

Danske Bank A/S  
For the attention of the Board of Directors and the Executive Board  
cc Group Internal Audit and external auditors

21 May 2019  
Ref. SBP  
File no. 6252-0158

## **Orders for violation of section 48a(1), cf. section 53b(1) and (5), of the Danish Financial Business Act**

### **Decision**

The Danish Financial Supervisory Authority (the FSA) orders Danske Bank A/S (Danske Bank or the bank) to bring its terms for notification of changes to interest margins and fees for the bank's home loans similar to mortgage loans in accordance with section 48a(1), cf. section 53b(1) and (5), of the Danish Financial Business Act.

The FSA also orders Danske Bank to amend its business procedures and any other material for the purpose of reflecting the amended terms.

The deadline for compliance with the orders is 21 August 2019. Documentation of compliance must be submitted to the FSA.

### **Background**

The FSA has reviewed selected banks' home loans similar to mortgage loans. Danske Bank has stated that it offers two home loans similar to mortgage loans, viz. Danske Bolig Fri and Danske Prioritet Plus.

#### **1. Changes to interest margins**

The interest rate on Danske Bolig Fri is made up of a reference rate, CIBOR-3M, an individual interest margin and an interest margin in the event that an agreement on add-on services has been concluded.

The interest rate on Danske Prioritet Plus is made up of a reference rate, the Danish central bank's certificate of deposit rate and an interest margin.

As regards both loan types, Danske Bank has stated that

*"pursuant to clause 6.II.A of its General Conditions – Consumers, the bank may change the interest margin without notice (zero months) if a change is made due to external factors beyond the bank's control."*

Clause 6.II.A of Danske Bank's General Conditions – Consumers specifies the following:

- "We may lower variable deposit rates and raise variable lending rates without notice if*
- 1. changes in national or international monetary or credit policies cause the general level of interest rates to change in a way that affects Danske Bank*
  - 2. other changes in the general level of interest rates, including developments in the money and bond markets, affect Danske Bank."*

The loan offer for Danske Bolig Fri specifies the following:

*"The bank may raise or reduce the individual interest margin in accordance with the right the bank has at all times to change the interest rate (see the terms of the mortgage deed and the bank's General Conditions – Consumers)."*

The mortgage deed for Danske Bolig Fri specifies the following:

*“Terms for making changes to interest rates. The individual interest margin and any extra interest margin applicable under any agreement on add-on services may be revised up or down at the term of notice required by law and in accordance with the creditor’s right to change interest rates from time to time (see the terms of contractual agreements between the creditor and the debtor(s) and the creditor’s General Conditions – Consumers in force from time to time). The term of notice for making changes to this loan is currently six months, as set out in clause 6.II.B of General Conditions – Consumers.*

*The creditor may further change the individual interest margin with effect only for the debtor(s) on the basis of the creditor’s assessment of the individual circumstances of the debtor(s). Individual changes to the individual interest margin must be reasonably justified in relation to the debtor’s/debtors’ creditworthiness, the property and/or the debtor’s/debtors’ business volume with the creditor (including the creditor’s group companies) including, but not limited to: - the debtor’s/debtors’ payment history, - the loan-to-value ratio of the property, - the use, nature, condition, location and marketability of the property, - the extent of the debtor’s/debtors’ business relationship with the creditor (including the creditor’s group companies) and - the profitability of the customer relationship in general. Changes are implemented at the term of notice required by law.”*

Danske Bank has stated that *“the term of notice required by law”* is *“a reference to sections 48a(1) and 53b(1) and (5) of the Danish Financial Business Act. The term of notice for changes to the individual interest margin for Danske Bolig Fri is currently six months.”*

Among other things, the business procedures for Danske Bolig Fri specify the following about interest rate adjustment:

*“The bank may adjust the interest rate in accordance with the rules of its General Conditions – Consumers. Furthermore, the bank may change the interest rate on the following conditions:*

