Executive Order on Calculation of Capital Base[1]

Executive Order no. 915 of 12 September 2012

The following shall be laid down pursuant to section 13(4), section 124(9), section 128(2), section 128a, section 148, no. 5 and section 373(4) of the Financial Business Act, cf. Consolidating Act no. 705 of 25 June 2012:

I

General provisions

Part 1

Scope and definitions

1.-(1) This Executive Order shall apply to financial undertakings, cf. section 5(1), no.1, of the Financial Business Act, as well as undertakings covered by subsections (2)-(5).

(2) The provisions of I, II and IV shall apply for financial holding companies.

(3) For groups which, pursuant to section 170(1)-(4) of the Financial Business Act shall complete a consolidated calculation, the provisions of I, II and IV shall apply.

(4) For subgroups which, pursuant to section 171(2), section 172(2), section 173(2) or section 174(2) of the Financial Business Act shall complete a consolidated calculation, the provisions of I, II and IV shall apply.

(5) For operators of regulated markets domiciled in Denmark, in another country within the European Union or in a country with which the Union has entered into an agreement for the financial area which have been granted a license under section 5(1), no. 20, of the Financial Business Act to operate multilateral trading facilities, I, II and IV shall apply with deviations made necessary by the circumstances.

2. For the purpose of this Executive Order:

[1] This Executive Order contains provisions to implement parts of the First Council Directive 73/239/EEC of 24 July 1973 (first non-life insurance directive), Official Journal 1973, no. L 228, page 3, parts of Council Directive 84/641/EEC of 10 December 1984 (amending, the first non-life insurance directive), Official Journal 1985, no. L 339, page 21, parts of Council Directive 92/49/EEC of 18 June 1992 (third non-life insurance Directive), Official Journal 1992, no. L 228, page 1, parts of Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 (the solvency 1 directive), Official Journal 2002, no. L 77, page 17, parts of directive 79/267/EEC of 5 March 1979, 90/619/EEC of 8 November 1990, 92/96/EEC of 10 November 1992 and 2002/12/EC of 5 March 2002, which have now been consolidated in Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 (the life assurance directive), Official Journal 2002, no. L 345, page 1, parts of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 (the financial conglomerates directive), Official Journal 2003, no L 35, page 1, parts of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (the credit institutions directive), Official Journal 2006, no. L 177, page 1, parts of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (the capital adequacy directive), Official Journal 2006, no. L 177, page 201, parts of Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (CRD II), Official Journal 2009, no. L 302, page 97, and parts of Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (CRD III), Official Journal 2010, no. L 329, page 3.

1) "*Securitisation*" shall mean a transaction or scheme in which the risk of an exposure or pool of exposures is divided into tranches and which is characterised by:

a) payments in connection with the transaction or the scheme depending on changes in the exposure or a pool of exposures, and

b) the ranking of tranches determines the distribution of the losses over the term of the transaction or the scheme.

2) "*Original interest basis of the issue*" shall mean: The interest basis agreed as the interest rate of the issue at the date of issue. A lifetime shall be utilised corresponding to the time to the increase in interest rate. The interest basis can either be fixed-interest or variable-interest.

3) "*Interest basis of the increase in interest rate*" shall mean: The interest basis agreed as the interest rate of the issue after the increase in interest rate. A lifetime shall be utilised corresponding to the time to the increase in interest rate. The interest basis can either be fixed-interest or variable-interest.

4) "*A unit of hybrid core capital*" shall mean: One capital certificate issued with a view to recognition as hybrid core capital in the capital base of the issuer.

5) "*Rate of conversion*" shall mean: The number of shares, guarantor certificates or cooperative share certificates to which a unit of hybrid core capital may be converted.

6) "*Rate of conversion at date of issue*" shall mean: The number of shares, guarantor certificates or cooperative share certificates to which the value of a unit of hybrid core capital corresponds on the date of issue.

7) "*Free reserves*" shall mean: The amount stated in section 180(2) of the Companies Act as free reserves.

8) "*Guarantee capital*" shall mean: Capital paid in to insurance companies and multi-employer occupational pension funds and for which the capital is recognised for accounting purposes as equity.

9) "*Guarantor capital*" shall mean: Capital which guarantors have paid in to a savings bank and for which the capital is recognised for accounting purposes as equity.

10) "*Cooperative capital*" shall mean: capital which members of a cooperative savings bank have paid in to a cooperative savings bank and for which the capital is recognised for accounting purposes as equity.

11) "*Redemption*" shall mean: Repayment or acquisition by the bank, mortgage-credit institution, investment firm and investment management company of own shares, guarantor certificates or cooperative share certificates.

12) "*Capital requirement*" shall mean: In this Executive Order, capital requirement shall be interpreted in accordance with section 127(1) of the Financial Business Act.

II

Special regulations for banks, mortgage-credit institutions, investment firms and investment management companies,

Part 2

Calculation of capital base in banks, mortgage-credit institutions, investment firms and investment management companies

3.-(1) The capital base in banks, mortgage-credit institutions, investment firms and investment management companies shall be calculated as core capital, cf. subsection (2) plus additional capital after deduction pursuant to section 31.

(2) Core capital shall be calculated as the sum of actual core capital, cf. section 4, and hybrid core capital, cf. section 10, which may be included in core capital, cf. section 12, after deduction pursuant to section 31.

Part 3

Calculation of actual core capital in banks, mortgage-credit institutions, investment firms and investment management companies

4.-(1) The actual core capital in banks, mortgage-credit institutions, investment firms, and investment management companies shall consist of

1) paid-up share capital which meets the requirements of sections 6 and 7,

2) paid-up guarantor capital which meets the requirements of sections 5-7,

3) paid-up cooperative capital which meets the requirements of sections 5-7,

4) share premium,

5) reserves,

6) undistributable savings bank reserve, cf. section 211 of the Financial Business Act,

7) retained losses or profits,

8) serial reserve funds in mortgage-credit institutions in series where there is no repayment obligation to the borrowers, and the part of the serial reserve funds in series with a repayment obligation, cf. section 24 of the Mortgage-Credit Loans and Mortgage-Credit Bonds etc. Act which may not become payable,

9) undistributable fund reserve in mortgage-credit institutions, and

10) Current profit for the year less expected dividends and other foreseeable expenses, provided the amount has been confirmed by the external auditors of the bank, mortgage-credit institution, investment firm or investment management company, cf. section 8 and 9.

(2) Actual core capital shall exclude any form of tax that can be foreseen at the time when the amount is calculated, or it shall be adequately adjusted to the extent that taxes reduce the amount with which said capital may be used to hedge risks or losses.

(3) A bank, mortgage-credit institution, investment firm and investment management company which has carried out securitisation, cf. section 2(1), no. 1, may not include in the items mentioned in subsection (1), nos. 5-7, net profits from capitalisation of future income from the exposures which are included in the transaction and which lead to an improvement in the credit of the positions of the undertaking with the relevant securitisation.

5.-(1) Guarantor capital and cooperative capital may be included in the actual core capital, if the capital can be reduced when the savings bank or cooperative bank has losses which are not covered by the free reserves, cf. section 2(1), no. 7. (3) The regulations on reductions in

share capital that apply to limited companies shall, with the changes necessary apply to reductions in guarantor capital and cooperative capital.

(2) Guarantor capital and cooperative capital may be included in the actual core capital if the capital is subordinated all other capital in the event of liquidation or bankruptcy.

(3) Guarantor capital and cooperative capital may be included in the actual core capital, if the capital is not linked to guarantees or pledges which legally or financially rank the capital better than in subsections (1) and (2).

6.-(1) Share capital, guarantor capital and cooperative capital can be included in the actual core capital, provided the capital is not divided into classes with

1) different rights if the bank, mortgage-credit institution, investment firm and investment management company has losses which are not covered by free reserves, and

2) different rights in the event of liquidation or bankruptcy.

(2) If the bank, mortgage-credit institution, investment firm and investment management company intends to include share capital, guarantor capital and cooperative capital in the actual core capital, with regard to the capital divided into classes, any rights to receive a higher rate of interest or dividend for specific classes shall be limited to a factor stipulated in advance of the rate of interest or dividend which the class receiving the lowest dividend or rate of interest receives, cf. however section 7.

