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SUBMITTED VIA E-MAIL

Mr. Peter Bach-Mortensen
Head of Division, Policy, Law, and Economics
Danish Ministry of Taxation
Nicolai Eigtveds Gade 28
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Re: Proposed Amendments to Denmark's Tax Treaty Claims Process

Dear Mr. Bach-Mortensen:

The Association of Global Custodians ("AGC" or "Association")[1] very much appreciated the opportunity to participate in the meeting with you in September sponsored by Finance Denmark to discuss the proposals currently under consideration in Denmark to amend the procedures for foreign investors to claim withholding tax relief under Denmark's tax treaties. The AGC is writing to you today to describe some ongoing concerns and questions we have about the proposals.

[1] The Association is an informal group of 12 member banks that provide securities safekeeping and asset servicing functions to cross-border institutional investors worldwide, including investment funds. In providing global custody services, AGC members routinely seek appropriate withholding tax relief on behalf of custody clients by processing millions of such claims in the aggregate each year, affecting substantial amounts of cross-border portfolio investment flows in and out of countries worldwide.

I. General comments

As noted in our letter to you of 20 August 2018, the AGC strongly supports in principle Denmark's decision to introduce a relief at source (RAS) system for claiming treaty-based withholding tax relief. Providing a RAS system would be consistent with recommendations that have routinely been made by the major bodies that have studied the effect of withholding tax procedures on the fairness and efficiency of cross-border markets.[2]

The AGC has deep experience working with RAS systems in countries around the world. That experience has taught Association members that such systems work effectively to achieve the stated goals of fairness and efficiency of cross-border markets only where the procedural obligations imposed on financial institutions participating in the system, and in particular the documentation requirements necessary to process and defend a claim for relief, are clearly laid out and consistently applied. Financial intermediaries between the ultimate investor and the issuer are not able to play their necessary role in administering such a system unless they have clear guidance on the specific information they will need to collect and transmit in processing an investor's claim. This is particularly true in a system where, as in the case of Denmark's proposed system, such intermediaries may face strict liability for any inaccurate withholding that may occur. As outlined in more detail below, the AGC believes Denmark will have to significantly improve the clarity of its guidance in this respect in order to achieve a successful RAS system. If financial intermediaries are unable to accurately assess the risks they face in participating in a country's RAS system on behalf of their customers, they will be forced to decline to participate, which will inevitably negatively affect their customers' willingness to invest in that country's market.

Along with the need for very clear documentation requirements, a second fundamental point is the critical importance of maintaining a mechanism for obtaining refunds of withholding tax for the minority of cases in which circumstances preclude timely satisfaction of the requirements for RAS. The availability of such a refund mechanism alongside a RAS system was also one of the best practices recommended in each of the reports mentioned above. The lack of a reclaim opportunity would represent a failure to recognize the realistic possibility that qualified

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[2] See, e.g., the EU Clearing and Settlement Fiscal Compliance Experts' ("FISCO") Group's 2007 "Second Report on Solutions to Fiscal Compliance Barriers Related to Post-Trading within the EU", available at http://ec.europa.eu/internal_market/financial-markets/docs/compliance/report_en.pdf; the OECD's Informal Consultative Group on the Taxation of Collective Investment Vehicles and Procedures for Tax Relief for Cross-Border Investors (the "ICG") 2009 Report on "Possible Improvements to Procedures for Tax Relief for Cross-Border Investors", available at http://www.oecd.org/ctp/taxtreaties/41974569.pdf; the European Commission's 2009 Recommendation on Withholding Tax Relief Procedures, available at http://ec.europa.eu/transparency/regdoc/rep/3/2009/EN/3-2009-7924-EN-F1-1.Pdf; the EU's Tax Barriers Business Advisory Group's ("T-BAG's") 2013 Report on "Workable Solutions for Efficient and Simplified Fiscal Compliance Procedures Related to Post-Trading Within the EU", available at http://ec.europa.eu/internal_market/financial-markets/docs/clearing/tbag/130524_tbag-report-2013_en.pdf; the European Commission's 2015 Action Plan on Building a Capital Markets Union, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0468; and the European Post-Trade Forum's 2017 Report, available at https://ec.europa.eu/info/sites/info/files/170515-eptf-report_en.pdf.

investors would be unable in many cases to obtain the tax relief to which they are entitled, which in itself would operate as a serious disincentive to invest in the Danish market.

