

Translation from Danish by Danske Bank of a decision dated 14 September 2015 from the Danish Financial Supervisory Authority (*Finanstilsynet*). In case of discrepancies, the Danish version prevails.

The board of directors and executive board of  
Danica Pension A/S

14 September 2015  
Ref. HHE  
File No. 6645-0502

## **Decision on partial control review of the annual report for 2014 of Danica Pension**

In continuation of an inquiry from Danica Pension A/S (Danica Pension), the Danish Financial Supervisory Authority (the FSA) has carried out a partial control review<sup>1</sup> of the annual report for 2014 of Danica Pension. The review was carried out as a step in the control of financial companies' annual and interim reports conducted by the FSA in pursuance of section 344(1) of the Danish Financial Business Act.<sup>2</sup>

The annual report for 2014, which was prepared in accordance with section 183(1) of the Danish Financial Business Act, was presented in compliance with the Danish Executive Order on Financial Reports for Insurance Companies and Multi-Employer Occupational Pension Funds<sup>3</sup> (the Danish Executive Order on Financial Reports).

The annual report for 2014 was audited by Ernst & Young Godkendt Revisionspartnerselskab. The auditors' report is unqualified and without emphasis of matter.

The FSA has had a dialogue with Danica Pension about the technical calculation of its life insurance provisions regarding the "red scheme" (*rød ordning*), a scheme established by Danske Bank A/S (Danske Bank) for its employees at the then Statsanstalten for Livsforsikring (now Danica Pension) and about the accounting treatment of the scheme.

As a result of the dialogue, Danica Pension provided public corrective/supplementary information to the annual report for 2014 on 22 July 2015.

On 14 August 2015, the FSA forwarded its draft decision to Danica Pension. Danica Pension replied on 17 August 2015.

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<sup>1</sup> The control review focused only on a limited part of the annual report for 2014. It should therefore be noted that the review of the annual report cannot be considered exhaustive.

<sup>2</sup> Consolidated Act No. 182 of 18 February 2015.

<sup>3</sup> Executive Order No. 112 of 7 February 2013.

## **Decision**

In the opinion of the FSA, Danica Pension's annual report for 2014 contains the following errors:

### **1. Inadequate life insurance provisions under the red scheme**

The red scheme life insurance provisions have been calculated as the value of pension commitments less a guarantee issued by Danske Bank. This is not in compliance with section 65 of the Danish Executive Order on Financial Reports and also conflicts with the prohibition against offsetting in section 188(1)(viii) of the Danish Financial Business Act.

As a result of its dialogue with the FSA, Danica Pension, at the time of publication of its interim report for the first half of 2015, provided public corrective/supplementary information to the annual report for 2014 on 22 July 2015 in which Danica Pension had adjusted the accounting method for measuring and presenting life insurance provisions to the red scheme.

Consequently, the FSA, pursuant to section 197 of the Danish Financial Business Act, issues a reprimand to the effect that the annual report for 2014 of Danica Pension contains errors.

## **Complaints procedure**

In accordance with section 372(1) of the Danish Financial Business Act, decisions made by the FSA may be brought before the Danish Company Appeals Board by e-mail to ean@erst.dk or by ordinary mail to Dahlerups Pakhus, Langelinie Allé 17, P.O. Box 2000, DK-2100 København Ø, tel. +45 33 30 76 22, no later than four weeks after Danica Pension has received the decisions.

According to section 7 of the Danish Executive Order on the Company Appeals Board, complaints to the Danish Company Appeals Board are subject to a fee of DKK 4,000. However, if the complaint does not concern the complainant's current or future business, the fee is DKK 2,000. According to section 15(4) of the executive order, the Board or its chairman on its behalf may decide to refund the fee paid in full or in part in the event that the complainant's claim is upheld in full or in part. The fee is refunded if the complaint is rejected.

## **Publication**

The FSA and Danica Pension must make the decision available to the public in pursuance of section 354a(1) of the Danish Financial Business Act.

## **1. Summary and assessment**

### **1.1 Summary**

Since the end of 2014, Danica Pension and the FSA have had a dialogue on the amount of the life insurance provisions made under the red scheme by Danica Pension. The red scheme is a pension scheme for about 1,300 Danske Bank employees, of whom about 1,100 are retirees today. The scheme was established back in the 1930s. The pension scheme does not accept any new members.

