2016-05-16

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Nordea Bank AB
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FI Ref. 16-4318,
16-4319 and 16-4320

Authorisation to execute merger plans

Finansinspektionen's decision (to be announced 17 May 2016 at 8:00 a.m.)

1. Finansinspektionen grants Nordea Bank AB, CIN 516406-0120, authorisation to execute the merger plan prepared with its subsidiary, Nordea Bank Danmark A/S, CIN 13522197, under which Nordea Bank Danmark A/S is absorbed by Nordea Bank AB (publ).
2. Finansinspektionen grants Nordea Bank AB, CIN 516406-0120, authorisation to execute the merger plan prepared with its subsidiary, Nordea Bank Finland Abp, CIN 1680235-8, under which Nordea Bank Finland Abp is absorbed by Nordea Bank AB.
3. Finansinspektionen grants Nordea Bank AB, CIN 516406-0120, authorisation to execute the merger plan prepared with its subsidiary, Nordea Bank Norge ASA, CIN 911 044 110, under which Nordea Bank Norge ASA is absorbed by Nordea Bank AB.

(Chapter 10, section 20 of the Banking and Finance Business Act [2004:297])

Summary

Nordea Bank AB has applied for authorisation to execute three merger plans. The mergers refer to the absorption of three wholly-owned subsidiaries that conduct banking and securities business respectively in Denmark, Finland and Norway.

The reason for the mergers is that the Nordea Group would like to change from a subsidiary bank structure to a branch structure in order to simplify the Group's legal structure and thus create conditions for more effective governance of the Group. If the mergers are implemented, Nordea Bank AB would have approximately 26,000 employees.

Finansinspektionen shall deny an application to execute a merger plan if, for example, the merger cannot be deemed compatible with the interests of the

depositors or other creditors (interests of creditors, Sw. *borgenärsintresset*). An application shall also be denied if justified with regard to public interest.

With regard to the interest of creditors, Finansinspektionen draws the conclusion that the financial circumstances of Nordea Bank and the subsidiary banks are such that an execution of the mergers will not result in a need for additional security or protection for creditors. The financial circumstances of the merging companies in general are also not such that the mergers should be deemed non-compatible with the interests of the depositors or other creditors. There are therefore no grounds on which to deny the applications due to the interests of creditors.

With regard to public interest, Finansinspektionen makes the assessment that the risks in Nordea Bank AB would not change significantly as a result of the implementation of the mergers and that the mergers therefore do not entail an elevated risk for a serious crisis in Nordea Bank AB. If a serious crisis were to arise within the Bank, Finansinspektionen believes that the mergers would not impair the conditions for handling this crisis or that the Swedish State's potential commitments would be significantly larger than they are today. Finansinspektionen therefore makes the assessment that the mergers would not increase the risk of a serious disruption in the payment system (system protection) or the manner in which the capital market functions (efficiency protection). There are therefore no grounds upon which to deny the applications due to public interest.

However, taking the transformation risk into consideration, it may be relevant to apply an additional, temporary own funds requirement to address the risks during this critical transition period. Finansinspektionen will continue to carefully monitor Nordea Bank AB's contingency planning when it comes to liquidity and funding, conduct more frequent and comprehensive supervision and, if necessary, widen the scope of the bank's reporting. Even if a large part of the supervisory responsibility after the mergers will be transferred to Finansinspektionen, it will still be necessary to coordinate supervision activities, the exchange of information, etc. Continued good cooperation via the supervisory colleges, concerning cross-border collaboration with supervisory authorities is therefore also important after the mergers.

Overall, Finansinspektionen finds that there are no grounds on which to deny the applications. Authorisation to execute the merger plans is therefore granted.

1 The case

1.1 Background

The Nordea Group (Nordea or the Group), which has assets totalling EUR 676 billion, is the largest bank in the Nordic region and one of the largest in Europe. The Group has been identified by the Financial Stability Board as a

global systemically important institution, and it is the only Nordic bank to have been classified as such.

The Group's parent company, Nordea Bank AB (Nordea Bank or the Bank) currently has wholly-owned subsidiaries in Denmark, Finland and Norway: Nordea Bank Danmark A/S (Nordea Denmark), Nordea Bank Finland Abp (Nordea Finland) and Nordea Bank Norge ASA (Nordea Norway) (jointly: the subsidiary banks). The subsidiary banks all conduct banking and securities business in accordance with authorisation from their respective supervisory authority.

Nordea Bank also has branches in these three countries. Nordea Bank is now planning to transfer the operations conducted by the subsidiary banks, with the exception of the mortgage credit operations in Nordea Finland and the pawn broking service in Nordea Norway, to Nordea Bank's branches in Denmark, Finland and Norway. The Bank intends to implement such a re-structuring by merging its subsidiary banks with Nordea Bank. If the mergers are implemented, Nordea Bank AB will have approximately 26,000 employees.

Nordea Bank must receive authorisation from Finansinspektionen to execute a merger plan for each of the mergers. Nordea Bank must also receive authorisation from relevant authorities in Denmark, Finland and Norway to implement each respective merger. These countries have not yet announced their position on the matter. Finansinspektionen's assessment is conducted in accordance with the rules regarding mergers that apply in Sweden and is not dependent on the assessments conducted in the other countries.

