

Report submitted to the Norwegian Ministry of Finance

**Assessment of Implementation of Articles 3 and 4  
of the Ethical Guidelines for the  
Government Pension Fund – Global**

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21 May 2008

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## Executive Summary

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- (i) This assessment was conducted at the request of the Ministry of Finance, which serves the Government of Norway as the owner of resources in the Government Pension Fund – Global. The Fund is managed by the central bank of Norway through Norges Bank Investment Management (NBIM). Investments in the Fund are governed by the Ethical Guidelines, which are implemented jointly by the three bodies: the Ministry of Finance, the Council on Ethics, and NBIM. The Ministry implements the Guidelines by deciding on exclusions of certain companies where owning shares would contravene the Guidelines; the Council on Ethics implements the Guidelines by making recommendations on such exclusions; and NBIM implements the Guidelines through active ownership in the Fund’s portfolio companies.
- (ii) The present report is part of a larger review of the Ethical Guidelines and is written by external consultants. Our review concludes that the general framework established by the Guidelines remains sensible and workable. The scope of the Guidelines remains broad enough and flexible enough to allow for Norway to incorporate its values into investment decisions. The Guidelines have been implemented in a professional and conscientious manner by both NBIM and the Council. Implementation has proceeded in a step-by-step manner that is appropriate for such a novel structure.
- (iii) The work done by NBIM and the Council has established Norway as a leader on ethical issues in the global economy, in particular through NBIM’s work on child labour and the Council’s practice of publishing thorough opinions. There are diverse views within Norway as to whether other specific matters should be covered by the Guidelines, such as investment in tobacco companies. We regard such questions as appropriately answered by the Norwegian people through their elected representatives and do not make specific recommendations on such matters here.
- (iv) Instead, the focus of the present report is on improving the structures and processes put in place to implement the Guidelines, building on past experience and anticipating future developments. In particular, we believe that in the next several years the implementation of the Ethical Guidelines will face several challenges:
- (v) **Increasing Overlap of the Council and NBIM:** Thus far there have been few cases in which the Council and NBIM have worked on the same issue, industry, or company. This is not surprising, because the range of possible issues and investments is large and because each entity has been building its activities gradually. This will change. Going forward, it will be important for there to be rules of the road for the Council and NBIM in such cases.
- (vi) **An Increasingly Crowded and Sophisticated Field in Responsible Investing:** The Ethical Guidelines arise in part from a desire for the Fund to serve as a “model” for investors. In the nearly five years since the Graver Commission completed its work, institutional investors have become more expert in this field. The implementation of the Guidelines could benefit from

greater collaboration with peer investors and other groups such as third party service providers.

- (vii) **Increased Exposure to Emerging Markets and Illiquid Holdings:** Emerging-market issues have been at the centre of controversial recommendations from the Council, including Total, Freeport McMoran, and Wal-Mart. These issues will become more common as more of the investment opportunities available to NBIM are tied directly or indirectly to emerging markets, and especially if NBIM increases its emerging markets exposure or its illiquid investments.
- (viii) **Increased Conflation of Shareholder Activism and Stakeholder Activism:** NBIM and the Council's roles arise from the Fund's position as a shareholder in specific companies, but in carrying out their respective mandates, the two bodies consider large issues such as Darfur, Myanmar (Burma), and climate change. While the two bodies' mandates are narrowly tailored to Norway's ownership of specific assets in the Fund, the ethical issues that these bodies address are also of concern to the Norwegian public as global stakeholders. As the Graver Commission noted, there are limits to what can be done on ethical issues by engaging with or divesting from portfolio companies. The management of the Government Pension Fund – Global cannot and should not be expected to address comprehensively all ethical issues of concern to Norwegians. Additional tools may be appropriate and necessary to address more fully the concerns of the Norwegian public as global stakeholders.
- (ix) The implication is not that shareholder activism should be avoided. It may be integral to promoting returns and could prevent the contribution of Norway in activities that are incompatible with its societal values. Nevertheless, on such issues the Government and people of Norway have a role as stakeholders that reaches well beyond their role as shareholders. Accordingly, the broader Norwegian interests in promoting sustainable, ethical governance will require resources beyond NBIM and the Council.

## Summary of Recommendations

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**Recommendation 1.** There should be ongoing communication between NBIM's corporate governance office and the Fund's external equity managers, with the aim of sharing information pertinent to corporate governance issues.

