

## PUBLIC NOTICE

Danske Bank A/S ('Danske') is a credit institution established in Denmark and is authorised by the Danish National Competent Authority (Finanstilsynet) to carry out banking activities.

Regulation (EC) No 1060/2009 on credit rating agencies ('the Regulation') lays down obligations for a Credit Rating Agency ('CRA') in the conduct of its activities. In conjunction with its role as supervisor of CRAs under the Regulation, the European Securities and Markets Authority ('ESMA') has functions and powers to take enforcement action in relation to infringements of the Regulation by CRAs. A firm that is a credit rating agency must apply to be registered if it is to issue credit ratings publicly or by subscription. Danske is not a registered CRA and has not applied to be registered.

In December 2016, the supervisors of CRAs in ESMA formed the view that there were serious indications of possible infringements of the Regulation by Danske. It appeared that Danske had been issuing credit ratings although it had not applied to be registered.

The matter was then referred to an independent investigating officer ('IIO') who, having conducted an investigation, submitted her findings to ESMA's Board of Supervisors ('the Board').

Having considered the evidence, the Board has found that Danske negligently committed an infringement of the Regulation as follows.

### **Infringement**

#### **A) Relevant legislation**

Article 14(1) of the Regulation obliges a CRA, in given circumstances, to apply for registration. A failure by a CRA to apply for registration where required to do so is an infringement of the Regulation – as provided by point 54 of Section I of Annex III of the Regulation ('the Infringement').

A credit rating is defined by Article 3(1)(a) of the Regulation.

Article 3(1)(b) of the Regulation defines a CRA as firm whose occupation includes the issuing of credit ratings on a professional basis.

In considering whether Danske had committed an infringement of the Regulation, ESMA reviewed Danske's conduct in appearing to issue credit ratings. In particular ESMA considered whether Danske was issuing credit ratings as they are defined by the Regulation.

## **B) Factual findings and analysis of the Board**

Between 1 June 2011 and 29 August 2016, Danske issued credit research reports as part of its credit research activities. These reports tended to relate to either issuers of bonds or debt instruments or those instruments themselves. A number of these reports included opinions that were variously described as a 'Corporate rating', an 'Unsecured rating', a 'Danske Bank Markets' rating ('**the Ratings**'). It appears that approximately 813 of the Ratings were issued by Danske during this period.

The Board found that the Ratings met the definition of a credit rating provided by the Regulation.

## **C) Finding of infringement**

The Board therefore found that Danske had committed the Infringement as a consequence of issuing the Ratings.

Furthermore, the Board found that Danske had committed the Infringement negligently and was therefore liable to a fine. In calculating the fine, the Board took into account the aggravating factor that Danske had committed the Infringement for more than six months. The Board also took into account the mitigating factor that Danske had voluntarily taken measures to ensure that similar infringement could not be committed in the future. The Board has therefore fined Danske EUR 495 000.

## **Supervisory measure and fine**

### **Public notice**

Pursuant to Article 24 of the Regulation, the Board decided that the Infringement warranted a supervisory measure in the form of the publication of this public notice.

### **Fine**

The fine imposed on Danske is EUR 495 000.