1.2 Applications

Nordea Bank has submitted three applications for authorisation to execute a merger plan. The following information is presented in the applications. Each subsidiary bank's assets and liabilities will be taken over by Nordea Bank through a cross-border merger in the form of an absorption. The aim of the mergers is to simplify the Group's legal structure. The mergers will strengthen corporate governance, reduce administrative complexity and improve efficiency. The operations that are conducted today through the subsidiary banks, with the exception of the mortgage credit operations in Nordea Finland and the pawn broking operations in Nordea Norway, will be merged into Nordea Bank and thereafter conducted through branches. The Swedish operations that Nordea Bank conducts today will not change as a result of the mergers. The current subsidiaries to the subsidiary banks will not be affected by the mergers as such, but after the mergers will be subsidiaries of Nordea Bank. After the execution of the mergers, Nordea Bank will legally be responsible for the commitments of all of the subsidiary banks. The mergers

will facilitate governance, risk control and internal auditing and reduce operational risk[1].

Nordea Bank has also provided information in its applications regarding the following.

With regard to the effects on customers, the intention is that the existing customers of the merging companies will essentially not be negatively affected by the mergers. One change is that deposits made in each of the subsidiary banks will primarily be covered by the Swedish deposit insurance scheme. There may be some differences between the Swedish deposit insurance scheme and the schemes in the other countries in terms of the accounts and amounts that are covered. If necessary, in order to achieve a scope and level equivalent to what applies to the subsidiary banks today, Nordea Bank will also join the Danish and Norwegian deposit insurance schemes and investigate the possibility of joining the Finnish deposit insurance scheme. Nordea Bank will also apply to the Swedish deposit insurance scheme to extend the Swedish protection to the Finnish level for certain deposits. Furthermore, the Bank will apply to the Swedish National Debt Office for an assessment of whether the terms for each type of account that are used in Denmark, Finland and Norway to receive deposits also mean that the account type is covered by the Swedish deposit insurance.

Appended to the applications are declarations of oath for each subsidiary bank from the Boards of Directors of Nordea Bank and the respective subsidiary banks that the mergers have not been forbidden in accordance with the Competition Act (2008:579) or Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings and that an assessment of the mergers is not currently underway in accordance with the Competition Act or the aforementioned Regulation.

A merger plan for each subsidiary bank has also been appended to the applications. Each merger plan has been signed by the Boards of Directors of Nordea Bank and each respective subsidiary bank. The merger plans were also approved by Nordea Bank's Annual General Meeting on 17 March 2016.

Statements from the authorised auditors appointed by Nordea Bank regarding the auditor review of each of the three merger plans have also been appended to the applications. In these statements the auditors expressed their opinion regarding whether there is reason to believe that the mergers introduce a risk that the creditors of Nordea Bank will not have their claims paid.

The Boards of Directors of Nordea Bank and the subsidiary bank have also submitted a report for each merger in accordance with Chapter 23, section 39

[1] The risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk.

of the Companies Act (2005:551). In these reports they have accounted for the mergers' probable consequences for shareholders, creditors and employees. The Boards make the assessment that creditors' claims will be sufficiently protected and will not be affected by the mergers since the merged company is not expected to represent a greater credit risk than the merging companies taken together. They also make the assessment that the operational risk will be reduced as a result of the merger since the new organisation is expected to strengthen corporate governance, decrease administrative complexity and increase efficiency. The Boards also do not expect there to be a change in the credit risk of the operations and thus no subsequent change in the capital requirement.

2 Comments from Sveriges Riksbank and the Swedish National Debt Office

Finansinspektionen has provided Sveriges Riksbank and the Swedish National Debt Office with an opportunity to make a statement regarding the applications.

2.1 Statement from Sveriges Riksbank

Sveriges Riksbank (the Riksbank) has primarily stated the following.

The Riksbank's overall assessment is that a restructuring from a subsidiary bank structure to a branch structure entails that the Swedish authorities will obtain more direct responsibility for supervision and crisis management regarding the company's operations abroad. This may result in a more integrated supervision and make it easier to manage a situation where the Bank is in crisis. A restructuring will also result in a simpler legal structure, which can create efficiency benefits for the bank. At the same time, the restructuring will increase the Swedish State's undertakings since Nordea Bank's balance sheet will be larger. One consequence of this is that the scope of the potential undertaking of liquidity support from the Riksbank and any future State crisis management measures increases significantly.

The Riksbank believes that there is reason to increase Nordea Bank's resilience to, for example, disruptions in its funding by tightening the requirements regarding its liquidity buffers. The Riksbank therefore considers that Nordea Bank, in addition to the current Liquidity Coverage Ratio (LCR) in EUR and USD, should also be subject to LCR in all of its significant currencies, including SEK, DKK and NOK. The need for additional requirements on liquidity buffers in EUR in excess of the current regulations should also be investigated.

Furthermore, the Riksbank states that it may also be necessary to take measures to ensure that it is able to provide liquidity in the currencies that are needed,

such as reviewing the size and composition of the currency reserve. The Riksbank may also need to establish swap agreements[2] with other central banks. It may also be relevant for the Riksbank to increase the frequency with which it obtains information from Nordea Bank and also include the Bank's liquidity situation in DKK and NOK in its reporting. The Riksbank also intends to intensify the cooperation and coordination with other central banks in the Nordic and Baltic regions.

In addition, the Riksbank discusses some issues related to the regulation of major banks' capital and liquidity requirements.

2.2 Statement from the Swedish National Debt Office

The Swedish National Debt Office has primarily stated the following.

The Swedish National Debt Office's overall assessment is that the State's risk with regard to the deposit insurance and resolution in the event of a future financial crisis is not affected to any material extent by the merger plans. Given this, and based on the Swedish National Debt Office's areas of responsibility, the Swedish National Debt Office takes a positive approach to the restructuring.

