

Sydbank A/S
Attn: Board of Directors and Group Executive Management
cc: Internal and external auditors

21 May 2019

Ref. SBP

File No. 6252-0158

Order in connection with breach of section 48a(1), cf section 53b(1) and (5), of the Danish Financial Business Act

**THE DANISH
FINANCIAL
SUPERVISORY
AUTHORITY**

Århusgade 110
2100 Copenhagen Ø
Denmark

Decision

The Danish FSA orders Sydbank A/S (hereinafter Sydbank or the bank) to bring the bank's terms and conditions of interest rate changes as regards mortgage-like loans of item 4.1. of the bank's "Terms and Conditions – Retail Clients" into agreement with section 48a(1), cf section 53b(1) and (5), of the Danish Financial Business Act.

Tel +45 33 55 82 82
Fax +45 33 55 82 00
CVR No 10 59 81 84
finansstilsynet@ftnet.dk
www.finanstilsynet.dk

The order must be complied with by 21 August 2019. Documentation of compliance must be forwarded to the Danish FSA.

**THE DANISH MINISTRY OF
INDUSTRY, BUSINESS AND
FINANCIAL AFFAIRS**

The Danish FSA orders Sydbank to bring the fact sheets of "Sydbank Prioritet" and "Sydbank Prioritet Plus" into agreement with section 48a(1), cf section 53b(1) and (5), of the Danish Financial Business Act.

Sydbank has explained that the notice was not correct and that Sydbank has changed the fact sheets to the effect that they now state that the notice is six months.

Background

The Danish FSA has conducted an inspection of the mortgage-like loans of selected banks. In this connection Sydbank has forwarded the bank's "Terms and Conditions – Retail Clients", which apply to the bank's mortgage-like loans. Item 4 of the Terms and Conditions provides:

"The Bank may reduce variable rates on deposits and increase variable rates on loans

4.1. without notice, if

- 4.1.1. *monetary or credit policy changes in Denmark and abroad, including changes in the Danish discount rate;*
- 4.1.2. *the general interest rate level in money and bond markets changes;*
- 4.1.3. *the Bank's funding costs change."*

Moreover 4.4. of the Terms and Conditions provide that the notice is six months *"if the interest rate is increased on a mortgage-like loan under a continuing customer relationship for the reasons mentioned under 4.2 or 4.3."*

Sydbank has informed the Danish FSA that Sydbank does not use a reference rate to fix the interest rate of the bank's mortgage-like loans.

In addition Sydbank has submitted the bank's fact sheets concerning its mortgage-like loans, "Sydbank Prioritet" and "Sydbank Prioritet Plus". These fact sheets state that Sydbank may change the interest rate at three months' notice:

"Interest rate changes (in addition to the bank's general): Interest rate changes in addition to the bank's general interest rate changes must always be subject to the standard time of notice of three months as regards customers."

Sydbank has explained that this notice is not correct and that Sydbank has changed the fact sheets to the effect that the notice is now six months.

Moreover Sydbank has explained that *"since section 48a(1), cf section 53b(1), of the Danish Financial Business Act entered into force, Sydbank has not implemented interest rate increases as regards mortgage-like loans without notice or at a notice of less than six months."*

Legal basis

Section 53b(1) of the Danish Financial Business Act specifies: *"A mortgage-credit institution shall not change interest rates, fees, contributions or other charges for mortgage-credit loans to the detriment of the consumer in an ongoing customer relationship at less than six months' prior notice."*

Section 53b(5) specifies: *"Subsections (1), (3) and (4) shall not apply to changes caused by external factors beyond the mortgage-credit institution's control."*

Section 48a specifies: *"Sections 53b and 53c shall also apply to banks when granting mortgage-like loans."*

The following appears from the explanatory notes to the bill to amend the Danish Financial Business Act, the Danish Act on Mortgage Credit Companies, and the Danish Mortgage-Credit Loans and Mortgage-Credit Bonds Act etc¹:

“Changes are caused by external factors only if this factor is beyond the control of the mortgage credit institution and as a result of the external factor the mortgage credit institution must change the interest rate, the fee etc at a ratio of one to one.

According to sub-section 5 the undertaking is not subject to the rules on notice where eg an interest rate change is implemented as a result of a changed reference interest rate or as a result of a refinancing of underlying bonds of an adjustable-rate loan. Instead such interest rate changes must be notified in accordance with the provisions of section 9 of the Danish Credit Agreements Act.

Similar rules apply to any change as regards which it is possible to calculate the price increase exactly on the basis of external factors and where it is not possible for the institution to choose to change the interest rate, for instance increases in public taxes such as registration fees.

In contrast external factors are not involved if a mortgage credit institution is forced to increase its contribution rate as a result of increased capital requirements. Although the institution does not have any influence on the capital requirements an assessment of the mortgage credit institution’s current capital structure will decide whether increased capital requirements necessitate an increase in the contribution rate.

