaking shall have an independent compliance function which is to check and assess whether methods and procedures pursuant to subsection (1), and whether the measures taken to address any deficiencies, are effective.”*

### **The Danish Executive Order on Auditing Financial Undertakings etc. as well as Financial Groups:**

Section 18(1):

*“The internal audit function shall function independently of the day-to-day-management.”*

Section 24(1):

*“In undertakings and groups with an internal audit function, all auditing shall be carried out in accordance with generally accepted auditing practices and in accordance with an audit agreement between the external auditors and the chief internal auditor. ...”*

### **The Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism (the Danish Anti-Money Laundering Act) applicable until June 2017:**

Section 25(2):

*“Undertakings and persons covered by section 1(1) nos. 1-12 shall appoint a person at management level to ensure that the undertaking or person complies with the obligations under this Act, the regulations issued pursuant hereto, the Regulation of the European Parliament and of the Council on the information on the payer accompanying transfers of funds, and regulations containing rules on financial sanctions against countries, persons, groups, legal entities, or bodies.”*

### **3. The Danish FSA’s review of material and replies from the bank**

The Moldovan case came into the media spotlight in March 2017. Thus, at its request, the Danish FSA, in April 2017, received from the bank a copy of a substantial volume of material regarding AML at the bank’s Estonian branch in the period from 2011 to 2015. The material had been selected by the bank on the basis of an assessment of what was relevant to shed light on the case. It concerns the Board of Directors, the Board of Directors’ Audit Committee, the Executive Board, audit reports, compliance reports and interaction with the Danish FSA and the Estonian FSA.

As a result of the media coverage of the Azerbaijani case in September 2017, the Danish FSA assessed that an actual investigation into the bank’s Estonian branch was required. Therefore, on 25 September, the Danish FSA asked the bank’s Board of Directors and Executive Board for a written statement about this case and more generally about AML handling at the branch.

The Danish FSA received a statement from the bank on 16 October 2017.

On 8 December 2017, the Danish FSA sent a list to the bank’s CEO with requests for additional material and received the material in the days from 12 to 14 December.

On 21 December 2017, the Danish FSA sent a memorandum entitled “Preliminary assessments of the involvement of Danske Bank’s management in the AML case at the bank’s Estonian branch” to Danske Bank. In addition to a description of the case and the Danish FSA’s preliminary assessments, the memorandum contained 32 questions for the Board of Directors and the Executive Board and three questions for the Chief Audit Executive. The Chief Audit Executive replied on 6 February 2018, and the Board of Directors and the Executive Board replied on 7 February 2018. The reply from the Board of Directors and the Executive Board included more than 200 pages of annexes.

It appeared from the reply from the Board of Directors and the Executive Board that they had sought, to the widest extent possible, to reply to all questions by the deadline. It also appeared, however, that the bank's investigations of what had happened in the AML area in Estonia were in the initial stages and that the replies to specific questions therefore necessarily were incomplete. In several instances, they expected the investigations launched by the bank to clarify matters. It also appeared that it would be both hasty and inappropriate – and potentially misleading for the Danish FSA – at the time to express views on individual persons.

On 12 March 2018, the Danish FSA sent a draft of this decision to the Board of Directors, the Executive Board and the Chief Audit Executive. The Danish FSA received a reply with a number of general comments on 26 March 2018.

The reply from the Board of Directors and the Executive Board also included more than 600 pages of annexes, and the Board of Directors and the Executive Board wrote the following about the annexes:

*“The Project [omitted] Investigation and the Project [omitted] Investigation described in our Initial Reply are progressing according to plan, and with this letter we share additional information uncovered or verified since our Initial Reply. Given that the Danish FSA is likely to act prior to the completion of the investigations, we are including a number of documents and e-mails with this letter. At the same time, we wish to stress that both the Project [omitted] Investigation and the Project [omitted] Investigation are not yet complete and consequently that the material shared is also not complete. We expect the Project [omitted] Investigation to be completed within two months, and we note the reservation in the beginning of the Draft Decision that “[t]he bank’s ongoing investigations may provide new information of significance to the Danish FSA’s assessments and supervisory reactions”.”*

Danske Bank has chosen to let the law firm handling the bank's investigations represent the Board of Directors in the case in relation to the Danish FSA.

The material received does not include e-mails or the like involving members of the Board of Directors. On 28 April 2018, the Board of Directors and the Executive Board stated the following:

*“Project [omitted] has access to the e-mail accounts of the current employees of the bank, including the bank’s CEO. The members of the Board of Directors do not have e-mail accounts at the bank, but they have been asked to share relevant material in their possession. The members of the Board of Directors can communicate with members of the Executive Board, but only with the knowledge of the Chairman of the Board of Directors and the CEO. Generally, such a dialogue would be unusual, and, for this reason, the bank’s governance model already includes an assumption against the “e-mails and the like” that the Danish FSA seems to request.”*

The bank showed relevant parts of the Danish FSA's draft of 12 March 2018 to a number of former employees of the bank. Subsequently, the former members of the Executive Board (the head of Business Banking and the bank's CRO and CFO) also sent their comments to the Danish FSA. In connection with the comments, the bank's legal representatives who handle the bank's investigations sent 265 pages of e-mails and annexes.

On 18 and 26 April 2018, the Danish FSA sent new drafts of this decision to the Board of Directors and the Executive Board and to the Chief Audit Executive.

On 22 April 2018, the Board of Directors and the Executive Board forwarded comments on selected parts of the draft.

Subsequently, on 24 April 2018, they sent comments on specific wording in the draft and more than 300 pages in the form of annexes.

Finally, on 25 April 2018, they sent comments on the announcement of the decision, and on 28 April and 1 May 2018, they sent additional comments on specific wording.

The process has thus been rather long, with the majority of the specific comments from the Board of Directors and the Executive Board not being made until the period from 22 April 2018. The Danish FSA has based its decision on the very extensive material received from the bank, including proposed decisions, minutes of meetings, audit and compliance reports, e-mails, replies to questions from the FSA and comments on the FSA's draft decision.

#### **4. Complaints procedure**

In accordance with section 372(1) of the Danish Financial Business Act, decisions made by the Danish FSA may be brought before the Danish Company Appeals Board by e-mail to ean@naevneneshus.dk or by letter to Toldboden 2, DK-8800 Viborg, no later than four weeks after the receipt of such decisions. The Company Appeals Board charges a fee for considering complaints.

Yours faithfully

Jesper Berg