A reorganisation of the legal structure, through a sharp increase in the parent company's assets and guaranteed deposits, would result in a wider formal responsibility for Sweden with regard to both deposit insurance and resolution. However, this broader responsibility should not be considered to be the same as an increase in the financial commitment of the Swedish State in the event of a future crisis in Nordea Bank.

Taking into consideration Nordea's business model and a preliminary assessment of a suitable resolution strategy, a branch structure, all else equal, would improve Nordea Bank's resolution capacity. Fewer legal entities mean fewer internal and external, operational, financial and legal links that must be secured from a resolution perspective. This also reduces the risk that better positioned subsidiaries will be ring-fenced in a crisis situation. It is the assessment of the Swedish National Debt Office that the planned measures together lead to a lower degree of complexity and increase the probability of a possible, efficient resolution process.

The aim of the Bank Recovery and Resolution Directive[3] is that losses in a resolution shall be carried by shareholders and creditors. In the exceptional

[2] A type of exchange agreement in order to gain access to foreign currency.
[3] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and

case where, for the resolution of Nordea Bank, it would be necessary to use the resolution reserve or other public funds, Sweden would probably have to carry the majority of the costs even with the Group's current structure. The overall assessment, therefore, is that with regard to the costs related to managing a resolution of Nordea Bank, the distribution of responsibility in practice will be the same regardless of whether the operations are conducted through branches or subsidiary banks.

The volume of insured deposits that would fall under the Swedish insurance scheme after the mergers implies an increased commitment for the Swedish deposit insurance. The deposit insurance fund's assets as a percentage of the total commitment (currently around 2.3 per cent) would subsequently decrease but are not judged to fall below the State's proposed target of 0.8 per cent. There is thus no risk that fees would need to be raised in order to reach the target level. In this context, it should also be noted that a default by Nordea Bank would probably not be handled within the framework of the deposit insurance but rather through a resolution procedure.

3 Applicable provisions

For a description of the applicable provisions, see the *Appendix*.

4 Finansinspektionen's assessment

4.1 General

An application for authorisation to execute a merger plan in accordance with Chapter 10, section 20 of the Banking and Financing Business Act (2004:297) with regard to mergers through absorption and in accordance with Chapter 10, section 22, first paragraph of the same Act, shall be denied if

- the merger plan has not been duly approved or the content thereof violates any act or other statutory instrument or the articles of association,
- the merger has been prohibited pursuant to the Competition Act (2008:579) or pursuant to Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings or where an assessment of a merger is pending pursuant to the Competition Act or the aforementioned Regulation,
- the company's creditors have not been assured such satisfactory security as referred to in section 21 of the Banking and Financing Business Act or the merging companies' financial circumstances in general are such that the merger may not be deemed compatible with the interests of depositors or other creditors, or
- it is justified with regard to the public interest.

Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council.

Finansinspektionen's assessment is set forth below.

4.2 Merger plans

Nordea Bank has submitted three merger plans, all of which have been duly approved. Finansinspektionen makes the assessment that the merger plans are not in violation of the law or other regulation or the articles of association. There are therefore no grounds related to this matter upon which to deny the applications.

4.3 Competition

Nordea Bank states that since the scope of the conducted operations will not be affected by the mergers, there will be no negative impact on competition on the market. The Boards of Directors of Nordea Bank and the subsidiary banks have also submitted a declaration of oath for each merger in accordance with Chapter 2, section 5a of the Banking and Financing Banking Ordinance (2004:329) that the merger has not been prohibited in accordance with the Competition Act or the Council Regulation on the control of concentrations between undertakings, and that a review of the merger is not currently underway in accordance with the Competition Act or the aforementioned Regulation.

Finansinspektionen therefore finds no grounds related to this matter on which to deny the applications.

4.4 Interests of creditors

An application to execute a merger plan shall be denied if the financial circumstances of the merging companies are such that the merger may not be deemed compatible with the interests of the depositors and other creditors (interests of creditors, Sw. *borgenärsintresset*). Finansinspektionen shall ensure during its assessment that creditors are assured satisfactory security if the financial circumstances of the merging companies make such protection necessary and where the creditors do not already have such security. The assessment of the impact of the mergers on creditors is presented below. Section 4.5 regarding public interest accounts in detail for the impact of the restructuring on the risks in the operations.

Nordea Bank currently has equity totalling approximately EUR 20 billion and assets totalling approximately EUR 200 billion. Its assets include shareholdings worth approximately EUR 6, 10 and 5 billion in Nordea Denmark, Nordea Finland and Nordea Norway, respectively. At the end of 2014, there were also intra-Group net loans totalling EUR 3, 29 and 11 billion to the Danish, Finnish and Norwegian subsidiary banks, respectively. In total, Nordea Bank's net exposure to these three subsidiary banks is thus more than EUR 60 billion, which corresponds to one-third of Nordea Bank's own balance sheet or three times its equity.

At the Group level the mergers lead to small changes in the balance sheet, capital adequacy and earnings. The mergers would result in Nordea Bank having a balance sheet total of almost EUR 500 billion, equity of approximately EUR 26 billion and common equity Tier 1 capital of approximately EUR 21 billion. Nordea Bank's balance sheet would grow because of the mergers, but its capital would also increase and the balance sheet's structure would become simpler since loans and guarantees between the merging companies would be eliminated. The Bank's relationship with its customers would most likely not be materially affected.

Finansinspektionen conducts an annual assessment of how much capital the banks should hold given a forward-looking perspective. For both Nordea Bank and the Group, Finansinspektionen finds that the expected own funds after the mergers exceed the expected future capital requirement. This applies to both total capital as well as common equity Tier 1 capital.

Finansinspektionen has also reviewed Nordea's forecasts for return on equity, the leverage ratio and credit losses for Nordea Bank and the Group and finds them satisfactory.