*a) The individual interest margin may be changed by the bank with effect only for the debtor on the basis of the bank’s assessment of the individual circumstances of the debtor. These changes must be justified in relation to the creditworthiness of the debtor, the property and/or the business volume of the debtor with the bank, including group companies, on the basis of, for instance, the following:*

- The payment history of the debtor*
- The loan-to-value ratio of the property*
- The property’s use, nature, condition, location and marketability*
- The profitability of the customer relationship in general*

*The interest rate change referred to under item a) is implemented at the term of notice required by law.”*

Danske Bank has stated that

*“no notices have been given in respect of changes to the interest margin on Danske Bolig Fri after the new rules have come into force.”*

The loan offer for Danske Prioritet Plus specifies the following:

*“The creditor may raise or reduce the interest margin in accordance with the right the creditor has at all times to change the interest rate (see the creditor’s General Conditions – Consumers). The interest margin may not, however, be changed on the basis of the individual circumstances of the debtor.”*

The mortgage deed for Danske Prioritet Plus specifies the following:

*“The creditor may raise or reduce the interest margin in accordance with the right the creditor has at all times to change the interest rate (see the creditor’s General Conditions – Consumers). The interest margin may not, however, be changed on the basis of the individual circumstances of the debtor.”*

Clause 6.II.B of Danske Bank’s General Conditions – Consumers specifies the following:

*“We may lower variable deposit rates and raise variable lending rates at one month’s notice if the changes are due to market, earnings or competitive factors, including risk, regulatory and expense factors, in Denmark or abroad. This could be*

- *increased funding costs*
- *increased solvency, capital or liquidity requirements*
- *a generally higher expense level, including a rise in the contribution to general guarantee schemes*
- *an imbalance between various market interest rates*
- *increased credit risk*
- *increased operational risk for Danske Bank*
- *changes in the law, legal practice or measures taken by public authorities*
- *a more appropriate use of Danske Bank’s resources*
- *changes in taxes and duties that affect Danske Bank*
- *changes in Danske Bank’s pricing and fee structure because of business needs unrelated to the trend in general interest rates”*

Danske Bank has subsequently stated the following:

*“The bank is aware of the statutory six-month notice (see section 53b(1), cf. section 48a, of the Danish Financial Business Act) even though such notice is not reflected in the loan offer or in its General Conditions – Consumers. Accordingly, any changes that the bank may make to interest margins would be implemented only in accordance with the notice required under section 53b(1) and (5) of the Danish Financial Business Act. Accordingly, the bank may not change the interest margin at only one month’s notice on grounds of the reasons set out in clause 6.II.B of its General Conditions – Consumers.*

*The bank has taken steps to update the loan offer and its General Conditions – Consumers so as to specify clearly in the document that changes to interest rates will be implemented only in accordance with the notice required by law.”*

Under “Interest rate spread”, the business procedures for Danske Prioritet Plus specify the following:

*“The margin is variable, but may not during the term of the loan be changed on account of individual circumstances of the debtor. The bank may change the interest margin as stated in clause 6 (Interest) of its General Conditions – Consumers.”*

Danske Bank has stated that

*“no changes have been made to the interest margin on Danske Prioritet Plus after the new rules have come into force.”*

and

*“Danske Bank can inform the FSA that no notice has been given of changes to other fees for Danske Prioritet Plus after the rules entered into force on 1 July 2017. The same is the case for Danske Bolig Fri, in respect of which a fee is currently charged only when the loan is established and in the event than an agreement on amendment to the loan terms has been concluded, for instance in the event of an agreement on registration or deregistration of an interest-only period.”*

## 2. Changes to fees

Clause 8.III of General Conditions – Consumers specifies the following:

*“For existing ongoing agreements, we may raise the fees you pay on an ongoing basis at three months’ notice if the changes are due to market, earnings or competitive factors, including risk, regulatory and expense factors, in Denmark or abroad. This could be*