II. Registration of investors and custodians

A. Registration of investors

Responsibility for registration. The AGC understands that Denmark has a preference for having investors' banks undertake the investor registration on the investors' behalf and intends to make the registration portal accessible only by banks. Our members believe that a number of troublesome aspects of the proposed procedures could be ameliorated if investors were able to perform their own registrations directly, and we respectfully request that Denmark reconsider restricting access to banks only.

Need for clear and consistent documentation requirements for each category of investor. The AGC understands that one objective of the proposal is to allow for a prompt and efficient mechanism for the registration of investors through an online portal. In order to achieve that objective, there will be a need for very clear and consistent guidance as to the exact documentation and information that will need to be submitted for each category of investors. The Association strongly urges Denmark to publish the proposed requirements for such registration well in advance of any effective date so that ambiguities as to the necessary documentation can be addressed before the system goes live.

Need for a "declaration of beneficial ownership for tax purposes". The preliminary information that has been provided about the investor registration process indicates that it will have to include a "declaration of beneficial ownership for tax purposes". The Association would like to know whether that refers to a generic statement from the investor as to all Danish assets held currently or in the future through the investor's account with that custodian, or whether it will need to refer to individually identified Danish securities. In the latter case, the AGC would like to know how an investor's registration would be affected, if at all, by a subsequent acquisition of additional or new Danish securities. In addition, the AGC would like to know whether the statement should refer to beneficial ownership for tax purposes under the law of the investor's country of residence or under Danish tax law.

Identification of type of legal entity. The Association also understands that the registration will require an identification of the investor's type of legal entity, and that SKAT intends to publish an exhaustive list of legal entity types for use in the registration process. AGC members assume this list will cover all types of legal entities existing under the laws of each of Denmark's treaty partners, and our members would like to know when that list will be available for review. As in the case of documentation requirements generally, the AGC strongly urges Denmark to publish the proposed list of entity types well in advance of any effective date so

that ambiguities as to the classification of entities can be addressed before the system goes live.

Avoidance of multiple registrations and multiple Danish TINs. During the meeting of 11 September 2018, there was discussion of the possibility that an investor might hold Danish securities through accounts with more than one custodian. We understood that it is Denmark's intention to avoid the need for multiple registrations and multiple Danish TINs in such cases. We understand that this would presumably require the introduction of some sort of mechanism by which a custodian could verify whether its investor client was already registered in Denmark before commencing its own registration of that investor. The AGC members would like to know how that mechanism will operate and how it will protect the confidentiality of investor information, consistent with the objective of identifying investors by Danish TIN only at the stage of transmission of investor information through the intermediary chain upon submission of the investor breakdown. The Association notes that the problem of multiple registrations could be avoided if Denmark were to accept the members' suggestion to allow investors to perform their own registrations directly.

Limitation on benefits / principal purpose test analysis. One of the questions raised but not clearly resolved at the 11 September meeting was whether custodians, in registering an investor, would be required to submit any declaration as to the investor's qualification for treaty benefits under "Limitation on Benefits" or "Principal Purpose Test" provisions that might exist in the relevant treaty. The AGC notes that custodians are generally not in a position themselves to conduct an analysis of that issue for their investor clients, nor are they in a position to verify any declaration made by the investor client in that regard. Accordingly, some clarification as to whether that issue needs to be addressed during the registration process, and if so, how it would have to be addressed, would be most welcome. The Association notes that the problem of the custodians' lack of information to make a determination on this issue could be avoided if Denmark were to accept the members' suggestion to allow investors to perform their own registrations directly.