Nordea already meets the current requirements on LCR. The mergers are not expected to have an impact on this ratio since Nordea already applies centralised liquidity management.

Finansinspektionen agrees with the Riksbank's and the Swedish National Debt Office's opinions that the mergers will generate efficiency benefits for the Bank. Finansinspektionen also makes the assessment that the mergers improve Nordea's recovery capacity, i.e. the Group's ability to recover from a serious crisis using its own financial resources. Finansinspektionen also agrees with the Swedish National Debt Office's assessment that the mergers improve Nordea's resolution capacity and that the group of investors that would be affected by an eventual debt write-down would not change.

As described in section 4.5.2, Finansinspektionen shares the assessment of the Swedish National Debt Office that it is highly improbable that Nordea, in the event of a default, would be managed within the framework of the deposit insurance. If Nordea Bank were to enter into bankruptcy, or if Finansinspektionen were to decide that the deposit insurance should enter into force, account holders that are covered by the deposit insurance at Nordea Bank would be entitled to compensation corresponding to the deposited amount as well as interest up to the point in time the decision is made and up to a certain amount. The regulation complies with the Deposit Guarantee Directive[4].

[4] Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes. The Directive has been recast through Directive 2014/49/EU of the

Nordea Bank's profitability after the mergers is not assessed to become lower than the profitability achieved today for Nordea Bank and its subsidiary banks as a whole, even though there are short-term costs for implementing the new legal structure. The risk that the Bank would not be able to meet its commitments to creditors in the future is not judged to be larger after the mergers than what it is today.

As a whole, Finansinspektionen makes the assessment that the financial circumstances of Nordea Bank and the subsidiary banks are such that an execution of the mergers will not require additional security or protection for the creditors. The financial circumstances of the merging companies in general are also not such that the mergers can be deemed non-compatible with the interests of the depositors or other creditors. Given this background, there are no grounds for denying Nordea Bank's applications due to the interests of creditors.

4.5 Public interest

As mentioned in section 4.1, an application shall be denied if justified with regard to the public interest. The preparatory works state that it should be possible for Finansinspektionen to object to a merger on the grounds of public interest only in the case of very serious situations and risks. The reason for this restrictive approach is the ensuing limitations on the freedom of establishment. A general rule regarding the right to oppose a merger should primarily be applicable if the merger were to result in major disruptions in the payment system (system protection) or in the capital market's functions (efficiency protection). The preparatory works also state that in order for an application for the execution of a merger plan to be denied on the grounds of public interest, the conditions of necessity and proportionality must be fulfilled. (See Govt. Bill 2008/09:180 p. 68f.)

When assessing how the public interest is affected by the mergers, Finansinspektionen starts below by assessing whether the risks in Nordea Bank's operations, and thus the risk of a serious crisis in the Bank, change significantly. Finansinspektionen then accounts for how the conditions for supervision, resolution and liquidity support are affected by the planned mergers in the event a serious crisis in the Bank. The account below also includes how the Swedish deposit insurance may be affected by the planned mergers. These conditions are relevant to Finansinspektionen's assessment since the rules that apply in the event of a crisis in a bank aim to protect the public interest.

European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast), which has not yet been adopted into Swedish law, see Govt. Bill 2015/16:106.

4.5.1 Effect of the mergers on the risks in Nordea Bank

As stated in section 4.4, Finansinspektionen makes the assessment that the financial circumstances of the merging companies as a whole are expected to be satisfactory even after the mergers. As part of the assessment of public interest, Finansinspektionen now assesses whether the risk of default in Nordea Bank increases after the mergers compared to today.

In this context it is important to note that the Bank and its subsidiary banks are already today so closely integrated operationally, and linked financially, that there is an interdependence between the stability of the Group, the Bank and the subsidiary banks. This means that Nordea Bank and the subsidiary banks are already affected by one another to such an extent that each plays an important role for the stability of the Group, and by extension for the public interest. A default in one of the subsidiary banks or the parent bank would thus entail a considerable risk for default in the other parts of the Group. An assessment of whether and in what way the risk level of the Bank is affected by the mergers must therefore be based on the Bank's consolidated position.

The planned mergers mean that Nordea Bank will become significantly larger and the subsidiary banks will disappear. However, the composition of Nordea's assets and liabilities will not change as a result of the restructuring, but rather become concentrated to the parent bank. Capital and liquidity for the Group will also be the same after the mergers. According to Finansinspektionen's assessment, there will not be any change in the risks associated with lending, securities trade or financing. Credit risk and market risk will not change after the mergers since the Group's credit and securities portfolios are the same, even if the exposures that were previously held in the subsidiary banks will be transferred to Nordea Bank. Pension risk will continue to be governed by local pension and labour regulations and will not be affected by the mergers. Insurance risk will not change since Nordea's insurance group, Nordea Life & Pensions Group, is already owned by Nordea Bank. Liquidity risk control is already centralised and the mergers are not expected to have a significant impact on liquidity or financing risk.

From the Group's perspective, the operations will not change except for the fact that some parts will be run under a new legal form. Finansinspektionen notes that the legal structure after the mergers will be more aligned to the operational governance of the Bank, which is already based on an integrated structure and consists of several cross-organisational processes and functions. Finansinspektionen therefore makes the assessment that the mergers improve the conditions for internal governance and control. The conditions for good compliance also improve since it becomes easier to maintain unified documentation and unified procedures in all parts of the operations that are planned to be merged. In general, less complex organisational structures have lower operational risk.

