EUROPEAN CENTRAL BANK

1 November 2000

OPINION OF THE EUROPEAN CENTRAL BANK
of 1 November 2000

at the request of the Danish Ministry of Economic Affairs
on a draft Act amending the Securities Trading Act

(CON/00/24)

1. On 27 September 2000 the European Central Bank (ECB) received a request from Danmarks Nationalbank, on behalf of the Ministry of Economic Affairs, for an ECB Opinion on a draft Act amending the Securities Trading Act (hereinafter referred to as the "Draft Law").

2. The ECB's competence to deliver an Opinion is based on Article 105 (4), second indent, of the Treaty establishing the European Community (hereinafter referred to as the "Treaty") and Article 2 (1), fifth and sixth indent, of Council Decision No. 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions, as the Draft Law contains rules (i) concerning payment and settlement systems and (ii) applicable to financial institutions which could have a material influence on the stability of financial institutions and markets. In accordance with Article 17 (5), first sentence, of the Rules of Procedure of the ECB, this Opinion has been adopted by the Governing Council of the ECB. This Opinion is based on an unofficial English translation of the relevant provisions of the Draft Law.

3. The ECB understands that the Draft Law has three main purposes: (i) to regulate the access to membership of a Danish securities settlement system or stock exchange for members from countries outside the EEA, which will be subject to the approval of the Danish Financial Supervisory Authority (hereinafter referred to as the "FSA"); (ii) to extend the provisions on insider trading and price manipulation to include crimes committed by Danish citizens, or persons resident in Denmark concerning securities, which are listed on stock exchanges and authorised marketplaces in third countries outside the EEA; and (iii) to extend the existing access for securities settlement systems and clearing participants to establish collateral rights in

connection with settlement of securities trades to apply also to all payment systems, as well as participants thereof, with regard to loans granted in connection with the settlement of payments within the system. Finally, the Draft Law contains suggestions for some minor editorial amendments to the Securities Trading Act.

4. It is noted that according to Article 1(2) and (13) of the Draft Law the existing scope of application for entities, which are eligible to become members of a stock exchange, is widened to cover a range of different financial entities.

5. More importantly, the existing access for companies and branches both within and outside the EEA to become members of a securities settlement system is proposed to be specified by requiring an authorisation from the FSA before allowing remote membership from applicants from countries outside the EEA. A similar specification is suggested for remote membership of a stock exchange. The background for this legislative initiative is to be seen as a consequence of alliances between securities settlement systems and between stock exchanges across national borders as well as of technological advances, which have created a growing interest in remote membership of the Copenhagen Stock Exchange respectively the Danish Securities Centre.

6. Based on the mutual recognition under the "European passport", derived from the Council Directive 93/22/EEC of 10 May 19993 on investment services in the securities field, there is no requirement to obtain an authorisation from the FSA for members from the EEA. However, it is proposed that remote members from countries outside the EEA obtain such an authorisation from the FSA. The ECB has been informed that such a requirement is necessary to ensure that companies from these countries are subject to sound supervision in their respective home countries and/or in order to avoid financial instability in connection with acceptance of an applicants' listing on the stock exchange. Furthermore, the FSA will only grant such an authorisation if a cooperation agreement has been concluded between the FSA and the supervisory authority in the applicant's home country. The acceptance of members from a third country shall not prevent the FSA from performing its supervisory tasks. Should the FSA find that an applicant is not subject to sound supervision, it may oppose the acceptance of that applicant as a member.

7. The ECB notes that Article 1(6) of the Draft Law proposes that the existing prohibitions against insider trading and price manipulation are extended to also include securities that are accepted for listing or for trading on stock exchanges or which are traded in authorised marketplaces or equivalent regulated marketplaces outside the EEA. This will create a global prohibition against insider trading and price manipulation, which is reaching further than strictly required by the Council Directive 89/592/EEC of 13 November 1989 on insider trading.

8. Article 1(7) of the Draft Law proposes to extend the existing access for clearing centres and clearing participants to establish collateral rights in connection with settlement of securities trades to apply also to registered payments systems as well as participation therein with regard to loans granted in connection with the settlement of payments within such systems. The borrowers can be both direct and indirect participants in these payment systems. The proposal puts clearing centres and registered payment systems on the same footing, as is already the case for a number of other items such as netting and immediate realisation of collateral in case of a default. The ECB appreciates that under article 1(7) of the Draft Law, the area of application of the above-mentioned collateral rights is expanded to apply also in connection with settlement in the payment systems operated by the Danish central bank. As a whole, the new Article 1(7) will improve risk and liquidity management and, as laid down in the Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, reduce systemic risk at the same time.

9. Traditionally, pledging of collateral includes the deposit of collateral security in specific securities in a safekeeping account. This has led to a binding of the securities portfolios, which are normally part of the participants' liquid reserve of securities used to manage the participants' risks. The suggested collateral right is seen to make the pledging of collateral within payment systems more flexible since the safekeeping account as such, and not the individual paper, constitutes the collateral. The ECB welcomes this initiative since it improves the participants' opportunities for effective risk and liquidity management and, at the same time, reduces systemic risk to the benefit of financial stability.

10. The ECB confirms that it has no objection to this Opinion being made public by the competent national authorities at their discretion.

Done at Frankfurt am Main on 1 November 2000.

The President of the ECB

[signed]

Willem F. Duisenberg