

Danske Bank A/S
For the attention of the Executive Board
Holmens Kanal 2-12
DK-1092 København K

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Reprimand for violation of the rules on insider lists

The Danish Financial Supervisory Authority (the FSA) reprimands Danske Bank A/S for having violated the rules on insider lists set out in article 18(1) and (3) of the Market Abuse Regulation.

The FSA issues a reprimand to the effect

- that Danske Bank failed to draw up and update a separate insider list regarding the inside information about the resignation of former member of the Executive Board Lars Mørch as required pursuant to article 18(1)(a) of the Market Abuse Regulation
- that Danske Bank's insider list regarding the inside information about the resignation of former chief executive officer Thomas F. Borgen did not contain the information required pursuant to article 18(3) of the Market Abuse Regulation.

1. Summary

On 5 April 2018, Danske Bank published a company announcement with the title "*Lars Mørch resigns from Danske Bank*". According to the company announcement, Lars Mørch, who was a member of the Executive Board and responsible for Business Banking at the time, resigned from his position with Danske Bank. The company announcement was published and registered in the FSA's OASM database as inside information.

On 19 September 2018, Danske Bank published a company announcement with the title "*Danske Bank's CEO resigns*". According to the company announcement, Danske Bank's chief executive officer at the time, Thomas F. Borgen, had informed the Board of Directors of Danske Bank that he wanted to resign from his position. The company announcement was published and registered in the FSA's OASM database as inside information.

On several occasions, the FSA asked Danske Bank to give an account of the course of events surrounding the resignations of Lars Mørch and Thomas F. Borgen, including requesting that the bank submit relevant insider lists.

In reply to the FSA's requests, Danske Bank submitted accounts dated 24 September, 31 October and 10 December 2018.

Among other things, Danske Bank's insider list regarding the inside information about the resignation of Thomas F. Borgen was attached to its account dated 24 September 2018. The insider list provided various information about the insiders included on the list. The following fields were included on the list: full name, abbreviation of name, birth surname, professional telephone number, personal telephone number, date of acquisition of inside information, national identification number, date of birth, personal home address. The national identification number was stated for seven out of 29 insiders on the list. The date of birth and personal home address were stated for eight insiders. The insider list did not state when it was drawn up or updated.

According to Danske Bank's accounts dated 24 September and 10 December 2018, the bank assessed that Thomas F. Borgen's resignation constituted inside information.

According to Danske Bank's account dated 31 October 2018, the bank assessed that Lars Mørch's resignation constituted inside information. The account also stated that Danske Bank failed to draw up a separate insider list in connection with Lars Mørch's resignation. Danske Bank explained that all employees with knowledge of Lars Mørch's resignation, with the exception of one employee with responsibility for publication of company announcements, were included on an event-based insider list relating to inside information about another matter prior to publication.

1.1. Consultation

On 5 March 2019, the FSA submitted the factual circumstances addressed in this decision to Danske Bank for commenting.

Danske Bank submitted its response on 3 April 2019.

In the response, Danske Bank confirmed that it assessed that the resignations of Lars Mørch and Thomas F. Borgen constituted inside information.

In the response, Danske Bank recognised that it should have drawn up a separate insider list regarding the inside information about Lars Mørch's resignation.

Danske Bank also recognised in the response that the event-based insider list regarding the inside information about Thomas F. Borgen's resignation lacked relevant information.

2. Legal basis

The rules on the drawing up and updating of insider lists follow from article 18 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the Market Abuse Regulation).

Issuers or any person acting on their behalf and on their account must draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information. These include not only employees, but also lawyers, accountants or other advisers. This follows from article 18(1) of the Market Abuse Regulation.