**Recommendation 2.** In the case of external managers or joint ventures in private equity, infrastructure, or real estate investments, specific benchmarks for corporate governance should be integrated into the implementation of investment decisions.

**Recommendation 3.** In the broad review of the Guidelines, a transparent, inclusive process should be considered as a way of promoting broad agreement among stakeholders. This can then serve as a stable foundation for NBIM's engagement with companies.

**Recommendation 4.** NBIM should expand its strategy on climate change to include (i) advocacy for information disclosure about climate change impacts and risks, (ii) engagement on managing those regulatory and physical risks, and (iii) involvement in investor consortia on the issue of climate change.

**Recommendation 5.** NBIM should allocate resources to validate the reported conditions and changes in corporate behaviour on the ground. This is especially relevant for the corporate governance unit's activities on child labour, where third party validation of effective oversight of child labour in corporate operations may provide critical information.

**Recommendation 6.** NBIM should enter each engagement with clear timelines by which to measure progress. The decision points identified should be reported to senior management within NBIM. The timelines will need to be adjusted in the light of unexpected events, but they should provide times when NBIM justifies to itself a decision to continue engagement.

**Recommendation 7.** The corporate governance office in NBIM should be authorized to recommend to the CIO changes in holdings based on the results of engagement.

**Recommendation 8.** NBIM should identify and change its own policies in order to remove any disincentives to ad hoc exclusion. Steps should be taken so that managers do not feel disadvantaged by decisions to disinvest on the basis of governance concerns.

**Recommendation 9.** Collaboration with other investors on NBIM's two priority environmental and social governance issues will be the

quickest way to establish a leadership profile. NBIM could do more to leverage activities of other investors on these and other issues; this may enhance NBIM's ability to promote a sustainable global market over the long term by magnifying its efforts on child labour and climate change.

**Recommendation 10.** NBIM should continue to publish reports on its corporate governance efforts, to inform the public, peer investors, and portfolio companies of its strategy and standards. This transparency will make NBIM's positions known and predictable to portfolio companies, and will enhance NBIM's leadership among the institutional investor community, more effectively shaping the global market on the governance issues of greatest interest to NBIM.

**Recommendation 11.** The Council on Ethics should make public its process for directing its resources and consider whether to adopt publicly identified priorities, such as specific sectors, to make its focus clear to companies and the public.

**Recommendation 12.** The Council should, through a new facility on its website, formally welcome submissions from the public. It should be made clear that such submissions are received for information purposes only and do not guarantee either inclusion on the watch-list, investigation, or a recommendation to exclude a given company.

**Recommendation 13.** The Council should, as a matter of principle, first seek more information from a company prior to drafting a recommendation for exclusion. Such requests should in the first instance be communicated through NBIM, in accordance with Article 4.5.

**Recommendation 14.** When the Ministry of Finance decides to exclude a company, that company should be informed of the decision after it is implemented but before it is announced publicly. Notification should most appropriately come from NBIM, attaching relevant information such as the Council's recommendation.

**Recommendation 15.** When a company is informed of a decision to exclude it, that notification should also provide information about how the company may seek to be removed from the exclusion list. This should include, in particular, a request to transmit information directly to the Council on Ethics but also an offer to enter into discussions, conducted by the Council but with the involvement of NBIM, on steps that can be taken to reverse the exclusion.

**Recommendation 16.** The Ministry of Finance's website on excluded companies should be revised to present companies excluded under the various bullet points of the ethical guidelines, rather than chronologically. This should be a list of excluded companies, with removal from the exclusion list entailing removal from the site (thus Kerr-McGee should be removed). The links to press releases and

Council decisions should be maintained.

**Recommendation 17.** The Council on Ethics should issue a press release to accompany its Annual Report, drawing attention to the list of excluded companies, an abbreviated explanation of the reasons for exclusion, and an update on companies that have been removed from the exclusion list and why.

**Recommendation 18.** The Council should publish prominently on its website a digest of its recommendations, organized thematically around the bullets in Article 4.4 of the Ethical Guidelines. This should draw explicitly on past recommendations and elaborate the standards that were adopted for exclusion and re-inclusion. The digest should be drafted in a manner intended to assist companies seeking to remain in compliance with the guidelines.

**Recommendation 19.** The Council should develop and maintain a “watch-list” of companies that have not been recommended for exclusion but raise concerns such that the Council believes active ownership rights should be exercised. This list should be kept confidential but shared with NBIM on a regular basis, perhaps monthly, while also serving as the partial agenda of more regular meetings between NBIM and the Council proposed in Recommendation 22.