7.-(1) Share capital, guarantor capital and cooperative capital may be included in the actual core capital, provided the holder of the capital has not been imposed with a specific rate of interest or dividend.

(2) The bank, mortgage-credit institution, investment firm and investment management company may, however, notwithstanding subsection (1), publish a rate of interest or dividend policy, provided that the policy reflects the board of directors' plans for paying interest or dividends on the basis of the financial situation of the bank, the mortgage-credit institution, the investment firm and the investment management company, and provided that the policy clearly states that said plans can be deviated from.

(3) Notwithstanding subsection (1), the articles of association of savings banks and cooperative savings banks may contain a provision on a maximum rate of interest or dividend.

(4) The ultimate authority of the bank, mortgage-credit institution, investment firm and investment management company shall stipulate the size of the rate of interest or dividend every year on the basis of the profit for the year and free reserves before payment of interest on guarantor capital. The rate of interest or dividend may not be set higher than proposed or approved by the board of directors.

(5) In the event that interest or dividends are not paid to the holders of share capital, guarantor capital and cooperative capital, the outstanding payment may not be replaced by other benefits for the holders of share capital, guarantor capital or cooperative capital.

Special regulations for redemption of share capital, guarantor capital and cooperative capital

8.-(1) Redemption of share capital, guarantor capital and cooperative capital may only be carried out when the bank, mortgage-credit institution, investment firm and investment management company has adequate capital after the redemption and within a reasonable time thereafter so that the financial and solvency situation remains satisfactory and after advance

approval has been obtained from the Danish FSA in accordance with sections 9 or 10, cf. however subsection (4).

(2) A holder of share capital, guarantor capital and cooperative capital may not demand redemption other than pursuant to the regulations in the Companies Act, and the bank, mortgage-credit institution, investment firm and investment management company may not lead a holder to expect redemption at a given time.

(3) The decision on redemption of share capital, guarantor capital and cooperative capital may not be published before the bank, mortgage-credit institution, investment firm and investment management company has obtained approval from the Danish FSA pursuant to subsection (1).

(4) Banks, mortgage-credit institutions, investment firms and investment management companies may, without approval pursuant to section 9 or 10, acquire own shares with view to resale provided that the holding of own shares after acquisition does not exceed 3% of the total issued share capital.

9.-(1) Approval to redeem share capital, guarantor capital and cooperative capital may be granted by the Danish FSA in order to change the capital position of the bank, mortgage-credit institution, investment firm, and investment management company, or with a view to resale.

(2) Application to the Danish FSA for redemption pursuant to subsection (1) shall have the following enclosed, cf. however subsection (3):

1) An statement of the background for why the bank, mortgage-credit institution, investment firm and investment management company wishes to redeem share capital, guarantor capital or cooperative capital.

2) Solvency data including the level and composition of the core capital before and after redemption as well as confirmation that the bank, mortgage-credit institution, investment firm and investment management company will continue to meet the supervisory requirements laid down in legislation or in regulations issued in pursuance hereof after the redemption.

3) A statement of the liquidity situation, including that the bank, mortgage-credit institution, investment firm and investment management company will continue to regulatory and supervisory requirements after the redemption.

4) A statement on the expected developments for at least three years in the conditions described pursuant to nos. 2 and 3, based on the business plan of the bank, mortgage-credit institution, investment firm and investment management company as well as the expected developments in financial undertakings within the same sector.

5) An assessment of the risks the bank, mortgage-credit institution, investment firm and investment management company is or could be exposed to and an assessment of whether the level of capital base ensures that these risks are covered, including stress tests of the most significant risks showing potential losses in different scenarios.

6) The most recent statement of solvency need of the bank, mortgage-credit institution, investment firm and investment management company.

(3) The Danish FSA may demand further information, if this is necessary to process the application.

10.-(1) Savings banks and cooperative savings banks may apply to the Danish FSA for approval to redeem guarantor capital and cooperative capital with a view to being in a position

regularly to satisfy requests from holders of guarantor capital and cooperative capital, if the redemption is within an overall net framework of up to the least of the following amounts:

1) One-third of the total guarantor capital and cooperative capital

2) 10% of the actual core capital.

(2) Approval pursuant to subsection (1) may be granted for a period of up to one year.

(3) The information mentioned in section 9(2), nos. 2 and 6 shall be enclosed with the application for approval pursuant to subsection (1).

(4) The Danish FSA may demand further information, if this is necessary to process the application.

Special regulations for inclusion of the current profit for the year in the actual core capital

11.-(1) If the bank, mortgage-credit institution, investment firm and investment management company utilises the possibility to include the current profit for the year in the actual core capital, cf. section 4(1), no. 10, the size of the amount shall be confirmed by the external auditors.

(2) In the situation mentioned in subsection 81), the external auditors shall state in the auditor's records the work performed as well as the solvency ratio of the bank, mortgage-credit institution, investment firm or investment management company before and after inclusion of the current profit for the year.

(3) Calculation of the current profit for the year in order to include this in the actual core capital shall be on the basis of interim financial statements submitted to the Danish FSA in which the interim financial statements show a profit.

12.-(1) With regard to confirmation pursuant to section 11(1) and (2), the external auditors shall:

1) Ensure that the accounting figures behind calculation of the current profit for the year originate from the undertaking's accounting system.

2) Ensure that all forms of tax and approved extraordinary dividends have been deducted from the current profit for the year.

3) Obtain confirmation from the board of management that the interim financial statements forming the basis for the calculation of the current profit for the year comply with the principles laid down in the Financial Business Act and in the Executive Order on Financial Reports for Credit Institutions and Investment Firms, etc. and that they comply with the accounting policies applied by the undertaking.

4) Ensure that the board of management has explained that significant variances from the undertaking's budget and earlier periods are the result of specific events such as changes in the business profile and scope of business.

(2) In the auditor's records, the external auditors shall describe whether the work performed pursuant to subsection (1) has given rise to any comments.

(3) The long-form audit report prepared by the external auditors shall be signed by these before the bank, mortgage-credit institution, investment firm or investment management company may include the current profit for the year in the core capital.

Part 4

Calculation of hybrid core capital of banks, mortgage-credit institutions, investment firms and investment management companies

13.-(1) Hybrid core capital, cf. subsection (2), may be included in the core capital of banks, mortgage-credit institutions, investment firms and investment management companies, with the restriction consequential upon section 15, if the capital meets the requirements of section 14 and sections 17-25.

(2) "Hybrid core capital of banks, mortgage-credit institutions, investment firms and investment management companies" shall mean capital which meets the following conditions:

1) The hybrid core capital shall be paid in to the bank, mortgage-credit institution, investment firm or investment management company.

2) A due date for repayment of the hybrid core capital set in advance may take effect no earlier than 30 years after it has been paid in and may not be combined with incentives for repayment, cf. section 21.

3) Unless a due date has been set in advance for repayment of the hybrid core capital 30 years or later after issue, the hybrid core capital may only fall due if the bank, mortgage-credit institution, investment firm or investment management company enters into liquidation or is declared bankrupt.

4) Agreed incentives for repayment shall be moderate and may enter into force no earlier than ten years after capital has been paid in, cf. section 21-23.

5) The lender's claims against the bank, mortgage-credit institution, investment firm or investment management company shall be subordinated to all other debt, including subordinate loan capital.

6) The lender's claim on the bank, mortgage-credit institution, investment firm or investment management company may not be covered by collateral provided by the bank, mortgage-credit institution, investment firm or investment management company or the undertakings mentioned in section 181(1) of the Financial Business Act, or in any other way be secured priority over the remaining creditors of the bank, mortgage-credit institution, investment firm or investment management company.

7) Interest on the debt and payment of interest due shall be cancelled, cf. however section 14, if

a) the bank, mortgage-credit institution, investment firm or investment management company fails to meet the capital requirement in section 127 of the Financial Business Act,

b) the bank, mortgage-credit institution, investment firm or investment management company deems that it is necessary to preserve the financial soundness of the undertaking, or

c) the Danish FSA deems it necessary due to the financial and solvency situation of the bank, mortgage-credit institution, investment firm or investment management company.

8) The interest rate may not be changed on the basis of a creditor's assessment of the bank, mortgage-credit institution, investment firm or investment management company.