The accounting treatment of the scheme was discussed at two meetings, on 11 June 2015 and 9 July 2015, and in correspondence between the FSA, Danica Pension and Danske Bank during the period June-July 2015.

Danica Pension states that the pension commitments are conditional on Danica Pension's achieving a real investment return of at least 3.5% before tax on pension returns (PAL tax) and on no new direct and indirect taxes being introduced that affect the pension scheme. In 2005, when Danica Pension reduced the rates for an upward adjustment of pension payments after retirement from 60%/50% of the full price index adjustment to 16%/11%, Danske Bank issued a financial guarantee to Danica Pension to avoid any further reduction of the pension payments. Danske Bank guaranteed that Danica Pension would achieve a real investment return of at least 3.5% p.a. Danske Bank may change or terminate its guarantee at one year's notice.

According to Danica Pension, this means that the pension commitments will be reduced if the return condition is not met and if Danske Bank does not fulfil or terminates its guarantee. Consequently, Danica Pension did not make provisions for the full pension commitments, but made provisions equivalent to the value of the pension commitments whilst taking into account the right to reduce the pension benefits and deducted the value of the guarantee.

On the basis of projections of the expected return five years ahead as well as Danica's budgets and operating plans, Danske Bank calculates the need to make provisions for the guarantee. At the end of 2014, Danske Bank's calculations showed a buffer of DKK 323 million. However, because of uncertainty about the agreement, Danske Bank decided to recognise a management estimate of DKK 200 million as provisions for obligations (see IAS 37).

In order to ensure that the pensions are secured in terms of reserves and that they can thus be paid out independently of the employer's financial situation, section 1 of the Danish Supervision of Company Pension Funds Act states that any promise of pension (pension commitment) in connection with employment must be honoured by an insurance company or a pension fund. This applies whether or not a pension commitment is guaranteed, conditional or not guaranteed. This practice also follows from a report on the assessment of the appropriateness of the current legislation on the supervision of company pension funds (*Rapport om undersøgelse af hensigtsmæssigheden i den gældende lov om tilsyn med firmapensionskasser*) prepared by a committee set up under the auspices of the Danish Ministry of Economic and Business Affairs from 3 October 2006.

As a result, the FSA found that Danica Pension had to recognise the full provisions for the pension recipients according to section 65 of the Danish Executive Order on Financial Reports and that it was an error that the guarantee had been offset against the pension liabilities in Danica Pension's annual report for 2014, which explains why provisions had not been made for the full amount.

The FSA also found that Danica Pension should have recognised the full life insurance provisions in its annual report for 2014, that the life insurance provisions should have been about DKK 1.1 billion higher, and that Danica Pension could not offset the guarantee issued by Danske Bank against its life insurance provisions under the red scheme. Referring to the bank's description of the calculation of the value of the provisions in the amount of DKK 200 million in Danske Bank's annual report for 2014, the FSA assessed that this amount, in all probability, would be the fair value of the guarantee at the end of 2014.

Consequently, in its annual report for 2014, Danica Pension would have been able to recognise the fair value of the guarantee of DKK 200 million as an asset (see section 189 of the Danish Financial Business Act).

Moreover, the FSA found that the matter was material to Danica Pension's annual report for 2014 because the estimated accounting effect was about DKK 900 million before tax, or 37% of profit before tax and 4.3% of shareholders' equity, which is why the FSA was of the opinion that Danica Pension should provide public corrective/supplementary information to its annual report for 2014.

After the dialogue with the FSA, Danica Pension decided to make the full life insurance provisions under the red scheme and to recognise the fair value of the guarantee at DKK 200 million and to provide public corrective/supplementary information to the annual report in this respect.

Subsequently, in connection with the release of its interim report for the first half of 2015, Danica Pension provided public corrective/supplementary information to the annual report for 2014 on 22 July 2015.

According to the corrective/supplementary information, changes were made for the accounting items where practically feasible back to 2010. The outcome is an increase in the life insurance provisions at 31 December 2014 of DKK 1,037 million; the recognition of the return guarantee as an individual asset at an estimated fair value of DKK 200 million; a net reduction in shareholders' equity of DKK 736 million because of the recognition of tax receivables of DKK 228 million and tax liabilities relating to tax on pension returns (PAL tax) of DKK 127 million triggered by the increase in life insurance provisions; and an increase in net profit for 2014 of DKK 103 million.