Even if Nordea's operational risk in the long run is judged to potentially decrease slightly as a result of the mergers, the actual implementation of the mergers can temporarily increase the operational risk. Large changes generally mean higher operational risks, particularly if they are implemented relatively quickly. In this case, the change is not just purely organisational, but also includes a number of consequential changes, such as changes to IT, client and reporting systems.

However, Finansinspektionen makes the assessment that Nordea Bank has satisfactorily identified the transformation risks and taken measures to manage them. There is a clear organisation for the implementation of the mergers that has established processes for identifying and rectifying risks during the course of the merger implementation. It also has clear escalation procedures for transferring information up through the organisation.

Given the fact that Nordea's accumulated risks are not affected by the mergers, capital adequacy and the liquidity coverage ratio are not affected at the Group level. Nordea Bank by itself also has sufficient capital adequacy and liquidity after the mergers. Finansinspektionen therefore makes the assessment that the inherent risk level in Nordea Bank will not increase as a result of the mergers. The restructuring is therefore not considered to have a direct impact on system protection in the sense that the change would directly lead to serious disruptions in the payment system. Neither is the restructuring expected to lead to a negative impact on the manner in which the capital market functions.

In summary, Finansinspektionen makes the assessment that the risks in Nordea Bank would not change materially if the planned mergers were executed. As described above, it is possible that the risks could decrease, and the resilience increase, under a branch structure, although a restructuring of this size does lead to elevated operational risk. The slightly elevated risk related to the implementation of the mergers, however, can be taken into account in the annual Supervisory Review and Evaluation Process that will be concluded on 30 September 2016. It is highly probable that an additional own funds requirement will be applied for a while to address these risks during this critical transition period.

4.5.2 Significance of the mergers in the event of a serious crisis in the bank

Nordea Bank is currently already a large, systemically important bank and if it were to default the consequences for financial stability would be considerable. The issue that Finansinspektionen shall assess is how the mergers and the resulting new legal structure affect the Swedish authorities' responsibility and conditions for managing supervision, resolution, deposit insurance and liquidity support, and thus their ability to prevent and manage a serious crisis in the Bank.

Authorisations and supervision of the Home and Host States

Under a subsidiary bank structure, the authorities in the Home States of the subsidiary banks are formally responsible for the subsidiary banks and therefore have comprehensive powers to intervene. Intervention may consist of, for example, the authorities issuing capital and liquidity requirements or deciding on sanctions for regulation violations. The authorities, in the event of a serious crisis in the group, are also able to ring-fence liquidity and capital in a subsidiary bank to protect the domestic financial stability.

The authorities in the Home State for the parent bank, however, in practice are also responsible for the subsidiary banks since problems in one subsidiary bank will result in problems for the parent bank and the entire group. Losses in a subsidiary bank in reality must be borne by the parent bank since a parent bank cannot allow a major subsidiary bank to fail without incurring extremely large losses, significant capital deterioration and potentially extensive funding problems for the parent bank and the group. For the same reason, it is also almost never a realistic alternative for the Home State of the parent bank, in a crisis situation, not to be involved in the solution for a major subsidiary bank even if this is theoretically possible.[5] This means that the authorities in the subsidiary bank's Home State, through ring-fencing, can protect the subsidiary bank from problems in the parent bank, but that authorities in the parent bank's Home State cannot protect the parent bank from problems in the subsidiary bank. There is therefore no guarantee that the burden for the Home State, in this case Sweden, would be any less if there were subsidiary banks in other countries compared to branches.

In a branch structure, the Host States only have limited authority to intervene and primarily participate in the supervisory college, which is intended to promote cross-border supervision collaboration, to exchange information and contribute to risk assessments. Instead, the Home State is officially responsible for the branches and thus also has full authority to supervise and intervene. In this way, the branch structure means that powers and control are more aligned with the actual division of responsibility since authorities in the parent bank's Home State, as described above, in practice are also responsible for the subsidiary banks in the event of a serious crisis.

If the mergers are executed and the subsidiary banks are changed into branches, a large part of the responsibility for the supervision of both the capital and liquidity requirements will fall to Finansinspektionen.[6] However,

[5] There are several examples from the most recent financial crisis where parent banks (and indirectly authorities in the parent banks' Home States) continued to support subsidiary banks experiencing serious solvency issues.

[6] The Host States will conduct some supervision of the branches and are entitled to take appropriate measures to prevent or punish regulatory violations within the Host State's territory. After the intended mergers, interventions will occur through the Home State, i.e. Finansinspektionen. In crisis situations, a Host State may also take security measures to protect

Nordea intends to keep mortgage institutions and financing companies in the Nordic countries, which means that the Host States would continue to be full-fledged members of the supervisory colleges and, for example, participate in joint decisions regarding capital and liquidity requirements, risk assessment and recovery plans. The remaining mortgage institutions, however, will be significantly smaller and less complex operationally than the current subsidiary banks. Therefore, Finansinspektionen will take on a significantly larger supervisory responsibility than it had before, both officially and in practice, even if the focus and design of this supervision will not change much. Finansinspektionen's supervision, due to the conditions described above, for a long time has been conducted at the consolidated level with a focus on the entirety of the Group's risks, including those of the subsidiary banks. The capital requirements, liquidity requirements and supervision planning are already based on a Group perspective. Even if a large part of the supervisory responsibility after the mergers will be transferred to Finansinspektionen, it will still be necessary to coordinate supervision activities, the exchange of information, etc. Continued close cooperation in the supervisory colleges is therefore important even after the mergers.

Once the mergers are executed, a significant portion of the responsibility for the supervision of the operations of the Group will be transferred from the other supervisory authorities to Finansinspektionen. Naturally, this affects Finansinspektionen's resource requirements.