9) The bank, mortgage-credit institution, investment firm and investment management company shall be able to reduce the hybrid core capital, cf. however sections 24-26, if the

solvency ratio or the core capital ratio falls below threshold values set in advance. The threshold value for the solvency ratio may not be set lower than the solvency need of the bank, mortgage-credit institution, investment firm and investment management company, and the threshold value for the core capital ratio may not be lower than 5%.

10) The agreement on the hybrid core capital shall state that the agreement cannot be changed with the effect that the capital may not be included as hybrid core capital without approval from the Danish FSA.

14. The agreement on hybrid core capital may, notwithstanding section 13(2), no. 7, contain provisions that interest payments which would otherwise be cancelled pursuant to section 13(2), no. 7, a) and b), be replaced by share capital, guarantor capital or cooperative capital. In such case, however, the agreement on hybrid core capital shall state that:

1) Replacement of cancelled interest payments with share capital, guarantor capital or cooperative capital requires that the Danish FSA has not refused payment on the grounds that the payment may prevent a recapitalisation.

2) Replacement of cancelled interest payments with share capital, guarantor capital or cooperative capital may not take place if the conditions for being able to reduce hybrid core capital, cf. section 13(2), no. 9, have not been met.

3) If circumstances make it impossible to replace cancelled interest payments with share capital, guarantor capital or cooperative capital, as anticipated in the agreement, creditors' claims for compensation for cancelled interest payments shall be void.

15.-(1) The hybrid core capital of banks, mortgage-credit institutions, investment firms and investment management companies, cf. sections 13 and 14, may amount to up to 50% of the core capital after deductions pursuant to section 31(9), cf. however subsection (4), if the agreement on hybrid core capital meets the following requirements:

1) The hybrid core capital shall be converted to share capital, guarantor capital or cooperative capital if the bank, mortgage-credit institution, investment firm or investment management company fails to meet the capital requirement in section 127 of the Financial Business Act or in some other way is in distress.

2) The hybrid core capital may, at the initiative of the Danish FSA, be converted into share capital, guarantor capital or cooperative capital, if the Danish FSA deems that there is an immediate risk that the bank, mortgage-credit institution, investment firm or investment management company will not meet the capital requirement in section 127 of the Financial Business Act.

3) The agreement does not contain incentives for repayment.

4) The agreement does not contain terms that the debt falls due at a date set in advance.

(2) Hybrid core capital of banks, mortgage-credit institutions, investment firms and investment management companies, cf. sections 13 and 14, which fails to meet the requirement in subsection (1), nos. 1 and 2 may, as a maximum, amount to 35% of the core capital after deductions pursuant to section 31(9), cf. however subsection (4), if the agreement does not contain incentives for repayment or terms that the debt falls due at a date set in advance.

(3) Hybrid core capital, cf. sections 13 and 14, may, as a maximum, amount to 15% of the core capital after deductions pursuant to section 31(9), cf. however subsection (4), if the

agreement contains moderate incentives for repayment or contains terms that the debt falls due at a date set in advance.

(4) Hybrid core capital covered by subsections (1)-(3) may together amount to a maximum of 50% of the core capital after deductions pursuant to section 31(9), and hybrid core capital covered by subsections (2) and (3) may together amount to a maximum of 35% of the core capital after deductions pursuant to section 31(9)

(5) The Danish FSA may allow the limits under subsections (1)-(4) to be exceeded temporarily under exceptional circumstances.

(6) The provisions of subsections (1) and (2), after which agreements on contracting of debt may not contain incentives for repayment, shall not cover hybrid core capital issued pursuant to the Act on Government Capital Injections in Credit Institutions (*lov om statsligt kapitalindskud i kreditinstitutter*) where agreements in connection with contracting of debt contain terms on interest-rate increases, provided that such interest-rate increases are exclusively made dependent upon changes in dividend payments and terms on increases in the repayment price, and provided that such increases do not amount to more than 5% from the sixth year and 10% from the seventh year.

16.-(1) Before banks, mortgage-credit institutions, investment firms, or investment management companies subject to the Companies Act establish agreements on hybrid core capital which contain terms on conversion, including hybrid core capital covered by section 15(1), the general meeting shall decide to enter into the agreement on the hybrid core capital, or through provisions in the articles of association authorise the board of directors to enter into the agreement on the hybrid core capital and at the same time authorise the board of directors to carry out the associated increase in capital for use in the conversion. The latter authorisation shall be in place prior to establishment of the agreement on hybrid core capital in order for this to be included pursuant to section 15(1). Terms on conversion may only be utilised provided the issuer is an undertaking covered by section 1.

(2) With regard to the decision by the general meeting to enter into an agreement on hybrid core capital which contains terms on conversion, including hybrid core capital covered by section 15(1) in banks, mortgage-credit institutions, investment firms, or investment management companies subject to the Companies Act, section 167(1) and (2) and section 168 of the Companies Act shall apply. Section 167(3) of the Companies Act shall apply correspondingly if the decision by the general meeting deals with the legal status before conversion takes place at the initiative of the issuer, or if the general meeting decides to enter into an agreement on issuing hybrid core capital covered by section 15(1).

(3) The authorisation from the general meeting for the board of directors to establish an agreement on hybrid core capital pursuant to subsection (1) which contains terms on conversion, including hybrid core capital covered by section 15(1), and the associated capital increase for use in the conversion, shall be granted for one or more periods of up to five years at a time. The time limit shall only apply for establishment of the agreement on the hybrid core capital and not for any subsequent increase in capital as a consequence of the conversion.

(4) In the authorisation pursuant to subsection (1), the articles of association shall state the following:

1) The date of the end of the period mentioned in subsection (3).

2) The highest amount by which the board of directors may increase the capital.

3) Provisions on the conditions mentioned in section 158, nos. 5, 6, and 9-11 of the Companies Act.

(5) With regard to banks, mortgage-credit institutions, investment firms, or investment management companies subject to the Companies Act, with the authorisation pursuant to subsection (1) the board of directors may decide to issue hybrid core capital. Section 169(2) of the Companies Act shall apply for the decision by the board of directors. The board of directors shall decide on the legal status of the recipient, if the conditions mentioned in section 169(3) of the Companies Act are implemented before conversion takes place at the initiative of the issuer. Section 169(4) and (5) and sections 170 and 171 of the Companies Act shall apply for the decision by the board of directors pursuant to the 1st clause.

(6) With regard to banks, mortgage-credit institutions, investment firms, or investment management companies subject to the Companies Act, sections 172-177 of the Companies Act on registration etc. shall apply for the decision by the general meeting pursuant to subsection (1).

(7) The authorisation from the general meeting pursuant to subsection (1) shall lapse if the issuer is no longer an undertaking covered by section 1.

(8) If an undertaking ceases to be covered by section 1, hybrid core capital may, in the same way as other borrowed capital continue to be excluded as part of the company's share capital.

Redemption of hybrid core capital at the initiative of the bank, mortgage-credit institution, investment firm and investment management company

17.-(1) The agreement on the hybrid core capital shall state that it may only be redeemed at the initiative of the bank, mortgage-credit institution, investment firm, or investment management company with approval from the Danish FSA and no earlier than five years after it was paid in.

(2) Notwithstanding subsection (1), the agreement may state that, with approval from the Danish FSA, hybrid core capital may be redeemed earlier than five years after it was paid in, in the event of a change in the tax or solvency treatment of the relevant instrument.

(3) Notwithstanding subsection (1), the agreement may state that, with approval from the Danish FSA, hybrid core capital may be redeemed earlier than five years after it was paid in, if it is replaced by paid-up core capital of at least the same quality.

(4) Notwithstanding subsection (1), the agreement may state that hybrid core capital issued pursuant to the Act on Government Capital Injections in Credit Institutions (*lov om statsligt kapitalindskud i kreditinstitutter*) and which pursuant to agreements on the government capital injection may be redeemed with approval from the Danish FSA no earlier than three years after it was paid in, is to be included in the capital base, provided core capital after repayment amounts to no less than 12%.