On 14 August 2015, the FSA forwarded its draft decision to Danica Pension for consultation. Danica Pension replied on 17 August 2015.

Danica Pension's response consisted of a number of proposed adjustments to the wording of the draft forwarded.

The FSA has accepted the proposed adjustments insofar as they help clarify the process and description of the events and do not conflict with the FSA's usual practices for making decisions.

## **1.2 The FSA's assessment**

The FSA finds that the offsetting of the financial guarantee made by Danica Pension in its annual report for 2014 against the life insurance provisions conflicts with the prohibition against offsetting in section 188(1)(viii) of the Danish Financial Business Act and with section 65 of the Danish Executive Order on Financial Reports.

In its assessment, the FSA emphasises the fact that the purpose of the pension agreement under the red scheme is to avoid a reduction in pensions even though the return of 3.5% is not achieved, in which case Danske Bank will step in. To comply with section 65 of the Danish Executive Order on Financial Reports and section 188(1)(viii) of the Danish Financial Business Act, Danica Pension's life insurance provisions must thus equal the full liabilities under the red scheme. Therefore, it is the FSA's assessment that Danica Pension should have increased the life insurance provisions by DKK 1,037 million at the end of 2014.

As Danske Bank A/S recognised provisions in its annual report for 2014 in the amount of DKK 200 million for the financial guarantee, the FSA finds that this amount, in all probability, must be the fair value of the guarantee at the end of 2014. Consequently, in its annual report for 2014, Danica Pension would have been able to recognise the fair value of the guarantee of DKK 200 million as an asset (see section 189 of the Danish Financial Business Act).

Taking into account the error in method made in Danica Pension's annual report for 2014 in relation to the calculation of life insurance provisions under the red scheme and the changes specified in the corrective/supplementary information, including the net reduction in shareholders' equity of DKK 736 million, or 3.5% of shareholders' equity at the end of 2014, the FSA finds that the deviation in the annual report is material.

A copy of this decision has been sent to Danica Pension's external auditors and group chief auditor.

Trine Camilla Høybye  
Head of Section

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Henrik Hector  
Office Clerk

[extract from unofficial English translation except for sections 344(1), 354a(1) and 372(1) of the Danish Financial Business Act and sections 7 and 15(4) of the Danish Executive Order on the Company Appeals Board of the Danish Ministry of Business, which were translated by Danske Bank]

## **Appendix 1 – Legal basis**

Section 1(1) of the Danish Supervision of Company Pension Funds Act states as follows:

“Any promise of pension (pension commitment) in connection with employment shall be covered in either an insurance company or a pension fund which may carry out insurance business under the Financial Business Act or in a pension fund licensed under this Act.”

Section 65 of the Danish Executive Order on Financial Reports for Insurance Companies and Multi-Employer Occupational Pension Funds states as follows:

“Provisions for insurance liabilities shall be calculated taking into account what can reasonably be foreseen as adequate to cover the total insurance liabilities of the undertaking, but they shall be no larger than necessary.”

Section 188(1)(8) of the Danish Financial Business Act states as follows:

“The annual report shall be prepared in accordance with the basic assumptions set out below:

...

8) Each transaction, event and change in value must be recognised and measured individually, and individual matters must not be offset against each other (gross presentation).”

Section 189 of the Danish Financial Business Act states as follows:

“The assets and liabilities of financial undertakings shall, unless otherwise provided for pursuant to section 196, be measured at fair value. Assets and liabilities shall be depreciated and revalued in accordance herewith and depreciation and revaluation amounts shall be included in the income statement unless otherwise specified pursuant to section 196.”

Section 197 of the Danish Financial Business Act states as follows:

“In order to ensure that the annual reports of financial undertakings, financial holding companies and insurance holding companies are in accordance with the regulations of this Part of this Act and the regulations issued in pursuance of section 196, and that the consolidated financial statements of financial undertakings covered by Article 4 of the Council Regulation on the application of international accounting standards are in accordance with the international accounting standards, the Danish FSA may

- 1) provide guidance,
- 2) take action against violations, and
- 3) order that errors be corrected and that violations be remedied.”