**Recommendation 20.** Companies included on the watch-list should receive a courtesy letter from the Council, transmitted through the Bank, advising that they are on a confidential list of companies identified as being of concern but that no formal action has been taken. Such companies may wish to submit relevant materials to the Council that may lead to them being removed from the watch-list.

**Recommendation 21.** Companies from the watch-list selected for further investigation should receive a second letter, transmitted through the Bank, advising them that they are under investigation and requesting information about possible non-compliance with specified provisions of the Ethical Guidelines. The Council may pursue additional investigative methods to gather information.

**Recommendation 22.** NBIM and the Council should meet quarterly, in person, to discuss individual cases on a confidential basis. The agenda would include the Council’s watch-list of companies; NBIM’s progress on priority engagements; and any information shared by the two organizations.

**Recommendation 23.** The Ministry of Finance should convene an annual retreat, bringing together key personnel from NBIM and the Council. This meeting, which should take no more than a day, would review practices, identify areas for collaboration, and examine the Guidelines to identify priorities for NBIM, the Council, and the Ministry and to suggest improvements.

**Recommendation 24.** Before the Council submits a draft recommendation to a company for response, it should as a rule communicate with the corporate governance unit at NBIM. (Communications to companies have been handled through the General Counsel's office.) If NBIM has begun to engage or intends to do so, NBIM and the Council should explore whether they can agree on a set of specific actions that the company might take in order to render further action under Article 4 unnecessary.

**Recommendation 25.** NBIM and the Council should agree on a process for verifying that reported changes in corporate behaviour have indeed taken place. In many cases this will involve third party verification mechanisms, and we recommend strongly that these include unannounced visits to field sites. The mechanism for assessing progress of corporate engagements cannot be limited to representations made by companies or vendors employed by companies.

**Recommendation 26.** Article 4.5 of the Guidelines should be amended to provide that "All enquiries to such companies shall be channelled through Norges Bank *and as necessary supplemented by direct correspondence with the Council. Norges Bank shall be provided copies of all such correspondence.*" If amendment of the Guidelines is deemed unnecessary, the Ministry of Finance should acknowledge the practice of direct Council communication with companies in a memorandum to both entities.

**Recommendation 27.** If a company is excluded under Article 4, it should be encouraged to seek reinstatement. The Council will retain its role in making recommendations to the Ministry, but NBIM and the Council should share all relevant information on the company's conduct.



## Introduction

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1. The Norwegian Government Pension Fund – Global (*Statens pensjonsfond – Utland*) invests surplus wealth produced by Norway's petroleum sector, principally revenue from taxes and licensing agreements. Known until January 2006 as the Petroleum Fund of Norway, it is the second largest pension fund in the world with assets in excess of NOK2,000 billion (approximately USD\$400 billion).
2. The Fund was created in 1990 by an act of the Norwegian Parliament (*Stortinget*).<sup>1</sup> Since its mandate was to receive money when there was a budget surplus, however, the first transfer was made only in 1996 for fiscal year 1995.<sup>2</sup> The Fund has now grown well beyond Norway's annual gross domestic product (GDP) — \$264.4 billion in 2006<sup>3</sup> — and is projected to reach a level of around 250 percent of GDP by 2030. As oil revenues diminish, it is then expected gradually to decline.<sup>4</sup> (Crude oil production is believed to have peaked; natural gas production will peak around 2013.<sup>5</sup>)
3. The purpose of the Fund was, first, to avoid the wide fluctuations of economic activity caused by the petroleum sector. By limiting the impact of variable oil revenues on government spending and investing a substantial portion of those revenues abroad, the Fund reduces these fluctuations and contributes to stabilizing the exchange rate.<sup>6</sup> Secondly, the Fund provides a savings vehicle for future generations of Norwegians — an aim reflected in its re-branding in 2006 as a “Government Pension” Fund.<sup>7</sup>
4. In addition to these domestic considerations of economic stability and intergenerational equity, the Government of Norway later adopted two mechanisms addressing the impact of its international investments. In 2001 an “Environmental Fund” was established within the larger Fund. This new instrument invested exclusively in developed markets and was restricted to acquiring equity in companies assumed to have limited negative influence on the environment, or which met specific environmental reporting and certification requirements based on analysis from the British consulting firm Ethical Investment Research Service (EIRiS).<sup>8</sup>
5. In the same year, the Ministry of Finance appointed an Advisory Commission on International Law for the Fund. The Commission responded to requests from the Ministry as to whether specific investments were in conflict with Norway's commitments under international law. In March 2002 the Commission responded to such a request concerning Singapore Technologies Engineering. It concluded that, as there was “a large degree of probability” that the company through a subsidiary produced anti-personnel mines, even modest investments in the company could constitute a violation of Norway's obligations under the Ottawa Convention on Anti-Personnel Mines. Such an investment could imply a violation of the Ottawa Convention prohibition on “assist[ing]” the production of anti-personnel mines.<sup>9</sup> A month later the