(5) Notwithstanding subsection (1), the agreement may state that, with approval from the Danish FSA, the bank, mortgage-credit institution, investment firm or investment management company may at any time acquire own hybrid core capital, to own up to 3% of the total issued capital, provided the acquisition is with a view to resale. Own hybrid core capital may as a maximum, however, amount to 10% of an individual issue.

18.-(1) The agreement on the hybrid core capital shall state that the banks, mortgage-credit institutions, investment firms and investment management companies may only repay hybrid core capital pursuant to section 17 if the undertaking has adequate capital after repayment,

and for a reasonable time thereafter, such that the financial and solvency situation remains satisfactory.

(2) In the assessment mentioned in subsection (1), the bank, mortgage-credit institution, investment firm and investment management company shall include the level and quality of the capital base which is necessary adequately to cover the risks to which the bank, mortgage-credit institution, investment firm and investment management company is, or may, be exposed. In this respect, the bank, mortgage-credit institution, investment firm and investment management company shall consider its liquidity position and revenue-generating ability.

19. The agreement on hybrid core capital which falls due at a date set in advance shall state that it may only be repaid at the due date if so permitted by the financial and solvency situation of the bank, mortgage-credit institution, investment firm and investment management company.

20.-(1) The agreement on hybrid core capital shall state that, as soon as the decision to redeem the hybrid core capital has been made, the bank, mortgage-credit institution, investment firm or investment management company shall apply to the Danish FSA for approval of the redemption. This shall also apply for hybrid core capital which falls due at a date set in advance.

(2) The application on redemption pursuant to subsection (1) shall include the following:

1) An account of the background for repayment of hybrid core capital by the bank, mortgage-credit institution, investment firm and investment management company.

2) Solvency data including the level and composition of the core capital before and after the repayment as well as confirmation that, after repayment, the undertaking will meet the supervisory requirements laid down in legislation or in regulations issued in pursuance hereof.

3) An statement of the liquidity situation, including that, after repayment, the bank, mortgage-credit institution, investment firm and investment management company will continue to meet the supervisory requirements laid down in legislation or in regulations issued in pursuance hereof.

4) A statement, covering at least three years, of the expected developments in the data issued pursuant to nos. 2 and 3, based on the business plan of the bank, mortgage-credit institution, investment firm and investment management company and including the expected developments in the balance sheet and income statement.

5) An assessment of the risks to which the business plan of the bank, mortgage-credit institution, investment firm and investment management company is or could be exposed, as well as an assessment of the extent to which the level of capital base ensures that these risks are covered, including stress tests of the most significant risks showing potential losses in different scenarios.

6) The most recent statement of solvency need of the bank, mortgage-credit institution, investment firm and investment management company.

(3) If the hybrid core capital is to be replaced by some other hybrid core capital, the Danish FSA may require that the bank, mortgage-credit institution, investment firm and investment management company demonstrate that this is likely to be possible. The bank, mortgage-credit institution, investment holding company and investment management company shall

also provide information about the significance of the replacement for revenue-generating ability, including expected prices and conditions.

(4) The Danish FSA may demand further information, if this is necessary for use in processing the application.

(5) Subject to agreement with the Danish FSA, the bank, mortgage-credit institution, investment firm and investment management company may omit to submit a full set of information if the hybrid core capital has already been replaced of capital of the same or better quality.

Incentives for repayment of the hybrid core capital of banks, mortgage-credit institutions, investment firms and investment management companies

21.-(1) Incentives for repayment are the terms and conditions regarding the hybrid core capital of banks, mortgage-credit institutions, investment firms and investment management companies which can give rise to an expectation that repayment will be made.

(2) Terms and conditions which can give rise to an expectation that repayment will be made are an incentive for repayment, irrespective of whether they do not coincide with the same date as the option for repayment.

(3) A duty for the issuer or owner to convert the hybrid core capital to share capital, guarantor capital or cooperative capital as a consequence of financial or solvency problems is not an incentive for repayment.

(4) An option of repayment is not in itself an incentive for repayment.

(5) The presence of incentives for repayment is determined at the date of issue or in renegotiating terms and conditions. Hybrid core capital with an incentive for repayment is therefore not be transformed to hybrid core capital without an incentive for repayment when the incentive lapses as a consequence of developments. Notwithstanding the 1st clause, hybrid core capital with an incentive for repayment may not be transformed to hybrid core capital without an incentive for repayment as a result of renegotiation after the incentive lapses as a consequence of developments.

22.-(1) An increase in interest rate is a moderate incentive for repayment, cf. section 13(2), no. 4, if it entails an increase in the original interest rate of the issue which is no larger than the highest of:

1) 100 basis points less the swap spread, and

2) 50% of the original credit spread less the swap spread.

(2) The swap spread in subsection (1), no. 1 shall be set on the date of issue as the difference between the interest basis of the increase in interest rate and the original interest basis of the issue.

(3) The credit spread in subsection (1), no. 2 shall be set on the date of issue as the difference between the original interest rate of the issue and the original interest basis of the issue.

(4) The agreement on hybrid core capital may not contain more than one increase in interest rate over the term of the instrument.

23.-(1) A conversion to share capital, guarantor capital or cooperative capital at a date set in advance or on demand from the owner of the hybrid core capital shall be a moderate incentive for repayment, cf. section 13(2), no. 4, if the agreement contains a restriction on the rate of conversion such that it may not amount to more than 150% of the conversion rate at the date of issue.

Reduction of hybrid core capital of banks, mortgage-credit institutions, investment firms and investment management companies

24.-(1) Notwithstanding section 13 (2), no. 9, the agreement on hybrid core capital may contain provisions that reduction of the principal may be made if

1) the bank, mortgage-credit institution, investment firm or investment management company subsequently either adds new capital to secure the continued viability of the undertaking or it winds up without loss for the non-subordinated creditors,

2) share capital, guarantor capital or cooperative capital is reduced, or

3) equity in the serial reserve fund in the mortgage-credit institution is lost.

(2) Reduction of hybrid core capital shall at least be possible at the same percentage at the reduction in share capital, guarantor capital or cooperative capital.

(3) Reduction of the hybrid core capital may be combined with an option for subsequent revaluation. A subsequent revaluation may not be based on new paid-up share capital, guarantor capital or cooperative capital, but may only be based on subsequent profits where the percentage of the subsequent profits used for revaluation of the hybrid core capital may as a maximum correspond to the percentage of the total hybrid core capital represented by the hybrid core capital before the reduction of the hybrid core capital.

(4) No terms and conditions may be imposed in the agreement on hybrid core capital which extend the time for implementation of the reduction.

(5) Interest payment may not be made on impaired hybrid core capital. These payments shall be annulled and shall be cancelled permanently.

25. The hybrid core capital of banks, mortgage-credit institutions, investment firms and investment management companies may not be secured or covered by a guarantee from the issuer or a group entity or have other arrangements that legally or financially may compensate the owner of the hybrid core capital for reduction of the capital.

26. The specific framework for the reduction, cf. section 24, shall be published in a way that ensures sufficient transparency for the market. For example, this may be in connection with compliance with the disclosure obligations of the undertaking according to annex 20 of the Executive Order on Capital Adequacy.

Part 5

Calculation of additional capital before deductions in banks, mortgage-credit institutions, investment firms and investment management companies

27.-(1) The additional capital of banks, mortgage-credit institutions, investment firms and investment management companies is composed of:

1) Subordinate loan capital, cf. section 29,

2) Revaluation reserves,

3) Hybrid core capital, cf. sections 13-16, which is not included in the actual core capital,

4) A positive amount which arises because the calculation of the expected losses on the relevant assets and liabilities is deducted from the accounting value adjustments and provisions on assets and liabilities outside the trading portfolio, except for shareholdings, assets subject to a securitisation, securitisation positions and tangible assets without counterparty, cf. annex 8 of the Executive Order on Capital Adequacy,

5) The part of the serial reserve funds in mortgage-credit institutions in series with a repayment obligation that corresponds to the requirement in section 124(8) of the Financial Business Act,

6) Paid-up guarantor capital which, pursuant to section 208(2) of the Financial Business Act may be included as subordinate loan capital, cf. however section 47, and

7) Share capital, guarantor capital and cooperative capital, cf. sections 5-7, which may not be included in the actual core capital and which meet the requirements of section 29.