Frequency of renewal of registrations. Another question that was not resolved at the 11 September meeting related to the issue of whether or how frequently an investor's registration would need to be renewed in the absence of a change in the underlying circumstances. There was some discussion suggesting that SKAT was thinking this might be tied to the period of validity of the investor's certificate of residence as determined by the residence jurisdiction, but it was noted that States of residence do not necessarily assign a period of validity to their certificates of residence and that it is instead typically source States who determine how long any such certificate should be considered valid. Accordingly, further clarification on this point would be welcome.

Maintenance of Danish TIN upon renewal. Association members would also welcome clarification as to whether investors will keep their Danish TIN upon renewal of their registration. We believe that maintenance of a single TIN would simplify the process of claiming relief.

Pre-approval of certain investors. The AGC understands that certain types of investors that are entitled to a rate below the standard treaty rate (e.g., pension funds, non-profits, sovereign funds) will need to go through a more robust pre-approval process to establish their entitlement to that lower rate, rather than a simple registration. Here again, this process will work smoothly only if there is clear, advance guidance on specifically what documentation will be needed to obtain pre-approval from SKAT (e.g., to determine that a pension fund meets Danish standards for pension funds). Also, AGC members note that the most efficient approach would be for exempt investors to submit their pre-approval applications directly on their own behalf. If, however, pre-approval applications are to be submitted by custodians, questions will arise for this process, too, as to how to avoid the need for duplicative applications for such investors that may hold Danish securities through more than one custodian.

Annual renewals of pre-approvals. The discussion at the 11 September meeting suggested that these investors requiring pre-approvals would need to renew their entitlement to lower withholding rates on an annual basis. Given that the relevant facts relating to such entities typically do not change materially from year to year, the AGC would be interested to know whether a decision has been made as to whether an expedited procedure will be available for such renewals, and if so, how that expedited procedures will work.

Holders of existing rulings. Members are also interested in how this renewal requirement will interact with the 10-year exemption rulings (Frikort) previously issued to exempt entities.

B. Registration of custodian banks

Certification requirements for custodian banks. The AGC understands that custodian banks themselves will need to undergo a certification or registration process before being allowed to register their client investors. Our members would like to know specifically what certification requirements will need to be satisfied to establish that the custodian is actually a bank acting on behalf of clients and whether, for example, LEI[3] codes will be used by Denmark to keep track of which banks are certified. The Association also notes that the need for custodian registration could be avoided if Denmark were to accept the members' suggestion to allow investors to perform their own registrations directly.

[3] The Legal Entity Identifier (LEI) code is a 20-digit code assigned to individual financial institutions by the LEI Regulatory Oversight Committee (ROC), a coalition of more than 70 financial regulatory authorities around the world, through the ROC's regulatory arm, the Global LEI Foundation (GLEIF).

III. Assignment to rate pools

Shares held as part of a securities lending arrangement. The AGC understood from the 11 September meeting that investors holding shares as part of a securities lending arrangement would have to be assigned to the 27% statutory withholding rate pool.

Under this proposal, custodians will need to:

a) Identify before record date the receipt of securities that are standard receipts versus those receipts from securities borrowing. Today custodians rely on information contained in the settlement instructions from the end investors and there is no consistent market practice relating to the provision of this information. This may improve from an EU/EEA perspective as from September 2020 with the entry into force of the Central Securities Depositories Regulation (CSDR),[4] but there is no guarantee that end investors located in other countries will comply.

b) Split positions between a securities lending account and a general securities account. If a client participates in securities lending, a custodian will be forced to use two separate securities accounts at the securities account provider (i.e., the next entity in the chain). This will be complex. It should be noted that a major reason for securities borrowing is to be able to settle pending deliveries. This means that such "fail-related" securities borrowing activity should settle on the main trading account of the securities borrower so presumably many active market participants will choose to use two separate accounts for Danish securities: one (trading/securities borrowing) account linked to the standard tax rate, and one custody account linked to the relevant favorable tax rate for that end investor. This would mean that – depending on the trading activity - there will need to be frequent transfers between the two accounts, with the risk that some positions that are entitled to a favourable rate are still on the main trading account.