Section 344(1) of the Danish Financial Business Act states as follows:

“The Danish FSA shall supervise compliance with Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, regulations and rules issued in pursuance of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, regulations issued in pursuance of Directive 2013/36/EU of the European

Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, and this Act and the rules issued in pursuance of the Act, except for section 75b and section 77(1) and (2). However, the Danish Business Authority shall supervise compliance with section 15(1), (2) and (4), and sections 83, 87, 91 and 112. The Danish FSA shall enforce that the rules regarding financial information in annual reports and interim reports laid down in sections 183-193 and in rules laid down in pursuance of section 196 are observed by financial undertakings that have issued securities admitted to trading on a regulated market, cf. section 83(2) and (3) and section 83b of the Danish Securities Trading etc. Act. The Danish FSA shall also ensure compliance with the rules issued pursuant to section 31(8) of the Danish Authorised Auditors and Audit Firms Act.”

Section 354a(1) of the Danish Financial Business Act states as follows:

“Supervisory reactions pursuant to section 345(7)(4) or from the Danish FSA after delegation from the Danish FSA's Governing Board to a supervised undertaking shall be made public with indication of the name of the undertaking, cf., however, subsection (4). The undertaking shall make public the information on its website in a place where it naturally belongs as soon as possible and no later than three weekdays after the undertaking has received notification of the supervisory reaction or no later than at the time of publication required in pursuance of the Danish Securities Trading etc. Act. At the time of publication, the undertaking shall also insert a link which provides direct access to the supervisory reaction on the front page of the undertaking's website in a visible manner, and the link and any text attached to the link shall clearly indicate that the subject is a supervisory reaction from the Danish FSA. If the undertaking comments on the supervisory reaction, such commenting shall be in continuation of the supervisory reaction, and the comments shall be clearly separated from it. Removal of the link from the front page and the information from the undertaking's website shall follow the principles applied by the undertaking to other messages. However, the link and the information shall not be removed until they have been posted on the website for three months and not until after the next annual general meeting or meeting of the board of representatives. The duty of the undertaking to make public the information on its website shall only apply to legal persons. The Danish FSA shall make public the information on its website. Supervisory reactions pursuant to section 345(7)(6) and the decisions of the Danish FSA to turn over matters to police investigation shall be made public on the Danish FSA's website with indication of the name of the undertaking, cf., however, subsection (4). In the event that the supervisory reaction made public pursuant to the first sentence is brought before the Danish Company Appeals Board or the courts, this shall appear from the Danish FSA's publication, and the status and ensuing outcome of the decision of the Danish Company Appeals Board or the courts shall also be made public on the Danish FSA's website as soon as possible.”

Section 372(1) of the Danish Financial Business Act states as follows:

“Decisions made by the Danish FSA or the Danish Business Authority under this Act and rules issued in pursuance of this Act and Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms or rules issued in pursuance of section 31(8) of the Danish Authorised Auditors and Audit Firms Act, regulations issued in pursuance of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, and regulations and rules issued in pursuance of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms may be brought before the Danish Company Appeals Board by the party against

which said decision is directed no later than four weeks after the party concerned has been notified of the decision.”

Section 7 of the Danish Executive Order on the Company Appeals Board of the Danish Ministry of Business states as follows:

“Complaints shall be filed in writing to the Danish Company Appeals Board of the Danish Ministry of Business, Secretariat, Kampmannsgade 1, DK-1780 København V.

(2) The complaint shall be subject to a fee of DKK 4,000. However, if the complaint does not concern the complainant’s current or future business, the fee is DKK 2,000. In the event that the fee does not accompany the complaint and it is not paid within a deadline set by the chairman, the complaint shall be rejected.

(3) No fee shall be charged for complaints over a rejection of a request for access to documents.”

Section 15(4) of the Danish Executive Order on the Company Appeals Board of the Danish Ministry of Business states as follows:

“In the event that the complaint filed by the complainant is upheld in full or in part or the defendant authority changes its decision in accordance with the complainant's claim, the Board or its chairman on its behalf may decide to refund the fee paid in full or in part.”