(2) Revaluation reserves, cf. subsection (1), no. 2, shall exclude any form of tax that can be foreseen at the time when the amount is calculated, or it shall be adequately adjusted to the extent that taxes reduce the amount with which said capital may be used to hedge risks or losses.

(3) Additional capital pursuant to subsection (1), no. 4 shall only be included for assets and liabilities for which the risk-weighted items outside the trading portfolio are calculated using an internal method, cf. section 143(3) of the Financial Business Act and it shall amount to no more than 0.6% of the risk-weighted items for assets and liabilities which are covered by the internal method. In calculation of this percentage, securitisation positions with a risk-weight of 1,250% shall not be included.

28.-(1) The additional capital of banks, mortgage-credit institutions, investment firms and investment management companies may not be included at more than 100% of the core capital after the deductions mentioned in section 31(1). nos. 1-9.

(2) The subordinate loan capital, cf. section 29, which is included in calculation of the additional capital, cf. however subsection (4), shall be reduced by:

1) 25% of the capital issued when less than 3 years and more than or exactly 2 years remains to maturity,

2) 50% of the capital issued when less than 2 years and more than or exactly 1 year remains to maturity,

3) 75% of the capital issued when less than 1 year remains to maturity,

4) The holding of own subordinate loan capital and own subordinate loan capital that serves as collateral for loans or guarantees reduced according to nos. 1-3.

(3) Subordinate loan capital which does not fulfil section 29(1), nos. 6-7 may not be included at more than 50% of the core capital after the deductions mentioned in section 31(1), nos. 1-9.

(4) Subordinate loan capital which does not fulfil section 29(1), nos. 6-7 and which is included in calculation of the additional capital shall be reduced by:

1) 17% of the capital issued when less than 5 years and more than or exactly 4 years remains to maturity,

2) 34% of the capital issued when less than 4 years and more than or exactly 3 years remains to maturity,

3) 50% of the capital issued when less than 3 years and more than or exactly 2 years remains to maturity,

4) 67% of the capital issued when less than 2 years and more than or exactly 1 year remains to maturity,

5) 83% of the capital issued when less than 1 year remains to maturity,

6) The holding of own subordinate loan capital and own subordinate loan capital that serves as collateral for loans or guarantees reduced according to nos. 1-5.

Subordinate loan capital in banks, mortgage-credit institutions, investment firms and investment management companies

29.-(1) Subordinate loan capital in banks, mortgage-credit institutions, investment firms and investment management companies may be included in the capital base if the following conditions are met, cf. however section 28(1) and (2):

1) The lender's claim is subordinated all other non-subordinated debt.

2) The amount is paid.

3) Redemption before the due date is not possible at the initiative of the lender or without approval from the Danish FSA, cf. however subsection (3).

4) The amount may only fall due before the agreed due date if the bank, mortgage-credit institution, investment firm or investment management company goes into liquidation or is declared bankrupt.

5) The ultimate authority of the bank, mortgage-credit institution, investment firm and investment management company is permitted to reduce the subordinate loan capital and unpaid interest if the equity is lost and the share capital, guarantor capital or cooperative capital has been fully written down, or if the equity in serial reserve funds in mortgage-credit institutions has been lost, cf. however subsection (4).

6) Payment of interest may be postponed if the capital base does not exceed the capital requirement at the due date.

7) Unpaid interest that has been postponed under no. 6 may only fall due if the capital requirement is met again or if the loan matures.

(2) Other subordinate loan capital with an original maturity of no less than 5 years, or for which the maturity has not been set, with a notice of cancellation of at least 5 years, after which the subordinate loan capital can be repaid, can be included in the capital base if subsection (1), nos. 1-5 is observed, cf. however section 28(3) and (4).

(3) Approval under subsection (1), no. 3 shall be subject to the capital base after repayment not being less than the capital requirement.

(4) Reduction under subsection (1), no. 5 may only take place if the bank, mortgage-credit institution, investment firm or investment management company subsequently either adds

new capital such that the capital requirement is met, or it winds up without loss for the non-subordinated creditors. The subordinate loan capital and unpaid interest may only be reduced by an amount that has been approved by the external auditors and the Danish FSA prior to the reduction.

(5) Interest-rate increases on subordinate loan capital may take place no earlier than three years after the issue. If one or more interest-rate increases have been agreed, the subordinate loan capital shall be considered as falling due on the date of the interest-rate increase, if the sum of the interest-rate increases exceeds 150 basis points less the swap spread on the date of issue, cf. however subsection (6). Swap spread shall mean the difference between the interest basis of the increase in interest rate and the original interest basis of the issue.

(6) In exceptional circumstances the Danish FSA may grant exemption from the limit of 150 basis points in subsection (5), 2nd clause.

30. Notwithstanding section 29(1), no. 3, the agreement on subordinate loan capital may state that, with approval from the Danish FSA, the bank, mortgage-credit institution, investment firm or investment management company, may at any time acquire own subordinate loan capital to own or as collateral of up to 3% of the total issued capital, however up to a maximum of 10% of the individual issue.

Part 6

Deductions in capital in banks, mortgage-credit institutions, investment firms and investment management companies

31.-(1) In calculation of the capital base of banks, mortgage-credit institutions, investment firms and investment management companies, deductions pursuant to subsections (9)-(12) shall be made for the following:

1) The current loss for the year.

2) Proposed dividends.

3) Intangible assets.

4) Tax assets.

5) The parts of the exposures of the bank, mortgage-credit institution, investment firm and investment management company which, pursuant to section 145(11) of the Financial Business Act are not subject to the provisions of section 145(1)-(3) of the Financial Business Act.

6) The value of the shares, guarantor certificates or cooperative share certificates of the bank, mortgage-credit institution, investment firm or investment management company which clients have acquired on the basis of loans which the bank, mortgage-credit institution, investment firm or investment management company has directly or indirectly made available for acquisition hereof.

7) The difference between the valuation of assets in the trading portfolio pursuant to the Executive Order on Financial Reports for Credit Institutions and Investment Firms, etc. and a prudent calculation of positions after applying model values (marking-to-model), cf. annex 2, points 8-13 of the Executive Order on Capital Adequacy, which have not already been deducted from the actual core capital.

8) The accumulated change in the value of hedging instruments for hedging cash flows.

9) The accumulated change in the value of liabilities at market price as a result of changes in own risk, less any corresponding accumulated changes in the value of assets at market value as a result of the same changes in own risk.

10) The proportion of the capital requirement of a subsidiary insurance company or an associated insurance company, which corresponds to the directly or indirectly owned proportion of the share capital and guarantee capital of said insurance company. If the insurance company does not have its registered office in Denmark, the capital requirement under the regulations of the home country shall be used in the calculation. However, the capital requirement shall be no less than it would have been if the insurance company had had its registered office in Denmark. The deduction under the 1st clause shall be reduced by an amount corresponding to the difference between a) and b), although the deduction may not be less than zero:

a) the proportion of the capital base of a subsidiary insurance company or an associated insurance company, which corresponds to the proportion of the share capital owned, and

b) the value in the balance sheet of the ownership shares in question with addition of the value of the subordinate loan capital, including subordinate loan capital from other group undertakings, to the subsidiary insurance company or the associated insurance company, when subordinate loan capital is included in the capital base of the subsidiary insurance company or the associated insurance company pursuant to section 37(1), no. 1.

11) Directly and indirectly owned shareholdings in subsidiary undertakings and associates which are credit institutions, investment firms or investment management companies, cf. however subsections (5)-(7). Shareholdings in finance institutions whose main activity is to acquire holdings or negotiable mortgage deeds or to carry out business for own account in one or more of the instruments mentioned in annex 5 of the Financial Business Act shall not be deducted. Indirectly owned shareholdings which have been deducted by a subsidiary insurance company, credit institution, investment firm or investment management company or an associated insurance company, credit institution, investment firm or investment management company under no. 12 or section 36(2), no. 2, and indirectly owned shareholdings which have been deducted or exempted by a subsidiary insurance company or an associated insurance company under section 36(4) shall not be deducted.

12) Shareholdings in other credit institutions and finance institutions that constitute more than 10% of the share capital, guarantor capital or cooperative capital of said credit institutions or finance institutions, which are not covered by no. 11, cf. however subsections (5)-(8). Furthermore, the subordinated debt of banks, mortgage-credit institutions, investment firms and investment management companies in said undertakings shall be deducted.