Resolution and deposit insurance

Given that a significant amount of the subsidiary banks' assets and liabilities will be moved to Nordea Bank, Sweden's formal responsibility for resolution and the deposit insurance increases as a result of the mergers. However, Finansinspektionen shares the Swedish National Debt Office's assessment that this does not necessarily mean that the Swedish State's financial commitment or risk increases.

Resolution is a new legal tool that aims to secure continued operations in forms controlled by the State, or an orderly winding up of a systemically important bank that is assessed to be about to fail.[7] After passing a decision regarding resolution, the State, via the resolution authority, takes control of the bank. The goal of the resolution is to maintain the bank's critical functions while at the same ensuring that the losses caused by the bank's default are carried by the bank's owners and lenders. Only in exceptional cases will it be possible to contribute public funds during a resolution. Finansinspektionen shares the Swedish National Debt Office's assessment that in these almost theoretical

against financial instability that would seriously threaten the collective interests of, for example, depositors. The Host State is also entitled to certain information from Finansinspektionen and the branch and is entitled to conduct on-site visits of the branch.

[7] See the Resolution Act (2015:1016),

cases Sweden would probably have to carry the majority of the cost on its own even under Nordea's current subsidiary bank structure.

The resolution of a cross-border, systemically important bank, which is part of a financially and operationally integrated banking group, in practice is still largely a national concern for the Home State and the parent bank. In Finansinspektionen's opinion, handling the national subsidiary banks separately in a resolution procedure is not possible. This is primarily due to the narrow windows of time that are available for the resolution procedure, which do not allow for an extensive restructuring of a bank. Given the Swedish National Debt Office's preliminary assessment that a resolution of Nordea would be carried out by intervention at the level of the parent bank, Finansinspektionen makes the assessment that a branch structure would improve the conditions for carrying out a resolution of Nordea.

It is Finansinspektionen's assessment that the expected burden on the Swedish State in the event of a resolution would be lower under a branch structure, primarily because it would avoid inefficiencies associated with having capital and liquidity spread among several subsidiary banks. The Swedish National Debt Office also states that the branch structure would decrease the risk for ring-fencing of better positioned subsidiary banks during a crisis situation, i.e. when a foreign authority locks in the capital and liquidity to protect its own subsidiary bank. The possibility of achieving a successful resolution increases under a branch structure since the entire Group's capital and liquidity can be used where they are needed most. The expected burden for the Swedish State would also decrease since early intervention would be significantly facilitated, thus raising the probability that the bank could recover on its own or in any case that the management of the resolution would be more efficient. The simplified resolution management process derives from that fact that there is only one legal banking unit that must be managed and that decision-making is concentrated to fewer authorities with regard to the assessment of recovery plans and the management of early intervention and resolution. Resolution would thus become a more appropriate and efficient alternative. Nordea will naturally still have subsidiaries in Denmark, Finland and Norway in the form of e.g. mortgage institutions, but these will represent a significantly smaller portion of Nordea than the current subsidiary banks.

With regard to deposit insurance in Sweden, an execution of the mergers would mean that the guarantee would cover significantly larger amounts and more account holders. The Swedish deposit insurance would therefore undertake a larger commitment and the fees from Nordea Bank to the Swedish scheme would also increase. Finansinspektionen makes the assessment, much like the Swedish National Debt Office, that it is highly improbable that a global systemically important banking group such as Nordea would be handled within the framework of the deposit insurance in the event of default.

There is also a possibility, even if somewhat limited, in the new law[8] for the Swedish State to provide precautionary support to solvent banks, for example in the form of guarantees or capital contributions. Finansinspektionen views this possibility or risk to be equally large in the current subsidiary bank structure. This assessment is supported by the experience from the financial crisis in 2008 and 2009 when both the Swedish National Debt Office's guarantee program for borrowing (which was only utilised by one major bank) and the capital contribution to Nordea were designed to support the groups as a whole and not just the Swedish parent banks.

Finansinspektionen also believes that a branch structure significantly increases the flexibility of a resolution procedure, while the costs in a worst-case scenario are judged not to be larger than what would be the case under the current structure. The costs arising from a serious crisis would probably be lower for the Swedish State if the mergers were executed. This is primarily because the possibilities for controlling preparations for a resolution and staving off a default are improved under a branch structure, and such a structure also in other ways gives more freedom when applying the resolution tools. To the extent that the Swedish resolution fund would need to be used, a branch structure also improves Sweden's possibilities for exercising actual control over the entire group compared to what could be expected to be the case under a subsidiary bank structure. The conditions related to the deposit insurance and precautionary State support are not materially affected by the mergers.

Liquidity support

Central banks can provide both general liquidity support (central bank facilities) and targeted liquidity support (emergency loans). Normally, both branches and subsidiaries have access to general liquidity facilities in the countries where they operate. This applies to both normal lending facilities and temporary facilities that are established during times of crisis. The situation for emergency loans, however, is not as clear. Even if both subsidiaries and branches formally have access to emergency loans in the countries where they operate, decisions regarding emergency loans are often more discretionary.

Finansinspektionen shares the Riksbank's assessment that there is a risk that the Riksbank would need to provide Nordea Bank with emergency loans in foreign currency. However, this is not a new development. This is one of the reasons why the Riksbank has a currency reserve and that Swedish liquidity requirements include specific requirements on foreign currency. The issue here is how a transition to a branch structure affects the size of any emergency loans to Nordea and thus the risk for the Riksbank and the Swedish State.

[8] Precautionary Support Act (2015:1017).