Government formally excluded Singapore Technologies Engineering from the Fund's investment universe.<sup>10</sup>

6. In Autumn 2002, the Government appointed a committee to develop more general ethical guidelines for the Fund's investments. The committee, which was chaired by Professor Hans Petter Graver, reported on 25 June 2003. In recognition of the pluralism of Norwegian society and the fact that beneficiaries of the Fund included future generations, the foundation of the ethical guidelines was made broad and relatively vague. The Graver Report sought to identify an overlapping consensus of ethical values that were consistent over time,<sup>11</sup> relying largely on internationally-accepted principles rather than seeking to develop a separate basis founded on Norwegian national culture or policy.<sup>12</sup> The Report specifically cited principles on protection of the environment, human rights, labour standards, and corporate governance embodied in the UN Global Compact<sup>13</sup> and adopted by the International Labour Organization (ILO),<sup>14</sup> the Organisation for Economic Co-operation and Development (OECD),<sup>15</sup> and the UN Sub-Commission on the Promotion and Protection of Human Rights.<sup>16</sup>
7. Two mechanisms were created to implement the general standards to which the Norwegian Fund would be held. The first was the exercise of active ownership rights to promote long-term financial returns — building on the premise that long-term financial returns are contingent on sustainable development in the economic, environmental, and social sense. When the Ministry of Finance adopted ethical guidelines that included environmental considerations, the Environmental Fund as a separate entity was discontinued. Those general guidelines now provide that the overall objective remains safeguarding the Fund's financial interests, but that the exercise of ownership rights “shall mainly be based on the UN's Global Compact and the OECD Guidelines for Corporate Governance and for Multinational Enterprises.”<sup>17</sup> Norges Bank, which administers the Fund, is required to report on how it has acted as owner representative, “including a description of the work to promote special interests relating to the long-term horizon and diversification of investments in accordance with” the guidelines on ownership.<sup>18</sup>
8. The second mechanism is exclusion from the investment universe, either through negative screening or ad hoc exclusion<sup>19</sup> of companies where there is an unacceptable risk as an owner of contributing to gross or systematic breaches of ethical norms within the areas of human rights and the environment. Though ad hoc exclusion on ethical grounds may in some circumstances influence the behaviour of companies, the Graver Report focused on the importance of exclusion as a means of avoiding one's own contribution to ethically suspect activity, rather than as a means of influencing the activity itself.<sup>20</sup> This was seen as an extension of the work of the Advisory Commission on International Law,<sup>21</sup> which was replaced in December 2004 by a five-member Council on Ethics. The focus of the Council's work was to be on avoiding the risk of doing the wrong thing rather than ensuring that a desirable course of action is followed. Moreover, the Council's examination is focused — at least technically — on the potential for Norwegian contribution to a wrong rather than the actual conduct of the company in question. As the

Graver Report observed, “the Council does not have to prove that a company is guilty of unethical practices.”<sup>22</sup>

9. Formally, the Council submits recommendations to the Ministry of Finance, which makes final decisions on negative screening and exclusion of companies from the investment universe.<sup>23</sup> These recommendations and decisions are to be made public, though there is provision for a delay in publication in order to “ensure a financially sound implementation of the exclusion of the company concerned.”<sup>24</sup> This recognizes the likelihood that knowledge of an imminent, concentrated sale may have a negative impact on the share price of the company in question; keeping notice of the sale closely held enables the Fund to sell at what would presumably be a higher share price.
10. A central tension within the Guidelines is the question of whether they are intended simply to avoid Norwegian complicity or influence the behaviour of others. In theory — and a central theme of the Graver Report — it is the former. In practice, however, the question of how to encourage ethical behaviour on the part of companies and other investment funds has become an important part of the work of the Bank, the Council, and the Ministry of Finance.