13) The sum of shareholdings and subordinated debt in other credit institutions and finance institutions that are not covered by nos. 11 and 12 and which exceed 10% of the capital base before deductions under nos. 8-10 and 12 and the deductions mentioned in this provision, cf. however subsections (5)-(8).

14) The sum of shareholdings in another undertaking or undertakings in the same group and charged shareholdings in another undertaking not covered by nos. 10-13 which exceed 15% of the capital base after deductions pursuant to nos. 10-13, 18 and 19, cf. however subsections (5), (7) and (8) and without additions pursuant to section 27(1), no. 4. The calculation shall also include share trading activities etc.

15) The sum of qualifying interests in other undertakings that are not covered by nos. 10-14 and which exceed 60% of the capital base after deductions pursuant to nos. 10-13, 18 and 19,

cf. however subsections (5), (7) and (8) and without additions pursuant to section 27(1), no. 4. The calculation shall also include share trading activities etc.

16) A negative amount which arises because the calculation of the expected losses on the relevant assets and liabilities is deducted from the accounting value adjustments and provisions on assets and liabilities outside the trading portfolio, except for shareholdings, assets subject to a securitisation, securitisation positions and tangible assets without counterparty, cf. the section on calculation and treatment of expected losses in annex 8 of the Executive Order on Capital Adequacy.

17) The expected loss on shareholdings outside the trading portfolio when the calculation of the risk-weighted items for shareholdings outside the trading portfolio is made on the basis of individual risk-weights or on the basis of the more advanced method based on calculation of risk parameters (the PD/LGD method), cf. the section on calculation and treatment of expected losses in annex 8 of the Executive Order on Capital Adequacy.

18)The value of transferred payments, securities, currency, and commodities in the event of transactions with delivery risk and addition for any positive value of the contract when delivery or payment by the counterparty has not taken place five days after the due date, cf. however subsection (7).

19) The value of securitisation positions which, according to the regulations in annex 11 of the Executive Order on Capital Adequacy shall be assigned, or for securitisation positions in the trading portfolio would be assigned, a risk weight of 1,250%, unless the amount is included in the calculation of the risk-weighted items, or the securitisation position in included in exposures which are deducted pursuant to no. 5

(2) Adjustments pursuant to subsection (1), nos. 8 and 9 may be positive or negative.

(3) The amount in subsection (1), no. 10, a) shall be calculated before deductions for directly and indirectly owned assets according to section 36(4), no. 3 to the extent that these assets are already included in this provision when calculating the capital base of the owning undertaking. If the relevant subsidiary insurance company or associated insurance company itself owns subsidiary insurance companies or associated insurance companies at the time of the calculation of subsection (1), no. 10, a) and b) the capital base in section 33(1), no. 5, a) shall be calculated before deductions for said companies' capital requirements when the capital requirements of said companies have already been deducted under section 36(2), no. 1. Moreover, the amount in subsection (1), no. 10, a) shall be calculated before deductions under section 36(2), no. 2 if the relevant undertakings are included in the consolidation under part 12 of the Financial Business Act.

(4) The amounts mentioned in subsection (1), nos. 16 and 17 shall only be included for assets and liabilities for which the risk-weighted items outside the trading portfolio are calculated using the internal-rating-based method, cf. sections 19-33 of the Executive Order on Capital Adequacy.

(5) Notwithstanding subsection (1), nos. 11-15, shareholdings shall not be deducted if the shareholdings are acquired temporarily and the acquisition takes place as part of a reconstruction. The proportion of the capital requirement of a subsidiary insurance company or an associated insurance company, cf. subsection (1), no. 10, shall furthermore not be deducted if the undertaking is acquired temporarily, and the acquisition takes place as part of a reconstruction.

(6) Notwithstanding subsection (1), nos. 11-13, shareholdings in credit institutions and finance institutions which together with the bank, mortgage-credit institution, investment firm, or investment management company are not covered by consolidation, cf. Part 12 of the Financial Business Act, shall not be deducted. This shall also apply to subordinated debt in credit institutions and finance institutions covered by the consolidation.

(7) In calculation of the deductions in subsection (1), nos. 11, 13-15 and 18, amounts which have been deducted pursuant to subsection (1), no. 5 shall not be included.

(8) Shareholdings acquired for pool funds for which the client bears the risk shall not be included in calculation of the amounts in subsection (1), nos. 11-15.

(9) The deductions according to subsection (1), nos. 1-6 shall be deducted from the actual core capital.

(10) The deduction according to subsection (1), no. 7 shall be deducted from the core capital. The adjustments according to subsection (1), nos. 8 and 9 shall be made to the core capital and may be positive or negative.

(11) Half of the deductions according to subsection (1), nos. 10-19 shall be deducted from the core capital and the other half shall be deducted from the additional capital, cf. however subsection (12).

(12) If the half of the reductions according to subsection (1), nos. 10-19 is greater than the additional capital, the excess shall be deducted from the core capital.

(13) In the calculation of the capital base for use for section 145(1) and (3) of the Financial Business Act, the capital base shall be calculated without additions and deductions pursuant to section 31(1), nos. 16 and 17.

III

Special regulations for insurance companies and multi-employer occupational pension funds

Part 7

Calculation of capital base in insurance companies and multi-employer occupational pension funds

32.-(1) The capital base in insurance companies and multi-employer occupational pension funds comprises the sum of the core capital and additional capital after deductions.

Part 8

Calculation of the core capital after deductions in insurance companies and multi-employer occupational pension funds

33.-(1) The core capital of insurance companies and multi-employer occupational pension funds shall consist of

1) equity,

2) member accounts in mutual companies and multi-employer occupational pension funds, cf. section 34,

3) special bonus provisions (type B) in life-assurance companies and multi-employer occupational pension fund fulfilling the conditions in section 35,

4) the value of tax assets as it would be in a situation where the licence has been withdrawn, cf. sections 253-258 of the Financial Business Act, and

5) a positive or negative difference between

a) an amount corresponding to the interest in the capital base of a subsidiary undertaking or an associated undertaking which is a financial undertaking, that corresponds to the proportion of the share capital owned, and

b) the value in the balance sheet of the ownership interest in question with an addition of the value of the subordinate loan capital, including subordinate loan capital from other group undertakings, to the subsidiary undertaking or the associated undertaking, when subordinate loan capital is included in the capital base of the subsidiary undertaking or the associated undertaking under section 37(1), no. 1.

(2) Core capital shall exclude any form of tax that can be foreseen at the time when the amount is calculated, or it shall be adequately adjusted to the extent that taxes reduce the amount with which said capital may be used to hedge risks or losses.

(3) The capital base in subsection (1), no. 5, a) shall be calculated before deductions for directly and indirectly owned assets according to section 36(2), no. 3 to the extent that these assets are already included in this provision when calculating the capital base of the owning undertaking. If the relevant subsidiary insurance company or associated insurance company itself owns subsidiary insurance companies or associated insurance companies at the time of the calculation of subsection (1), no. 5, the capital base in subsection (1), no. 5, a) shall be calculated before deductions for said companies' capital requirements when the capital requirements of said companies have already been deducted according to section 36(2), no. 1.

(4) The addition according to subsection (1), no. 5 for each subsidiary undertaking or each associate that is a financial undertaking may be no more than the amount deducted under section 36(2), no. 1 for the relevant subsidiary undertaking or associate.

(5) The guarantee capital of insurance companies and multi-employer occupational pension funds shall not be reduced without the consent of the Danish FSA. The guarantee capital may be repaid in accordance with regulations stipulated in the articles of association. The Danish FSA may decide to require corresponding provisions to a general capital fund or another fund, which cannot be reduced without the approval of the Danish FSA.

Members' accounts in mutual companies and multi-employer occupational pension funds

34. Members' accounts in mutual companies and multi-employer occupational pension funds may be included under section 33(1), no. 2 if the following conditions have been met in the articles of association:

1) In the event of liquidation or bankruptcy, amounts shall not be repaid before the entire remaining debt has been repaid.

2) In other cases than those mentioned in no. 1, amounts shall only be repayable if the capital base is not thereby reduced to an amount less than the capital requirement.