To ensure that those investors who participate in securities lending arrangements are able to receive their treaty entitlements on those shares entitled to a favourable rate, there will be a need for a tax reclaim procedure to facilitate this.

Effect of treaty changes. The Association is also interested in understanding what the effect, if any, on the assignment of investors to rate pools will be in the event that the terms of the relevant treaty change after the investor is registered (e.g., changing the relevant withholding rate, or changing the conditions for eligibility for the particular withholding rate).

4 See Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1229&from=EN.

Securities held by fiscally transparent entities. The Association understood from discussion at the 11 September meeting that the proposal contemplates that all fiscally transparent entities will be automatically assigned to the 27% statutory withholding rate pool, and that no investors holding Danish securities through such entities will be entitled to withholding relief at source. We further understood that the "correction" or reclaim procedure will have to be used by such entities (or their investors) to obtain the treaty relief to which they are entitled. The Association notes that this process will be relevant for a very large number of the AGC members' clients, and our members are therefore very interested in understanding details of the process by which relief will be able to be obtained for investments held through fiscally transparent entities. Also, we would be interested to know which law will govern the question of whether an entity is fiscally transparent (e.g., Denmark as the source State, the State where the entity is established, or the State of residence of the investor).

IV. Submission of investor breakdown

The Association understands that the proposal calls for the "account controllers", which we understand to be the local Danish sub-custodian banks, to prepare and submit an investor breakdown statement to SKAT within 45 business days after the record date of a dividend payment. We understand that this statement will have to include a number of items of information which will have to be supplied to the sub-custodians through the intermediary chain by those financial institutions with direct relations with the investors. It would be helpful if Denmark could clarify that a failure to provide information for one or more shareholders will not affect the liability of the account controllers for underwithholding with respect to other shareholders for whom the required information is timely provided and that the shareholders who have provided the information will not be negatively impacted by the missing information.

V. Random spot checks

Need for clear, consistent guidance on documentation to be requested. A critical aspect of the new RAS system will be whether Denmark can publish clear and consistent guidance about the specific documentation that may be requested as part of the program of random spot checks. Custodian banks will need to know exactly what types of documentation they will need to have on hand from their clients in order to respond promptly to random spot checks. One question that has arisen, for example, is whether the documentation demands under the spot check program will be similar to those under Denmark's current tax relief reclaim system. The experience of Association members with reclaim requests under the latter system is that the types of documents to be requested are not clearly laid out in advance, and different types of documents may be requested for different reclaims, with no consistency or clarity on what documentation is acceptable to justify a claim. Under the proposed new RAS approach, where banks face the possibility of strict liability for under-withholding in the event that a claim for RAS cannot be promptly justified as part of a random spot check, the banks will be very

hesitant to enrol their clients in the RAS program if they bear an unquantifiable risk due to lack of advance information about the demands that will be placed on them. Here again, AGC members strongly urge Denmark to publish draft guidance on the random spot check documentation requirements well in advance of any effective date, so that ambiguities can be resolved before the system goes live. If this critical aspect of the RAS system cannot be adequately addressed, that failure, combined with the effective elimination of a reclaim mechanism, will severely adversely affect the attractiveness of Denmark as an investment market.

Sixty-day period for responding to spot check documentation requests. The Association notes that a 60-day period for responding to spot check documentation requests may be extremely tight if: (i) the request needs to pass along the custody chain from the sub-custodian to the financial institution with the direct client relationship; (ii) the latter institution needs to solicit documentation from the client due to lack of advance notice of the type of documentation that might be requested; (iii) the client needs to generate or obtain and transmit to its financial institution the requested documentation; and (iv) the requested documentation needs to passed back along the chain to the sub-custodian, with some level of review at each stage to reflect the exposure of the financial institutions to strict liability. The Association suggests that the 60-day period is likely to be too restrictive in many cases, particularly if the documentation requests are similar to the types of demands that are typically made today as part of the Danish reclaim process and if the types of documentation to be demanded are not clearly identified in advance. We recommend that Denmark consider using a longer period and also consider permitting extensions to the 60-day period where the custodian can establish a reasonable basis for any delay.