- *increased funding costs*
- *increased solvency, capital or liquidity requirements*
- *a generally higher expense level, including a rise in the contribution to general guarantee schemes*
- *an imbalance between market rates*
- *increased credit risk*
- *increased operational risk for Danske Bank*
- *changes in the law, legal practice or measures taken by public authorities*
- *a more appropriate use of Danske Bank’s resources*
- *changes in taxes and duties that affect Danske Bank*
- *changes in Danske Bank’s pricing and fee structure because of business needs unrelated to the trend in general interest rates*
- *the basis on which your individual fee terms were previously determined changes materially; such material changes include changes in your own situation, for example changes in the amounts of your deposits, loans or credit facilities*

*If we introduce new fees for existing ongoing contractual services for the reasons listed above, we do so at six months’ notice. This concerns fees for services for which we did not previously charge a fee.”*

As regards Danske Bolig Fri, Danske Bank has stated the following:

*“The “Costs” section of the loan offer sets out the costs, including fees, payable in relation to Danske Bolig Fri. The fees listed cover setting up the loan, and no other fees are presently associated with Danske Bolig Fri forming part of ongoing contractual services.”*

In this respect, the FSA notes that the business procedures for Danske Bolig Fri – interest rates and fees under “Fees” refer to “Redemption” and “Registration and deregistration of interest-only period”. The amounts of fees are, however, crossed out in the material submitted to the FSA.

As regards Danske Prioritet Plus, Danske Bank has stated the following:

*“The “Costs” section of the loan offer sets out the costs, including fees, payable in relation to Danske Prioritet Plus.*

*Among the fees subject to section 53b, cf. section 48b, of the Danish Financial Business Act, the bank applies a prepayment fee. As described above, the bank is aware that a six-month notice has been introduced even though such notice is not reflected in the loan offer or in the bank’s General Conditions – Consumers. Notice of changes to fees will always be given at the minimum notice set out under the Danish Financial Business Act since the provisions of this Act take precedence over the bank’s General Conditions – Consumers. As a result, the bank may not change existing fees for Danske Prioritet Plus under ongoing contractual services at three months’ notice.*

*As mentioned above, the bank is currently in the process of updating and specifying the terms of the loan offer and its General Conditions – Consumers so as to ensure that both reflect the extended notice requirements. It should be noted in that connection that the bank has not implemented changes to its prepayment fee after the changed notice requirements took effect on 1 July 2017.”*

In this respect, the FSA notes that the business procedures for Danske Prioritet Plus – interest rates and fees under “Fees” refer to “Fee for redemption”, “Fee for extension of interest-only period”, “Processing fee: Extension of the interest-only period for existing Danske Prioritet Plus” and “Processing fee”: Start

repayment of existing Danske Prioritet or Danske Prioritet Plus”. The amounts of fees are, however, crossed out in the material submitted to the FSA.

### 3. Choice of new reference rate

The mortgage deed for Danske Bolig Fri specifies the following:

*“If Nasdaq Copenhagen A/S stops fixing the CIBOR-3M, the creditor is entitled to choose another similar official reference rate or calculate the variable reference rate on the basis of a 3-month money market rate.”*

The mortgage deed for Danske Prioritet Plus specifies the following:

*“If the Danish central bank stops fixing a certificate of deposit rate, the creditor is entitled to choose another similar officially fixed reference rate.”*

On 28 November 2018, the FSA asked Danske Bank to explain what is meant by ‘another similar official reference rate’ and ‘another similar officially fixed reference rate’, respectively, and the criteria on the basis of which the bank will choose another similar official reference rate.