Finansinspektionen makes the assessment that the size of emergency loans from the Riksbank in such a case may increase slightly since the possibilities for the central banks of the Host Countries to take collateral or control the use of emergency loans are limited. Some central banks may also be prevented by domestic legislation from granting emergency loans to a branch.[9]

However, it is Finansinspektionen's assessment that there is already considerable uncertainty about whether another country's central bank would grant emergency loans to subsidiary banks, and especially without conditions that would make it more difficult to carry out efficient crisis management for the Group as a whole, e.g. ring-fencing. According to Finansinspektionen, the risk that the Riksbank would need to provide liquidity support to the entire Group is significant even under the current subsidiary bank structure, and thus the risk is largely unchanged or only marginally greater under a future branch structure.

This is also in line with the Riksbank's own analysis of the size of the currency reserve in conjunction with the request for additional loans from the Swedish National Debt Office in 2012, which was based on the banks' consolidated balance sheets.[10] In other words, the Riksbank did not distinguish between subsidiary banks and branches, but rather based its calculations explicitly on the assumption that it may need to support the major banks' foreign subsidiary banks. To that extent the restructuring will not make a difference.

Given this background, from the Home State's perspective the risk rather is lower in a branch structure than a subsidiary bank structure since the supervisory authority has a greater possibility of making demands and checking the composition and physical placement of the liquidity buffer. Under a branch structure, liquidity and capital can also be moved freely within the bank, which increases the possibility that the Bank can recover with support from relatively "sound" parts of the operations. Furthermore, the Host States' central banks do not have any reason in such a situation not to provide the Riksbank with local currency, if such were needed to secure a branch's supply of liquidity. From their perspective there is significantly lower credit risk in entering a swap agreement with the Riksbank than in granting emergency loans to a branch. Finansinspektionen therefore agrees with the Riksbank's assessment that the Riksbank should take measures to establish swap agreements with other central banks.

Finansinspektionen draws the conclusion that the risk that the Riksbank will need to issue emergency loans in foreign currency to Nordea Bank increases

[9] According to the statement from the Riksbank, for countries in the euro zone, a central bank's decision to grant emergency loans in practice must be approved in advance by the ECB.
[10] Appendix A: *The Riksbank's need of foreign exchange reserves*, 2012-11-30, Financial Stability Department and Asset Management Department (http://www.riksbank.se/PageFiles/24062/probil_bilaga_A_121206.pdf)

marginally under a branch structure since there is a slightly lower probability that the central banks of Host States would issue such emergency loans if the foreign operations are run as a branch. At the same time, the Bank's opportunities for moving liquidity to where it is needed most improves, since the risk that liquidity would be ring-fenced in a subsidiary bank decreases. This also increases the possibility that Swedish authorities may achieve an efficient recovery or resolution of the Bank.

In its statement, the Riksbank expounds upon how the liquidity requirements for Nordea Bank should be designed. Finansinspektionen believes that, with regard to the LCR requirement, the currency composition of the liquidity buffer should reflect the relevance of different currencies in a bank's business and financing. It is particularly important for Swedish banks to have sufficient buffers in the world reserve currencies, EUR and USD. As world reserve currencies, EUR and USD can almost always be exchanged for other currencies and therefore function as liquidity reserves against outflows of other currencies as well. Finansinspektionen finds that a requirement on Nordea Bank, and in that case also on other Swedish banks, to hold sufficient buffers in SEK or other smaller (and in crisis situations less liquid) currencies would not be well suited to its purpose from a stability point of view.[11] Finansinspektionen will continue to carefully monitor Nordea Bank's contingent liquidity and supplement this with more frequent and comprehensive supervision and, if necessary, a wider scope for the bank's reporting.

4.5.3 Overall assessment

Finansinspektionen makes the assessment that the mergers do not increase the risk of a serious crisis in Nordea Bank. If a serious crisis were to arise in the Bank, Finansinspektionen believes that the mergers would rather improve the conditions for handling the crisis compared to the conditions today. The mergers also do not make the Swedish State's potential commitment significantly larger than what it is today. The Swedish State's formal responsibility for supervision, resolution, the deposit insurance and liquidity support increases, but at the same time so does its control and freedom to take action during a serious crisis, which improves the conditions for achieving an efficient recovery or resolution. Finansinspektionen therefore makes the assessment that the mergers would not increase the risk of a serious disruption in the payment system (system protection) or the manner in which the capital market functions (efficiency protection). There are therefore no grounds upon which to deny the applications due to public interest.

[11] See, for example, Finansinspektionen's report, Stability in the Financial System, published 1 December 2015, p. 32 (http://www.fi.se/upload/43_Utredningar/20_Rapporter/2015/stabrapp_15-2ny6.pdf).

4.6 Conclusion

Finansinspektionen makes the assessment that each of the mergers is compatible with public interest and the interests of depositors and other creditors. Finansinspektionen also makes the assessment that there are no other grounds on which to deny the applications. Authorisation to execute the merger plans is therefore granted.

FINANSINSPEKTIONEN

Sven-Erik Österberg
Chairman

Isa Svenneborg
Legal Counsellor

This matter was decided by the Board of Directors of Finansinspektionen (Sven-Erik Österberg, Chairman, Sonja Daltung, Marianne Eliason, Anders Kvist, Hans Nyman, Gustaf Sjöberg and Erik Thedéen, Director General) following a presentation by Legal Counsellor Isa Svenneborg. Chief Legal Counsel Per Håkansson, Executive Director Uldis Cerps, Department Director Martina Jäderlund, Senior Supervisor Caroline Moberg Pettersson and Supervisor Mattias Odenberg also participated in the final proceedings.