VI. Liability of banks

Association members understood from discussion at the 11 September meeting that the strict liability for under-withholding under Danish law will apply only to the “account controllers” (i.e., the Danish sub-custodians), and not to other financial intermediaries further along the chain, even though such intermediaries might be required to assume corresponding liability obligations as a matter of contract law. The Association suggests that Denmark confirm this point in writing.

VII. Correction options

Four-month period for registering new shareholders. The Association believes that the period of 4 months from the record date for registering new shareholders in order to be able to obtain relief for them with respect to dividends paid prior to their registration is very likely liable to be too short. For example, the experience of AGC members is that at least 10-20% of applications to the U.S. Internal Revenue Service for certificates of residence are not fulfilled

within a 4-month period. This means that large numbers of new investors into the Danish market could be permanently deprived of benefits with respect to dividends paid early in their ownership period if the 4-month deadline is maintained and the general reclaim procedure is eliminated. As indicated below, Association members recommend retention of the general reclaim procedure after the introduction of the RAS system, but at the very least we recommend a much longer correction option period for new investors.

Availability of correction option for securities lending and transparent entity cases. The Association understands that under the proposed RAS system, investors who hold shares in connection with a securities lending arrangement or who hold shares through fiscally transparent entities will be assigned to the 27% withholding pool and thus will not be able to obtain any RAS benefits. In light of the complexity of account structure associated with securities lending as described above in section III of our letter, Association members would appreciate confirmation that a tax reclaim procedure or a correction option will be available to those investors with entitled positions (i.e., not borrowed securities) and for underlying beneficiaries of tax transparent entities to claim treaty entitlements.

Interaction of RAS system with treaty refund provisions. One question that was not resolved at the 11 September 2018 meeting was how the proposed 4-month correction option available to limited categories of investors would interact with the provisions of various Danish tax treaties that allow all types of investors from the relevant treaty countries to apply for and obtain refunds of over-withholding of Danish tax during more extended periods.[5] A further question is how the limited refund opportunities under the proposed system will interact with the more standard provisions under many Danish treaties that allow residents of the treaty partner to seek relief (including refunds) through the competent authority procedure when tax is imposed contrary to the treaty rights, and to obtain such relief without regard to domestic time limitations. The Association would be grateful for clarification from Denmark on those questions.

VIII. Current reclaim procedures

Need to retain reclaim possibility. As referenced above, the Association strongly recommends that Denmark retain a general reclaim procedures even after introduction of the RAS system. As we noted in our 20 August 2018 letter, the maintenance of a refund procedure alongside the RAS system is one of the best practices endorsed by the various EU and OECD reports referenced earlier in this letter. The Association's experience is that there are inevitably circumstances that cause treaty-eligible investors to fail to timely meet all the conditions for withholding tax relief through a RAS system, such that a reclaim procedure is critical to allow

[5] Examples of such provisions in treaties with Denmark include the following: Argentina (Article 4 of the 1995 Protocol); Germany (Article 46); Italy (Article 30); Kuwait (Article 10(6)); Macedonia (Article 22); Malta (Article 10(6)); Netherlands (Article VII of the 1996 Protocol); Poland (Article 10(6)); Uganda (Article 10(7)); and Venezuela (Article 10(6)).

such investors an opportunity to obtain the relief to which they are entitled. That sort of "safety valve" is even more critical where, as may be the case here, various aspects of the RAS system (e.g., pre-registration and pre-approval requirements, strict liability for banks, time- and scope-limited correction options, etc.) raise particular risks of over-withholding. The failure to provide a reasonable opportunity to investors to obtain relief through a reclaim procedure will make the Danish market an outlier and discourage investments into that market.