Danske Bank has stated the following about Danske Bolig Fri:

*“By ‘another similar official reference rate’ is meant that the bank – in the very special case that a CIBOR rate is no longer being fixed – will try to find an alternative official reference rate which is also fixed in the money market and reflects an average of Danish banks’ willingness to lend money for a period of three months. [...]. The bank intends to use a reference rate which is sufficiently similar to the CIBOR-3M so that the risk to customers of the chosen reference rate is, as far as possible, at the same level as before.”*

Danske Bank has stated the following about Danske Prioritet Plus:

*“By ‘another similar officially fixed reference rate’ is meant that the bank – in the special case that the Danish central bank stops fixing an official certificate of deposit rate – will, as far as possible, try to find a similar reference rate which is fixed by the Danish central bank or another similar player and which has the same characteristics as the certificate of deposit rate. [...]. The bank intends to use a reference rate which is sufficiently similar to the Danish central bank’s certificate of deposit rate so that the risk to customers of the chosen reference rate is, as far as possible, at the same level as before.”*

### Rules

Section 53b(1) of the Danish Financial Business Act stipulates the following: *“A mortgage-credit institution may not, in an existing customer relationship, change interest rates, fees or other charges for mortgage-credit loans to the disadvantage of the consumer without having given an advance notice of six months.”*

Section 53b(5) stipulates the following: *“Subsections (1), (3) and (4) shall not apply to changes motivated by external factors beyond the control of the mortgage-credit institution.”*

Section 48a(1) stipulates the following: *“Sections 53b and 53c shall apply also to banks when they grant loans similar to mortgage-credit loans.”*

The explanatory notes to the bill to amend the Danish Financial Business Act, the Danish Act on Mortgage-Credit Companies and the Danish Act on Mortgage-Credit Loans and Mortgage- Credit Bonds, etc.<sup>1</sup> stipulate the following:

---

<sup>1</sup> <https://www.retsinformation.dk/Forms/R0710.aspx?id=188629>

*“A change is motivated only by external factors if the mortgage-credit institution has no control over these factors and if the external factors mean that the mortgage-credit institution must change the interest rate, fee, etc. at the ratio of one to one.*

*Subsection 5 means that the undertaking is not governed by the rules on notification when, for example, an interest rate change is implemented because of a changed reference rate or refinancing of the bonds underlying an interest-reset loan. Such interest rate changes must instead be notified in accordance with the rules of section 9 of the Danish Consumer Credit Act.*

*The same applies to any change where it is possible, on the basis of the external factors, to calculate price increases accurately and where the institution cannot choose whether to change the interest rate or not. This is the case, for example, with increases in public indirect taxes such as registration fees.*

*However, it will not be a question of external factors if a mortgage-credit institution has to raise the administration margin as a result of increased capital requirements. Even though the mortgage-credit institution has no influence on the extent of the capital requirements, an assessment of the mortgage-credit institution’s current capital position will determine whether increased capital requirements result in a need to raise the administration margin.*

*Institutions may choose to describe external factors that motivate, for instance, interest rate changes in the terms of agreement in connection with the description of the terms allowing changes to interest rates due to factors under the control of the undertaking. The reason for changing the interest rate determines whether notice is to be given of a change.”*

#### **The FSA’s assessment**

The FSA finds that the cases stated by Danske Bank in clause 6.II.A of the bank’s General Conditions – Consumers applicable to both Danske Bolig Fri and Danske Prioritet Plus (“*1. changes in national or international monetary or credit policies cause the general level of interest rates to change in a way that affects Danske Bank 2. other changes in the general level of interest rates, including developments in the money and bond markets, affect Danske Bank.*”) are not in compliance with section 48a(1), cf. section 53b(1) and (5), of the Danish Financial Business Act.

The cases stated by Danske Bank thus do not mean that the bank must change the interest margin at the ratio of one to one, and so the cases do not reflect external factors that are beyond the bank’s control and which mean that the bank must change the interest rate at the ratio of one to one.

Therefore, Danske Bank is not entitled to change the interest rate margin without notice with reference to the cases stated in the conditions.

