

ASA KASHER, Ph.D.
Laura Schwarz-Kipp Professor Emeritus of
Professional Ethics and Philosophy of Practice,
Tel Aviv University, Tel Aviv, Israel

September 11, 2008

Ministry of Finance
Government of Norway

By e-mail: postmottak@fin.dep.no

Dear Officials:

We write you the present letter within the framework of the Public Hearing on the Ethical Guidelines of the Norwegian Government Pension Fund – Global.

We take it for granted, as many others do, that the work done by Norges Bank Investment Management (NBIM) and the Council of Ethics "has established Norway as a leader on ethical issues in the global economy", to use the words of the Albright Group and Prof. Simon Chesterman in their "Assessment of Implementation of Articles 3 and 4 of the Ethical Guidelines for the Government Pension Fund – Global".

Since Norway has been established as a leader on ethical issues in the global economy, it seems natural for anyone who is interested in these issues, whether one is a citizen of Norway or not, to consider the possibility of making a contribution to the Public Hearing on the Ethical Guidelines, which is a process meant for the improvement of the Ethical Guidelines and their implementation. An improvement of the standards and procedures of a leader is of obvious importance to everybody.

We are two citizens of Israel, a father and a daughter. One of us is a professor of professional ethics with much experience in various practical fields. One of us is a high ranking official of an investment company with much practical experience. Additional details appear in a PS of this letter.

We have studied the consultation paper and its appendices and our recommendations are made on their background.

We would like to make several recommendations. We assume that the gist of each recommendation is clear. However, if there is going to be a need for clarification and justification, we would be delighted to elaborate on any recommendation made in the sequel.

Recommendation 1:

The Ethical Guidelines should be more specific with respect to methods of "positive screening", on a par with the level of specification of the "negative screening". Exercise of ownership rights is not specified in the present Ethical Guidelines to any extent, but it should be, to some extent.

Recommendation 2:

Methods of inclusion should not be introduced, specified and implemented the way exclusion methods are used. While an exclusion is usually a sharp "yes"/"no" decision, considerations related to inclusion may result in decisions of various other types.

Recommendation 3:

A company should be included in the investment universe of the Fund in a way that reflects the values of certain ethical parameters of some general ethical profile of companies. The higher the values, the more significant should be the space devoted to the company in the investment universe of the Fund, *ceteris paribus*.

Recommendation 4:

While investment decisions are made on grounds of the "investment profile" of a company, which consists of both economical and ethical parameters, the possibility should be considered of establishing a list of ("good") companies that satisfy the ethical requirements of entering the investment universe and some threshold economical conditions, but in which investment is not made for purely economical reasons.

Recommendation 5:

Companies that are interested in entering the investment space of the Fund should be required to have an appropriate transparent Codes of Ethics. Such a Code of Ethics should include values and norms that are part of an "overlapping consensus" with respect to the nature of business ethics of companies in a national investment universe. Such Codes of Ethics are not universal, since they have to include values and norms directly related to their specific sphere of activity.

Recommendation 6:

The possibility should be considered of encouraging companies that are interested in entering the investment universe to include in their Codes of Ethics values and norms, such as "pro bono", of contributing to the relevant communities within which they are active beyond the ordinary core of Business Ethics requirements. Policies of diligent implementation should be accordingly introduced.

Recommendation 7:

Companies in the Fund's investment universe should be required to implement an "effective compliance and ethics program" of their organizational ethics, as best specified in the 2004 U.S.A. Federal Sentencing Guidelines Manual: Sentencing Organizations, Ch. 8, Sec. 8B2.1.

Recommendation 8:

Information providers employed by the Council on Ethics for monitoring all the companies in the Fund's portfolio should also be required to have Codes of Ethics and effective compliance and ethics programs that would set appropriate and transparent standards and implement them.

Recommendation 9:

For the Council of Ethics investigations of companies on grounds of information on their conduct to be fair, such investigations should start only if the information and its source satisfy significant threshold requirements of reliability and transparency.

Recommendation 10:

For the Council of Ethics investigations of companies on grounds of information on their conduct to be fair, if the information pertains to policies and regularities of a company's conduct, a comparative study of the related field, including the company and its major competitors, if any, should be carried out as part of the investigation.

Recommendation 11:

The exclusion of a company where there is considered to be an unacceptable risk of contributing to "serious violations of individuals' rights" is now confined to "situations of war or conflict" and a list of certain activities. The possibility should be considered of extending it to include situations of systematic discrimination unrelated to wars and conflicts and beyond the given list of activities, such as systematic discrimination of women.

Recommendation 12:

The exclusion of a company where there is considered to be an unacceptable risk of contributing to ethical norms in general is confined to "particularly serious violations of fundamental ethical norms". The possibility should be considered of rendering it broader and more specific by alluding to protection of human dignity, when it is part of an "overlapping consensus".

Recommendation 13:

The possibility should be considered of adding to the list of exclusion parameters gross violations of the local law, beyond corruption, which is already an exclusion parameter.

We hope these recommendation, even if not here explained and defended in detail, will be of help to you within the framework of your highly important consultation and assessment.

Sincerely,

Asa Kasher
kasher@post.tau.ac.il

Shirith Kasher
skasher@Brack-Capital.com

PS:

Asa Kasher, Ph.D. is Laura Schwarz-Kipp Professor Emeritus of Professional Ethics and Philosophy of Practice, and Professor Emeritus of Philosophy at Tel Aviv University, Israel.

For his work in Philosophy he won the highest national Prize of Israel, 2000.

He has served on numerous governmental, public and academic commissions in various fields of practical ethics.

In recent years he was member of commissions that wrote codes of ethics for government ministers and for parliament members.

He is member of the Company Ranking Committee of Maala – Business for Social Responsibility in Israel.

Shirith Kasher, B.Sc., Ll.B., is in charge of Corporate and Structured Finance in BCRC Brack Capital Real Estate Group, Ramat Gan, Israel and New York, NY, USA,. Formerly, she was Investments Legal Advisor

and Assistant to Board Chairman and Head of Investment Committee of the Phoenix holdings Co., a branch of which is the Phoenix Insurance Co..