The insider list must include at least

- the identity of any person having access to inside information
- the reason for including that person on the insider list
- the date and time at which that person obtained access to inside information and
- the date on which the insider list was drawn up

This follows from article 18(3) of the Market Abuse Regulation. The requirements for what an insider list must include are elaborated in Commission Implementing Regulation (EU) 2016/347 of 10 March 2016. The annexes to this implementing regulation present a specific format of the insider list. Separate sections for each type of inside information (event-based sections) are required, and the issuer may create a section with information about the persons with permanent access to all inside information (permanent insiders section). This follows from article 2(2) of the implementing regulation.

Inside information is defined in article 7(1)(a) of the Market Abuse Regulation on the basis of four criteria. Inside information is

1. information of a precise nature
2. which has not been made public
3. relating, directly or indirectly, to one or more issuers or to one or more financial instruments and
4. which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the prices of related derivative financial instruments

3. The FSA's assessment

The FSA's assessment comprises two issues: Failure to draw up an event-based insider list and an incomplete insider list.

3.1. Failure to draw up an event-based insider list

The FSA assesses that Danske Bank failed to meet the requirement to draw up an event-based insider list as stipulated in article 18(1)(a) of the Market Abuse Regulation regarding the inside information about Lars Mørch's resignation.

An issuer must draw up and update an insider list every time inside information arises. In this connection, it does not matter whether the issuer informs the public as soon as possible of the inside information or delay disclosure. Furthermore, the issuer must keep an insider list in the cases where the inside information ceases to be valid before it is made public. The issuer may be exempt from keeping an event-based insider list only if the natural persons who have access to the inside information are already included on the issuer's list of permanent insiders. This being the case, the issuer remains required to draw up an event-based insider list even though the persons with access to the inside information are already included on an event-based insider list regarding other inside information.

Danske Bank stated that it assessed that the information about the resignation of former member of the Executive Board Lars Mørch constituted inside information. The FSA agrees with this assessment. The FSA therefore bases its decision on the premise that Danske Bank was required to draw up and update an insider list regarding the inside information.

Danske Bank recognised that it was required to draw up an insider list.

3.2. Incomplete insider list

The FSA assesses that Danske Bank failed to meet the requirement to draw up and update an insider list with the information set out in article 18(3) of the Market Abuse Regulation.

As a minimum, the insider list must state the following:

- a) the identity of any person having access to inside information
- b) the reason for including that person on the insider list
- c) the date and time at which that person obtained access to inside information
- d) the date on which the insider list was drawn up.

This follows from article 18(3) of the Market Abuse Regulation.

The FSA finds that Danske Bank's insider list regarding the inside information about Thomas F. Borgen's resignation does not contain sufficient information about the identity of the persons included on the list. For 22 of 29 persons, no national identification number, such as a civil registration number, is stated. For 21 of 29 persons, no date of birth is stated. For those 21 persons, no personal home address is stated either.

Danske Bank's insider list does not state the reason for the inclusion of the persons in question on the list.

The insider list states the date but not the time when the persons were included on the list.

Finally, the insider list does not state when it was created or updated.

Danske Bank recognised that the insider list did not include all the relevant information.

4. Publication

The FSA is required to publish reprimands on its website with indication of the name of the undertaking. This follows from section 234(1)(ii) of the Danish Capital Markets Act. This does not apply, however, if publication is restricted by section 239 and thus has to be anonymous.

The FSA is of the opinion that publication is not restricted by section 239. The publication of the reaction will therefore include the name of the undertaking.

5. Complaints procedure

This decision 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, Toldboden 2, DK-8800 Viborg, tel. + 45 72 40 56 00, no later than four weeks after the receipt of the decision. The right to complain follows from section 232(1) of the Danish Capital Markets Act.

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 matters, the fee is DKK 2,000. The fee follows from section 7 of the Danish Executive Order on the Company Appeals Board of the Danish Ministry of Business.

The Board or its chairman on its behalf may decide to refund part of or the whole fee paid if the complainant's claim is upheld in whole or in part. The fee is refunded if the Board decides not to consider the complaint. This follows from section 15(4) of the order referred to.

Yours faithfully

Anne Bruun
Director

Anne Marie Vestergaard
Administrative Officer