The FSA notes that the bank, according to information at hand, has not changed the interest margins and fees for Danske Prioritet Plus and Danske Bolig Fri since sections 48a and 53 took effect on 1 July 2017.

Furthermore, the FSA finds that Danske Bank fails to comply with section 48a(1), cf. section 53b(1), of the Danish Financial Business Act when Danske Bank, in the loan agreement and the mortgage deed for Danske Prioritet Plus, states that the bank may change the interest margin by referring to clause 6.II.B of its General Conditions – Consumers, which allows the bank to change the interest margin at one month’s notice.

The FSA finds that Danske Bank fails to comply with section 48a(1), cf. section 53b(1), of the Danish Financial Business Act when Danske Bank (see clause 8.III of its General Conditions – Consumers) states that it may change fees for the bank’s home loans similar to mortgage loans at three months’ notice.

The FSA orders Danske Bank to amend its terms for notification of changes to interest margins and fees for the bank's home loans similar to mortgage loans so they are in accordance with section 48a(1), cf. section 53b(1) and (5), of the Danish Financial Business Act.

The FSA also orders Danske Bank to amend its business procedures and any other material for the purpose of reflecting the amended terms.

The deadline for compliance with the orders is 21 August 2019. Documentation of compliance must be submitted to the FSA by email to sbp@ftnet.dk or finanstillsynet@ftnet.dk (secure email).

Furthermore, the FSA directs Danske Bank's attention to section 48a(2), see section 53d, of the Danish Financial Business Act. Section 53d states the following:

*“If a mortgage-credit institution has given a consumer notice of an increase in an administration margin, cf. section 53b(1), and the consumer has terminated the mortgage-credit loan in question within six months from the date when the notice was received, the mortgage-credit institution shall not charge any fees in connection with the redemption of the mortgage-credit loan in question. The mortgage-credit institution may, however, charge half the fees charged in connection with a bond transaction for the purpose of redeeming the mortgage-credit loan. The mortgage-credit institution shall complete the bond transaction at the request of the consumer.*

*(2) If a mortgage-credit institution grants a loan to a consumer for the purpose of redeeming a mortgage-credit loan or a loan similar to a mortgage-credit loan in cases where the consumer has terminated the loan in question following the receipt of a notice of an increase in the administration margin or interest margin within a period of six months from the date when such notice was received, the receiving mortgage-credit institution may charge only half the fees charged in connection with a bond transaction for the purpose of redeeming the terminated mortgage-credit loan or the loan similar to mortgage-credit loans.”*

As regards the choice of another reference rate in the event that the CIBOR-3M and/or the Danish central bank's certificate of deposit rate is no longer being fixed, the FSA points out that it takes into account that Danske Bank will choose a reference rate which, as far as possible, enables the borrower to continue the loan on unchanged terms.

### **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@naevneneshus.dk or by letter to the Danish Company Appeals Board, Secretariat, Toldboden 2, DK-8800 Viborg, no later than four weeks after the receipt of such decisions.

In accordance with section 7(2) of the Danish Executive Order on the Company Appeals Board, complaints made to the 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. In accordance with 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 Board decides not to consider the complaint.

### **Publication**

It follows from section 354a(1), first sentence, of the Danish Financial Business Act that decisions made by the FSA's Governing Board must be made public with specification of the name of the undertaking (see section 354a(4) of the Danish Financial Business Act, however).

The FSA does not find that any of the conditions referred to in subsection 4 on publication with specification of the name applies to this case. The decision will therefore be made public in its entirety on the FSA's website.

Furthermore, the FSA orders Danske Bank to make the information public on its website no later than three business days after the undertaking has received notification of the reaction (see section 354a(1), second sentence, of the Danish Financial Business Act). Danske Bank must also meet the requirements of publication as set out in section 354a(1), third to fifth sentences, of the Danish Financial Business Act.

The decision about publication is final and may not be brought before any administrative authority.

Yours faithfully

Susanne Bo Poulsen  
Specialist Consultant