Institutions may choose to describe external factors causing eg interest rate changes in the terms and conditions of the agreement in connection with the description of the terms and conditions which allow for interest rate changes caused by factors which are not beyond the control of the undertaking. The cause of the interest rate change decides whether notice must be given of the change.”

Assessment by the Danish FSA

It is the assessment of the Danish FSA that the events listed by Sydbank in item 4.1 of its “Terms and Conditions – Retail Clients” (“4.1.1. monetary or credit policy changes in Denmark and abroad, including changes in the Danish discount rate; 4.1.2. the general interest rate level in money and bond markets changes;

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

4.1.3. *the Bank's funding costs change.*”) are not in compliance with section 48a(1), cf section 53b(5), of the Danish Financial Business Act.

The events listed by Sydbank do not entail that the bank is required to change the interest rate one to one and consequently the events do not constitute by external factors which are beyond the control of the bank and as a result of which the bank must change the interest rate at a ratio of one to one.

Consequently Sydbank is not entitled to change the interest rate without notice referring to the events mentioned in the terms and conditions.

The Danish FSA orders Sydbank to change the bank's terms and conditions as regards interest rate changes of the bank's mortgage-like loans to the effect that the terms and conditions are brought into agreement with section 48a(1), cf section 53b(1) and (5), of the Danish Financial Business Act.

The order must be complied with by 21 August 2019. Documentation of compliance must be forwarded to the Danish FSA by email to sbp@ftnet.dk or finanstilsynet@ftnet.dk (secure email).

Moreover it is the assessment of the Danish FSA that the notice of three months which appears from Sydbank's fact sheets for “Sydbank Prioritet” and “Sydbank Prioritet Plus” is contrary to section 48a(1), cf section 53b(1) and (5), of the Danish Financial Business Act.

The Danish FSA orders Sydbank to bring the fact sheets of “Sydbank Prioritet” and “Sydbank Prioritet Plus” into agreement with section 48a(1), cf section 53b(1) and (5), of the Danish Financial Business Act.

Sydbank has explained that the notice was not correct and that Sydbank has changed the fact sheets to the effect that the notice is now six months. In addition Sydbank has explained that *“Sydbank has complied with section 48a(1), cf section 53b(1), of the Danish Financial Business Act since its entry into force and during the period interest rate increases subject to a notice of three months as regards mortgage-like loans have not been implemented.”*

In addition the Danish FSA calls Sydbank's attention to section 48a(2), cf section 53d. It follows from section 53d:

“If a mortgage-credit institution has notified a consumer of an increase of a contribution, see section 53b(1), and the consumer has given notice of termination of the mortgage-credit loan no later than six months after receiving the notice of increase, the mortgage-credit institution shall not be entitled to charge any fees in connection with the repayment of the mortgage-credit loan.”

However, the mortgage-credit institution shall be entitled to charge half of the fees that are charged for a bond transaction in connection with the repayment of the mortgage-credit loan. The mortgage-credit institution shall execute the bond transaction if so requested by the consumer.

(2) If a mortgage-credit institution grants a loan to a consumer for repayment of a mortgage-credit loan or a mortgage-like loan in cases where the consumer has given notice of termination of the loan in question as a result of an announced increase of a contribution or interest rate premium no later than six months after receiving the notice of increase, the recipient mortgage-credit institution shall only charge half of the fees that are charged for a bond transaction in connection with repayment of the mortgage-credit loan or mortgage-like loan that has been terminated by the consumer.

Complaints

According to 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 email to ean@naevneneshus.dk or by post to the secretariat of the Danish Company Appeals Board, Toldboden 2, 8800 Viborg, Denmark, no later than four weeks after the receipt of such decisions.

According to section 7(2) of the Danish executive order on the Danish Company Appeals Board, complaints submitted to the Danish Company Appeals Board are subject to a fee of DKK 4,000. Where then complaint is not related to the complainant's current or future trade, the fee is DKK 2,000. According to section 15(4) of the mentioned executive order the board or the chairman on its behalf may decide to refund the fee paid in full or in part if the claim is upheld in full or in part. The fee is refunded if the complaint is rejected.

Publication

Section 354a(1), first sentence of the Danish Financial Business Act provides that decisions made by the Danish FSA must be published stating the name of the undertaking, cf however section 354a(4) of the Danish Financial Business Act.

The Danish FSA does not find that any of the considerations mentioned in sub-section 4 concerning publication stating the name apply in this matter. Therefore the decision will be published in its entirety on the website of the Danish FSA.

Furthermore the Danish FSA orders Sydbank to publish the information on its website no later than three weekdays after the undertaking has received notification of the reaction, cf section 354a(1), second sentence of the Danish Financial Business Act. In addition Sydbank must comply with the requirements regarding publication in accordance with section 354a(1), sentences 3 to 5 of the Danish Financial Business Act.

The decision as regards publication is final and cannot be brought before any other administrative authority.

Yours sincerely

Susanne Bo Poulsen
Special Advisor