### *About the Assessment*

11. This assessment of the Guidelines is submitted in response to a request from the Norwegian Ministry of Finance. The scope of the assessment was set forth by the Ministry’s on 30 November 2007:

1. How Norges Bank has carried out its mandate as laid out in Article 3 of the Ethical Guidelines, including the preparatory work to the guidelines. The assessment should include an examination of how the principles referred to in Article 3.1 have been implemented through Norges Bank’s internal guidelines, “Principles for Corporate Governance and the Protection of Financial Assets.”

2. How the Council on Ethics has carried out its mandate as laid out in Article 4 of the Ethical Guidelines, including the preparatory work to the guidelines. The assessment should encompass both substance and procedure, relating in particular to Articles 4.4 and 4.5.

3. The assessment should also — to the extent possible — address: Whether the current information-sharing and cooperation between Norges Bank and the Council on Ethics is at a level that contributes in an effective way to enhancing each of the entities’ ability to perform its task, and that facilitates the envisaged interaction described above between the policy instruments.<sup>25</sup>

12. Following a competitive tender process, the Ministry of Finance invited The Albright Group LLC to focus on question 1 and Professor Simon Chesterman, of New York University School of Law and the National University of Singapore, to focus on question 2. Question 3, which addresses the

intersection of NBIM and the Council, combines the efforts of the two groups. The present report is a joint product and reflects our shared views.

13. The assessment has been undertaken through a review of published and confidential materials; interviews with officials responsible for implementing the Guidelines, in both the Council on Ethics and Norges Bank Investment Management (NBIM); and interviews with opinion leaders among institutional investors regarded as peers to NBIM, advocates in the field, outside experts, and affected companies. We understand that not all deliberative and confidential matters have been made available to us but have no reason to believe that these omissions affect the recommendations made in this report.
14. The following sections of this report address the three questions raised by the Ministry of Finance.

## **I. Norges Bank**

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*How has Norges Bank carried out its mandate as laid out in Article 3 of the Ethical Guidelines, including the preparatory work to the guidelines? The assessment includes an examination of how the principles referred to in Article 3.1 have been implemented through Norges Bank's internal guidelines, "Principles for Corporate Governance and the Protection of Financial Assets."*

15. Norges Bank Investment Management (NBIM) is the arm of Norges Bank that is dedicated to management of the Government Pension Fund – Global. NBIM's corporate governance group falls within the investment management branch of the Bank's organizational structure, headed by NBIM's Chief Investment Officer.

### **A. Organizational Structure and Resources**

16. The corporate governance team consists of ten full-time employees and one part-time employee, collectively tasked with exercising NBIM's ownership rights through voting and direct engagement with portfolio companies. Approximately half of the team's resources and workload is dedicated to traditional shareholder right issues, such as the right to vote, while the other half is dedicated to issues of social and environmental sustainability. One of the professional staff is dedicated to issues of climate change, and another is focused on child labour issues. This division of effort, and the proportions devoted to traditional and social issues, are in keeping with industry norms and appear appropriate.
17. NBIM's corporate governance department functions as a discrete unit of the investment management branch of NBIM. Corporate governance activities are

conducted apart from the portfolio management activities of the other investment departments. For the successful function of this organizational structure, the head of the corporate governance team must have direct access to senior decision makers, so that the implementation of the ethical guidelines is not at risk of being subordinated to other objectives. This direct access appears to be successfully built into NBIM's organizational structure. Under the recently updated structure, the head of the corporate governance team reports directly to the Chief Investment Officer, as do the other departments of NBIM's investment branch.

18. All ownership activities are carried out by the corporate governance unit, with informational exchanges between portfolio managers and corporate governance staff. NBIM portfolio managers are informed of corporate governance strategies and priority areas, and are updated on corporate governance dialogues with portfolio companies. Occasionally, portfolio managers provide input on governance-related dialogues with portfolio companies.
19. This division of responsibility allows portfolio managers and corporate governance personnel to focus on their core responsibilities and is a reasonable approach. The division is not an impermeable barrier, however, and we are told that communication is working well. This is important, because corporate governance issues may become known to portfolio managers, who have a responsibility to alert corporate governance personnel. Conversely, corporate governance issues may serve as proxies for deeper problems in a company's management and should be taken into account by portfolio managers along with other factors affecting an investment decision.
20. NBIM reports that external managers are not involved in corporate governance issues. External managers are occasionally informed of developments in NBIM's corporate governance strategy and practices but are rarely involved in ownership activities and engagements. This partly reflects practical concerns, as the managers have many clients and often are concentrated on fixed income investments. It also reflects NBIM's focus on developing the in-house expertise to conduct its voting activities internally. NBIM exercises its voting rights in-house, regardless of whether investment decisions are made internally or externally. The lack of coordination with external managers is a concern, however. External managers represent a substantial portion of the portfolio, and governance issues in externally managed portfolios may not always be captured in NBIM's voting activities. Investments in real estate, infrastructure, or other long-term holdings, especially in emerging markets, may require close coordination with external managers or co-investors. It is important that there be shared values.