3) Repayment caused by other factors than cessation of membership may only be made when the Danish FSA has been notified hereof no less than one month in advance. Repayment may be refused by the Danish FSA.

4) Changes in the provisions of the articles of association regarding members' accounts shall be approved by the Danish FSA.

Special bonus provisions (type B) in life-assurance companies and multi-employer occupational pension funds

35.-(1) With regard to special bonus provisions (type B) in life-assurance companies and multi-employer occupational pension funds which are included in the capital base according to section 33(1), no. 3, and which are a part of the insurance provisions, the following applies:

1) They are, for all or part of the company's insurance contracts, built up of funds from the insurance contracts' share of the realised results, cf. section 20(1), no. 3 of the Financial Business Act, or of distributions from equity.

2) They are attached to the insurance contracts, individually or collectively, in such a way that the individual insurance contract's share with related return, cf. no. 5, may be calculated at any time, cf. however subsection (2) regarding collective special bonus provisions built up of distributions from equity.

They are not, as an amount, part of the portfolio of insurance contracts when calculating the proportion of the realised results, cf. section 20(1), no. 3 of the Financial Business Act, which shall be added to said portfolio.

4) Transfer of the individual special bonus provision of an insurance contract, and an insurance contract's share of collective special bonus provisions built up of the insurance contracts' share of the realised result shall take place no later than at the same time as payment of benefits under the insurance contract.

5) They shall be granted the same proportional return as the return on equity before taxation, irrespective of said return being negative or positive.

6) The individual special bonus provision of an insurance contract, and an insurance contract's share of collective special bonus provisions built up of the insurance contracts' share of the realised result shall be included in full in calculation and payment of cash surrender values, in transfers from one company to another, in a change of job or in connection with a transfer of ownership or reorganisation of an undertaking, cf. section 20(1), no. 7 of the Financial Business Act. An insurance contract's share of collective special bonus provisions built up of distributions from equity may be included in calculation of payment of cash surrender values, in transfers from one company to another, in a change of job or in connection with a transfer of ownership or reorganisation of an undertaking, cf. section 20(1), no. 7 of the Financial Business Act. Special bonus provisions, however, may only be included if the core capital elements in the company consisting of paid-up share capital and guarantee capital, share premium, other reserves that do not correspond to liabilities, retained earnings or losses, members' accounts, special bonus provisions of type B and the current profit for the year, add up to more than one-third of the solvency requirement, or add up to an amount greater than the minimum capital requirement.

(2) Amounts that are irrevocably distributed from equity to the benefit of policy holders may be included in calculation of the special bonus provisions (type B) if, in accordance with a detailed distribution regulation, over a period they are brought into compliance with the conditions of subsection (1), nos. 2 and 4, and no. 6, 1st clause. There is a further condition that, together with other special bonus provisions (type B), the amount distributed meets the conditions in subsection (1), nos. 3 and 5. The distribution regulation shall be notified to the Danish FSA before the regulation is applied. The distribution may, as a maximum, last for ten years from the date on which the amount was originally distributed from equity.

Reductions in core capital in insurance companies and multi-employer occupational pension funds

36.-(1) The core capital of insurance companies and multi-employer occupational pension funds shall be reduced by

1) proposed dividends,

2) intangible assets, and

3) tax assets, cf. however section 33(1), no. 4.

(2) In addition to the deductions mentioned in subsection (1), the following shall be deducted:

1) The proportion of the capital requirement of a subsidiary insurance company or an associated insurance company, which corresponds to the directly or indirectly owned proportion of the share capital and guarantee capital of said insurance company.

2) The proportion of the capital requirement of a bank, mortgage-credit institution, investment firm or investment management company, which is a subsidiary undertaking or an associate, which corresponds to the directly or indirectly owned proportion of the share capital.

3) For directly and indirectly owned assets representing a risk in an individual undertaking, or a group of undertakings representing a joint risk: The amount by which the carrying amount of the relevant assets exceeds a weighted sum of the capital requirements of the company, the capital requirements of its subsidiary insurance companies, and the capital requirement of other subsidiary undertakings under the supervision of the Danish FSA. The deduction shall not, however, be made for investments in subsidiary undertakings and for assets covered by section 162(1), nos. 1-8 of the Financial Business Act. The weighted sum shall be calculated as follows:

a) If the insurance company carries out direct life-assurance activities, with a weight of 75%. Other insurance companies are weighted by 100%.

b) Subsidiary undertakings carrying out direct life-assurance activities are weighted by 75% of the ownership share. Other subsidiary undertakings are weighted by the ownership share.

4) An amount corresponding to the difference between provisions for claims net of reinsurance parts of claims provisions for insurance classes 3-18 before discounting, and after discounting if the provisions for claims are discounted in order to take into account future investment returns.

(3) In exceptional cases and for a limited time-period, the Danish FSA may grant exemptions from the deduction in the core capital under subsection (2), no. 3.

(4) Insurance companies shall deduct from the core capital directly and indirectly owned shareholdings in subsidiary finance institutions and associated finance institutions. Shareholdings in finance institutions that are financial undertakings and finance institutions whose main activity is to acquire holdings or negotiable mortgage deeds or to carry out business for own account in one or more of the instruments mentioned in annex 5 of the Financial Business Act shall not be deducted. Indirectly owned shareholdings which have been deducted by a subsidiary insurance company or an associated insurance company under the 1st clause, or which have been deducted by a subsidiary undertaking which is a credit institution, investment firm or investment management company or an associated credit institution, investment firm or investment management company under section 31(1), nos. 11

or 12 shall not be deducted. The Danish FSA may in exceptional cases grant exemptions from the deduction mentioned in the 1st clause.

(5) For a financial undertaking, which is a subsidiary undertaking or an associate with its registered office outside Denmark, the capital requirement under the regulations of the home country shall be used with regard to subsection (2), nos. 1 and 2. However, the capital requirement shall be no less than it would have been if the registered office of the company or undertaking had been in Denmark.

(6) The share of the capital requirement or the shareholdings in subsidiary undertakings and associates shall not be deducted, cf. subsections (2) and (4), when the undertakings are acquired temporarily, and the acquisition takes place as part of a reconstruction.

Part 9

Calculation of additional capital in insurance companies and multi-employer occupational pension funds

37.-(1) The additional capital of insurance companies and multi-employer occupational pension funds consists of

1) subordinate loan capital, cf. sections 38 and 39,

2) addition for possible supplementary premiums in mutual non-life assurance companies, cf. section 40, and

3) special bonus provisions (type A) in life-assurance companies and multi-employer occupational pension fund fulfilling the conditions in section 41.

(2) For insurance companies and multi-employer occupational pension funds, the additional capital may be included at an amount corresponding to the lower of

1) 100% of the core capital after deductions,

2) 50% of the capital requirement.

(3) The subordinate loan capital with a fixed term in insurance companies and multi-employer occupational pension funds shall not exceed an amount corresponding to the lower of

1) one-third of the core capital after deductions,

2) one-quarter of the capital requirement.

Subordinate loan capital in insurance companies and multi-employer occupational pension funds

38.-(1) Subordinate loan capital in insurance companies and multi-employer occupational pension funds may be included in the capital base if the following conditions are met, cf. however section 37(2):

1) The lender's claim is subordinated all other non-subordinated debt.

2) The amount is paid.

3) Repayment before maturity may not take place on the initiative of the lender or without the approval of the Danish FSA.

4) The amount may only fall due before the due date agreed if the insurance company and the multi-employer occupational pension fund enters into liquidation or is declared bankrupt.

5) The ultimate authority of the insurance company and the multi-employer occupational pension fund shall be permitted to reduce the subordinate loan capital and unpaid interest if the equity is lost and the share capital and guarantee capital has been written down, cf. however section 49.

6) Payment of interest may be postponed if the capital base does not exceed the capital requirement at the due date.

7) Unpaid interest that has been postponed pursuant to no. 6 may only fall due if the capital requirement is met again or if the loan matures.

8) The original maturity is at least five years.

9) Changes in the loan agreement shall be approved by the Danish FSA.

(2) Approval under subsection (1), no. 3 shall be subject to the capital base after repayment not being less than the capital requirement.