CC:
The Swedish Companies Registration Office
Swedish Tax Agency, Large Business Tax Office in Stockholm
Swedish Competition Authority
Sveriges Riksbank
Swedish National Debt Office

Appendix

Applicable provisions

Chapter 10, section 20, first paragraph of the Banking and Financing Business Act (2004:297) prescribes the following. When the merger plan has become applicable to all companies, both the transferor company and the transferee company shall apply for authorisation to execute the plan. In a cross-border merger, the application shall be made by the Swedish company or companies involved in the merger. Applications must be submitted to Finansinspektionen.

Chapter 10, section 21 of the Banking and Financing Business Act prescribes that upon consideration of an application for authorisation to execute a merger plan, an assessment shall be made as to whether the companies' creditors are assured satisfactory security, where such security is required taking into account the merging companies' financial circumstances, and whether the creditors have not already received such security.

Chapter 10, section 22 of the Banking and Financing Business Act prescribes the following. An application as referred to section 20 shall be denied where:

1. the merger plan has not been duly approved or the content thereof violates any act or other statutory instrument or the articles of association,
2. the merger has been prohibited pursuant to the Competition Act (2008:579) or pursuant to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, or where an assessment of a merger is pending pursuant to the Competition Act or the aforementioned Regulation,
3. in the event of consolidation, the auditor's statements pursuant to Chapter 23, section 11 of the Companies Act (SFS 2005:551) do not indicate that the total actual value to the transferee company of the transferor companies amounts to, at a minimum, the share capital of the transferee company,
4. the company's creditors have not been assured such satisfactory security as is referred to in section 21, or the merging company's financial circumstances in general are such that the merger may not be deemed compatible with the interests of depositors or other creditors, or
5. it is justified as being in the public interest.

According to Chapter 23, section 21a of the Companies Act (2005:551), during the period that Finansinspektionen is processing the application, the Swedish Tax Agency may decide that, for a specified period not to exceed 12 months, an impediment exists to the execution of the merger plan. This period may be extended where special grounds exist.

Chapter 23, section 51 of the Companies Act states the following.

In conjunction with a cross-border merger between a parent company and a wholly-owned subsidiary, the provisions of sections 36–50 shall apply, however with the following deviations.

1. The merger plan need not contain such information as referred to in section 38, first paragraph, points 2, 3 and 5.
2. The provisions regarding an auditor review in sections 11–13, 40 and 41, as well as regarding the general meeting's approval of the merger plan in section 15, first paragraph, shall not apply.

With respect to the type of legal consequences of the merger, the provisions set out in section 34, second paragraph, points 1 and 2 shall apply in lieu of the provisions set out in section 26, first paragraph, points 1–4.

In conjunction with a merger pursuant to this section, the merger plan shall contain a statement from one or more such auditors as referred to in section 12, with such content as referred to in section 11, second paragraph, point 1.

Chapter 23, section 11, second paragraph, point 1 of the Companies Act states that the auditor statement in particular shall specify whether the auditors, in their review, have found that the merger would jeopardise the payment of claims held by creditors of the transferee company.

Chapter 23, section 12 of the Companies Act states the following. An auditor as referred to in section 11 shall be an authorised or approved public accountant or a registered accounting firm. Unless otherwise stated in the articles of association, the auditor shall be appointed by the general meeting of each company. Where no specific auditor is appointed, the examination instead shall be conducted by the companies' auditors. The provisions of Chapter 9, sections 40, 45 and 46 shall apply to an auditor appointed to conduct a review pursuant to section 11.

Chapter 23, section 38, first and second paragraphs of the Companies Act prescribe the following. The merger plan shall contain information regarding

1. the forms, names and registered offices of the merging companies,
2. the ratio applicable to the exchange of shares and any securities in the transferor and transferee companies respectively and any cash payment,
3. the terms which shall apply for the allotment of shares and any securities in the transferee company,
4. the likely repercussions of the cross-border merger on employment,
5. the date from which, and the terms on which, shares and any securities entitle the holders to dividends in the transferee companies,
6. the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the transferee company,
7. the rights conferred by the transferee company on holders of special rights in the transferor company or the measures which shall otherwise be taken which are advantageous to such holders,
8. fees and other special benefits granted to a member of the board of directors, a managing director or comparable member of senior

management, or a party who carries out a review pursuant to sections 11, 40 or 41 as a result of the merger,

9. articles of association for the transferee company,
10. the value of the assets and liabilities which are to be transferred to the transferee company and the considerations which have been made in conjunction with the valuation, and
11. the date of the accounts which have formed the basis for the determination of the terms of the merger.

Where appropriate, the merger plan shall also contain information on the procedures by which arrangement for the involvement of employees in the definition of their rights to participation in the company are determined.

Chapter 23, section 39 of the Companies Act states the following. The board of directors of each and every company participating in the merger shall prepare a report regarding the circumstances which may be material in conjunction with the assessment of the suitability of the merger for the companies. The report shall state how consideration for the merger was determined and the legal and financial perspectives which have been taken into account. The report shall also contain information regarding the likely implications of the merger for shareholders, creditors and employees. Where the board of directors receives a statement from the representative of the employees reasonably in advance, such statement shall be appended to the report.

Pursuant to Chapter 2, section 5a of the Banking and Financing Business Ordinance, a declaration of oath from the companies' boards of directors or managing directors shall be appended to the applications in accordance with Chapter 10, section 20 of the Banking and Financing Business Act (2004:297) stating that the merger has not been forbidden in accordance with the Competition Act (2008:579) or Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings and that an assessment of the mergers is not currently underway in accordance with the Competition Act or the aforementioned Regulation.