Need to improve current procedures by establishing clear, standardized documentation requirements. In addition to retaining a reclaim procedure, the Association recommends that Denmark improve its current reclaim procedures by establishing clear, standardized documentation requirements for reclaim applications. Under the current procedures, there is a lack of clarity about what documentation will be needed to justify a claim for relief, and in some cases the documentation requirements (e.g., the purchase receipt for shares) are administratively very burdensome to comply with. The following are examples of the types of documentation requests that are onerous or unclear under the current reclaim procedure:

- There is a lack of clarity and consistency regarding the documentation that will be required to demonstrate that the investor is the beneficial owner of the dividends received. For example, a custodian may be required to produce multiple forms of documentation, including a transaction history report prepared by the custodian which clearly identifies the dividend payment, a Tax Voucher (Proof of Final Distribution), an MT 566 (i.e., the SWIFT message confirming completion of the corporate action), screen shots from the custodian's system showing the cash account listed in the transaction history report is owned by the investor. There is no certainty that even providing these multiple forms of documentation will be sufficient.
- Documentation requests for reclaims may come in multiple batches, and there is no standardized set of questions custodians must answer.
- Documentation requests may include variants of the same question, with no consistency in the information sought (e.g., asking whether the investor has ever borrowed shares at any time, or asking for a transaction history for the prior year or for the last purchase of shares).
- Documentation requests may relate to "free of payment" (FOP) transfers, which are deliveries of securities not linked to a corresponding transfer of funds. FOP transfers can arise, for example, if an investor changes custodians or receives a stock dividend.

Thus, the experience of Association members is that Denmark's current reclaim procedure is both costly and unpredictable, which defeats the objective of applying treaty benefits in a fair and efficient way. The Association recommends that Denmark publish draft guidance laying out in a clear manner standardized documentation requirements to be fulfilled by investors

seeking relief by reclaim, so as to allow participants in the process to help SKAT identify ambiguities and potential examples of over-inclusiveness in the requirements.

Possibility of using information from new RAS process to simplify reclaim process for prior year dividend payments. The Association recommends that Denmark consider the possibility of using the information obtained in the future via the tax ID registration/pre-approval process under the new RAS system to simplify the reclaim process for dividend payments that were made in prior, non-statute-barred, years. For example, one approach might be to allow the reclaim form to reference the Danish TIN obtained under the new RAS system, which would allow SKAT to refer to the portal for details and documentation of the claimant, making the reclaim submission far more straightforward and less documentation-heavy.

IX. Account structure implications of the new RAS system

Association members are also concerned about the extent to which the new RAS system could significantly complicate the use of omnibus account structures with respect to investments held by investors that own Danish securities. Currently, a number of custodians operate in Denmark under a single omnibus account structure, meaning that they hold all their direct and indirect clients' Danish securities through a single omnibus account with their Danish sub-custodian and through them with the Danish CSD.[6]

The use of omnibus rather than segregated accounts offers significant operational efficiency and simplicity gains. Having a single account reduces fees associated with opening and maintaining accounts and effecting transfers. Transfers of ownership between indirect investors in an omnibus account can be achieved through internal settlement (book entries), rather than through an external settlement process, vastly simplifying those transactions. The omnibus structure reduces the need for duplicative KYC and AML processes at each level of the custody chain. This greatly improves time-to-market capability, which is vital to some fund managers, as it avoids the sometimes weeks-long on-boarding process of opening new accounts throughout the custody chain. It avoids the increased processing and operational costs that would be needed to provide separate instructions and corporate action reconciliations throughout each level of the custody chain, likewise limiting the risk of error those could entail and avoiding delays associated with multiple processing, time zone differences, etc. It allows for more efficient collateral management, improving liquidity. It improves access of smaller investors to markets and facilitates their ability to derive income streams from securities lending. It likewise facilitates block trading.

There is a strong recognition of the need to accommodate omnibus account structures in the EU's developing securities regulatory framework, which is designed to promote a seamless and

[6] An exception may be where a client holds a "frikort" ruling entitling them to an exemption from Danish tax; in those cases, the custodian may set up a client-specific segregated account with the Danish sub-custodian.

efficient Capital Markets Union. From a securities settlement perspective, the European Central Bank's new TARGET2-Securities (T2S) securities settlement platform is being established in Europe on the basis of an account structure that makes use of both omnibus and segregated accounts in order to facilitate the optimal use of resources and of various efficiency features. T2S has not been designed to handle a model of full segregation at the level of individual beneficiaries.