(3) Reduction under subsection (1), no. 5 may only take place if the insurance company or the multi-employer occupational pension fund subsequently either adds new capital such that the capital requirement is met, or it winds up without loss for the non-subordinated creditors. The subordinate loan capital and unpaid interest may only be reduced by an amount that has been approved by the external auditors and the Danish FSA prior to the reduction.

(4) Interest-rate increases on subordinate loan capital may take place no earlier than three years after the issue. If one or more interest-rate increases have been agreed, the subordinate loan capital shall be considered as falling due on the date of the interest-rate increase, if the sum of the interest-rate increases exceeds 150 basis points less the swap spread on the date of issue. Swap spread shall mean the difference between the interest basis of the increase in interest rate and the original interest basis of the issue.

(5) In exceptional circumstances the Danish FSA may grant exemption from the limit of 150 basis points in subsection (4), 2nd clause.

39. The subordinate loan capital of insurance companies and multi-employer occupational pension funds which is included in calculation of the capital base shall be reduced by

1) 25% of the capital issued when less than 3 years and more than or exactly 2 years remains to maturity,

2) 50% of the capital issued when less than 2 years and more than or exactly 1 year remains to maturity,

3) 75% of the capital issued when less than 1 year remains to maturity, and

4) The holding of own subordinate loan capital and own subordinate loan capital that serves as collateral for loans or guarantees, reduced according to nos. 1-3.

Addition for possible supplementary premium in mutual non-life insurance companies

40.-(1) The Danish FSA may, after receiving an application, approve that additions for possible supplementary premiums in mutual non-life assurance companies may be included under section 37(1), no. 2 if the premium is variable pursuant to the insurance contract so

that the premium can be increased considering the risk development of the insurance portfolio, and if the policy holder may be charged for the extra premium during the year.

(2) Amounts under subsection (1) may not be included before the end of the year in which the supplementary premium is chargeable.

(3) Amounts under subsection (1) for which the policy holder has been charged cannot be included under section 37(1), no. 2.

Special bonus provisions (type A) in life-assurance companies and multi-employer occupational pension funds

41.-(1) With regard to special bonus provisions (type A) in life-assurance companies and multi-employer occupational pension funds which are included in the capital base according to section 37(1), no. 3, and which are a part of the insurance provisions, the following shall apply:

1) They are, for all or part of the company's insurance contracts, built up of funds from the insurance contracts' share of the realised results, cf. section 20(1), no. 3 of the Financial Business Act, or of distributions from equity.

2) They are attached to the insurance contracts, individually or jointly, in such a way that the individual insurance contract's share with related return, cf. no. 5, may be calculated at any time, cf. however subsection (2) regarding collective special bonus provisions built up of distributions from equity.

They are not, as an amount, part of the portfolio of insurance contracts when calculating the proportion of the realised results, cf. section 20(1), no. 3 of the Financial Business Act, which shall be added to said portfolio.

4) Transfer of the individual special bonus provision of an insurance contract, and an insurance contract's share of collective special bonus provisions built up of the insurance contracts' share of the realised result shall take place no later than at the same time as payment of benefits under the insurance contract.

5) Special bonus provisions built up of funds from the insurance contracts' share of the realised result, cf. section 20(1), no. 3 of the Financial Business Act, shall regularly be allocated interest agreed on market terms corresponding to the subordinate loan capital. Special bonus provisions built up of distributions from equity shall regularly be allocated interest corresponding to the subordinate loan capital which is set by the company.

6) They may be used to cover all the company's losses and any non-subordinated claim against the company, when the equity has been lost.

7) The individual special bonus provision of an insurance contract, and an insurance contract's share of collective special bonus provisions built up of the insurance contracts' share of the realised result shall be included in full in calculation and payment of cash surrender values, in transfers from one company to another, in a change of job or in connection with a transfer of ownership or reorganisation of an undertaking, cf. section 20(1), no. 7 of the Financial Business Act. An insurance contract's share of collective special bonus provisions built up of distributions from equity may be included in calculation of payment of cash surrender values, in transfers from one company to another, in a change of job or in connection with a transfer of ownership or reorganisation of an undertaking, cf. section 20(1), no. 7 of the Financial Business Act. Special bonus provisions, however, may only be included if the core capital elements in the company consisting of paid-up share capital and guarantee capital, share

premium, other reserves that do not correspond to liabilities, retained earnings or losses, members' accounts, special bonus provisions of type B and the current profit for the year, add up to more than one-third of the solvency requirement, or add up to an amount greater than the minimum capital requirement.

(2) Amounts that are irrevocably distributed from equity to the benefit of insured parties may be included in calculation of the special bonus provisions (type A) if, in accordance with a detailed distribution regulation, over a period they are brought into compliance with the conditions of subsection (1), nos. 2 and 4, and no. 7, 1st clause. There is a further condition that, together with other special bonus provisions (type A), the amount distributed meets the conditions in subsection (1), nos. 3, 5 and 6. The distribution regulation shall be notified to the Danish FSA before the regulation is applied. The distribution may, as a maximum, last for ten years from the date on which the amount was originally distributed from equity.

IV

Entry into force and transitional provisions

Part 10

Penalties

42.-(1) Any person violating section 11(1) and (2) shall be liable to a fine or imprisonment of up to four months.

(2) Violation of section 8, section 12, section 25 and section 26, shall be liable to a fine.

(3) Limited companies etc. (legal persons) may be subject to criminal liability pursuant to the provisions of Part 5 of the Penal Code.

Part 11

Entry into force and transitional provisions

43.-(1) This Executive Order shall enter into force on 1 October 2012, cf. however subsection (2).

(2) section 8(1), (3) and (4), as well as sections 9 and 10, shall enter into force on 1 January 2013.

(3) Executive Order no. 764 of 24 June 2011 on Calculation of Capital Base shall be repealed.

44.-(1) Guarantor capital and cooperative capital which met the requirements for inclusion in core capital on 30 June 2011, but which failed to meet the requirements after 1 July 2011, may be included in the actual core capital up to 1 July 2012.

45.-(1) Hybrid core capital in banks, mortgage-credit institutions, investment firms and investment management companies issued before 1 July 2010 which met the requirements for hybrid core capital before 1 July 2010, but which failed to meet the requirements for hybrid core capital after 1 July 2010 may, up to 31 December 2040, be equivalent to hybrid core capital which meets the requirements of sections 13-26, however with the following restrictions:

1) In the period from 1 January 2020 to 31 December 2029, such capital may as a maximum amount to 20% of the core capital reduced by the value of own shares, intangible assets and the current loss for the year.

2) In the period from 1 January 2030 to 31 December 2039, such capital may as a maximum amount to 10% of the core capital reduced by the value of own shares, intangible assets and the current loss for the year.

(2) Hybrid core capital covered by subsection (1) which could be included by up to 50% of the core capital before 1 July 2010 shall be equivalent to hybrid core capital which meets the requirements of section 15(1), nos. 1 and 2 up to 31 December 2040 with the same restrictions as stated in subsection (1), nos. 1 and 2.

(3) Hybrid core capital covered by subsection (1) which could be included by up to 35% of the core capital before 1 July 2010 shall be equivalent to hybrid core capital which meets the requirements of section 15(2) up to 31 December 2040 with the same restrictions as stated in subsection (1), nos. 1 and 2.

46. Hybrid core capital in banks, mortgage-credit institutions, investment firms and investment management companies issued in the period from 1 July 2010 up to and including 30 June 2011 which met the requirements for hybrid core capital on 30 June 2011 but which fails to meet all the requirements for hybrid core capital in this Executive Order is equivalent to hybrid core capital which meets the requirements of this Executive Order.

47. Paid-up guarantor capital pursuant to section 208(2) of the Financial Business Act which could be included in the core capital before 1 July 2011 may be included in the actual core capital up to 1 July 2016.

48. Section 35(2) and section 41(2) shall not apply for collective special bonus provisions which have been built up from distributions from equity before entry into force of this Executive Order.

49. Section 38(1), no. 5 shall not apply for agreements on subordinate loan capital entered into before 1 January 2004.

The Danish Financial Supervisory Authority, 12 September 2012

Ulrik Nødgaard

/ Sean Hove