

*Proposed Danish Legislation Creates Possibility
of Non-Preferred Senior Debt Issuance*

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Proposed Danish Creditor Hierarchy Legislation Creates Possibility for Non-Preferred Senior Issuance

New Danish Creditor Hierarchy

- According to a bill proposed on 14 March 2018*, a new layer of creditors will be created in the Danish insolvency regime for banks via an amendment to the Danish Act implementing Article 108 of the European Bank Recovery & Resolution Directive (BRRD)
- The bill aims to implement the EU Directive 2017/2399 on the ranking of unsecured instruments in insolvency hierarchy into Danish law
- The bill will amend § 13 in the law of reconstruction and resolution of certain financial companies (“Lov om restrukturering og afvikling af visse finansielle virksomheder”)
- The bill effectively creates a new class of unsubordinated debt, “Non-Preferred Senior”, which is positioned between ordinary senior claims (§ 97 in the Danish Bankruptcy Act, “Konkursloven”) and subordinated debt (§ 98 in the Danish Bankruptcy Act)
- Existing senior debt will remain ordinary senior claims (“simple krav”) which will rank ahead of Non-Preferred Senior debt

Timeline and documentation requirements

- The bill was presented to the Danish Parliament on 14 March 2018
- First reading in Danish Parliament scheduled for 20 March 2018
- Law expected to be passed in Q2 2018, with effect from 1 July 2018
- As required in Directive 2017/2399, the bill states that non-preferred senior instruments must have:
 - an original maturity in excess of one year,
 - no derivative features, and
 - a clear reference to the instrument’s ranking in the creditor hierarchy
- Importantly, the law will be effective retroactively from 1 January 2018 thereby allowing Danish banks to issue Non-Preferred Senior debt once their documentation has been amended, even if the issuance occurs prior to July 2018

* The legislative process required before the final passage of the bill into law will last at least 30 days from publication of the bill proposal. Changes to the bill are possible during this process; thus there can be no assurances that the passed law will be as presented to the Danish Parliament on 14 March 2018.

Danske Bank's Documentation Considerations

Documentation of Non-Preferred Senior Debt

- In light of the proposed legislation, Danske Bank plans to include Non-Preferred Senior (NPS) debt into some of its various outstanding debt issuance programmes so as to facilitate issuance prior to the final implementation of the new law
- By including NPS terms into the relevant base prospectuses, we maintain valuable flexibility around prospective issuance
- Our approach is consistent with other European banks who have chosen to include NPS into programme documentation
- Should Danske Bank elect to issue NPS prior to the final implementation of the law, we anticipate a mechanism whereby the status will automatically adapt when the law enters into force:

Issuance of Non-Preferred Senior debt
(initially *pari passu* with 'preferred senior' debt)

Danish legislation enters into force

Automatic change in status to new non-preferred ranking

- Our EMTN programme is currently being updated

Recap of MREL Eligibility Criteria

Certain key elements of MREL, based on Article 72(b)(2)* of revised Capital Requirements Regulation (CRR)

- 'Non-preferred' status: unsubordinated instruments, ranking:
 - senior to capital instruments, including Tier 2 debt securities
 - junior to 'preferred senior' claims (including derivatives, etc.)
- Unsecured obligations, without any guarantees or other forms of credit enhancement
- Restricted acceleration rights in respect of future interest or principal (i.e. only upon insolvency or liquidation of the issuer)
- Not subject to 'set-off' rights

* Article 72(b) is still subject to negotiations in the EU (part of the CRDV and CRR2 package).