The European Securities and Markets Authority (ESMA) issued an important Opinion in July 2017,[7] strongly favoring the ability to use omnibus accounts in custody structures. The Opinion recommends that segregation requirements in the EU regulatory framework be kept to a minimum, so that the accounts held by any intermediary at a second intermediary would ensure that assets of the first intermediary's customers are segregated from the first and second intermediary's own assets, but need not be segregated amongst themselves.

The proposed RAS system in Denmark would effectively require custodians to segregate their current single omnibus accounts into separate, single-tax-rate pool omnibus accounts (e.g., for securities of investors eligible, respectively, for 0%, 15%, or 27% withholding rates), with those single-rate pool omnibus accounts being held at the level of the Danish sub-custodian and CSD. An inevitable consequence of this type of segregation at the CSD level is that it is necessarily reflected in the account structure of each intermediary in the custody chain, all the way down to the last intermediary. This has the effect of multiplying the number of accounts to be opened, maintained and reconciled across the chain of intermediaries. The analysis so far suggests that omnibus account structures are associated with cost savings, greater efficiency, and lower risk. The cost, inefficiency, and risk of more segregated account structures will inevitably be reflected in the tariff structure, and in the willingness to provide services, of intermediaries.

As described previously, the proposed structure will impact securities lending of Danish securities with a likelihood that such positions will be split at the level of the Danish issuer CSD and consequently through the chain of custody. Such complexity may reduce securities lending, which contradicts a specific objective of the CSDR which is to encourage securities lending and borrowing to minimize settlement failures. It should also be noted that for the purposes of tri-party collateral management, whereby collateral moves in the books of an intermediary or an investor CSD, any movement of Danish securities in the books of the tri-party agent may have to be replicated in the books of the issuer CSD, thereby constraining the movement of collateral.

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[7] ESMA34-45-277, Asset segregation and application of depositary delegation rules to CSDs, available at https://www.esma.europa.eu/sites/default/files/library/esma34-45-277_opinion_34_on_asset_segregation_and_custody_services.pdf.

A decision by a custodian bank, especially a regional or local (i.e., non-Danish) bank in a different country, and at the end of a custody chain, to offer its clients access to securities in a market or CSD where segregation is required to obtain efficient withholding tax relief, will imply very significant extra costs in account structure and maintenance for potentially all the securities that it holds in custody. A typical consequence may be that a regional or local custodian bank decides to restrict its service offering for retail clients (e.g., by not agreeing to hold Danish securities or by not offering RAS services for Danish securities). The net effect may be that certain categories of end investors will no longer access the Danish securities markets, particularly if there is no longer any possibility of obtaining treaty benefits through a reclaim procedure.

There are some markets whereby some of our members offer RAS services only to "direct" clients. This can be due to several reasons. For example, there may be a legal obligation to maintain segregated accounts at the CSD (e.g. in the Middle East and some Asia-Pacific countries).

There are other markets where members are able to offer RAS service to "intermediary" clients in situations where the members are able to commingle the assets of their clients under "multi-tax-rate" omnibus accounts at the sub-custodian level. To ensure that each treaty-eligible beneficiary obtains reduced treaty rates at source in such cases, the custodians send a breakdown to the local sub-custodian providing all the necessary details and documentation on such beneficiaries. In some markets that is not possible for omnibus account clients, typically due to timing issues in regards to the provision of asset allocation breakdowns or due to documentation that the local tax authority requires in order to support the relief claim.

Our members are not aware, however, of any source country government that has a local law, rule, or procedure that prohibits the submission of a retrospective tax reclaim. As indicated above, the combination of the lack of a reclaim opportunity and the need to maintain multiple single-tax-rate pool accounts in order to obtain RAS will cause Denmark to become a much less attractive investment market.

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The AGC appreciates the opportunity to share with you our insights into practical issues of application of any new RAS system and the existing reclaims system. We would be happy to meet with you to discuss these issues further. Please do contact the undersigned if you have any questions concerning our positions.

Sincerely yours on behalf of the Association,

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