**Recommendation 1.** There should be ongoing communication between NBIM's corporate governance office and the Fund's external equity managers, with the aim of sharing information pertinent to corporate governance issues.

**Recommendation 2.** In the case of external managers or joint ventures in private equity, infrastructure, or real estate investments, specific

benchmarks for corporate governance should be integrated into the implementation of investment decisions.

21. The corporate governance unit receives information on traditional corporate governance issues from a number of service providers, including RiskMetrics, Governance Metrics International, Deutsche Bank, and BoardEx, and on social and environmental sustainability issues from organizations such as KPMG Sustainability, Innovest, New Standards, UNICEF, Save the Children, Childwatch International, the International Labour Organization (ILO), as well as from investor coalitions such as the International Corporate Governance Network (ICGN) and the Council of Institutional Investors (CII).
22. NBIM has identified clear priorities in its strategy on corporate governance. It has also made clear its preference for attempting to persuade corporate management toward improvements, particularly within the fields of environmental and social governance, rather than divesting from portfolio holdings on the basis of poor governance. NBIM has taken considerable effort to begin implementing this policy, and at this stage the emphasis on engagement and persuasive dialogue is appropriate.
23. NBIM's preferred strategy of active ownership through voting and corporate engagement has the effect of sharply distinguishing NBIM's approach from the Council's role in recommending ad hoc exclusion. However, in practice the two bodies' activities are interrelated, as components of a single overall process for managing ethical and sustainability risks in the Fund. The two bodies of work are both undertaken within the context of portfolio ownership, and in cases where both NBIM and the Council are concerned with the same company, the efforts of NBIM to improve sustainability may be seen as potential resolution of the concerns being considered by the Council on Ethics. Accordingly, the Ethical Guidelines may be implemented more effectively with greater coordination between the two organizations.
24. NBIM's four year strategy began in 2007. This review is therefore a snapshot of a changing landscape. The effectiveness of the strategy will depend in large part on what happens in the coming years, and we expect (as does NBIM) that adjustments will be made as experience is gained. Two subjects deserve special scrutiny during the continued implementation of the strategy and are discussed below.
25. First, engagement requires patience but cannot be endless. Companies — or at least management — must know that there are consequences for failure to respond appropriately, and that there is a realistic possibility that these consequences will be implemented. It remains unclear in what circumstances NBIM would decide that engagement is not working, and whether that decision would lead to ad hoc exclusion.
26. Secondly, in its engagement activities NBIM may at times be overly dependent on representations made by corporate management or outside advocates. Peer investors point to this as a common challenge in governance engagements and identify third party verification as a promising solution.

## ***B. Interpreting the Ethical Guidelines***

27. Article 3.1 of the Ethical Guidelines provides that:

The overall objective of Norges Bank's exercise of ownership rights for the *Government Pension Fund – Global* is to safeguard the Fund's financial interests. The exercise of ownership rights shall be based on a long-term horizon for the Fund's investments and broad investment diversification in the markets that are included in the investment universe. The exercise of ownership rights shall mainly be based on the UN's Global Compact and the OECD Guidelines for Corporate Governance and for Multinational Enterprises. Norges Bank's internal guidelines for the exercise of ownership rights shall stipulate how these principles are integrated in the ownership strategy.

28. Article 2 of the Guidelines provides that the mechanisms for implementing the Guidelines shall include “the exercise of ownership rights” and exclusions for ethical reasons. This section of the report focuses on the exercise of ownership rights.

29. NBIM's policy of active ownership is grounded in an assessment of the Fund's long term financial interests. In its position as shareholder, NBIM exercises its voting rights and interacts directly with portfolio companies at the board level to advocate management and strategic decisions that may enhance shareholder returns.

30. The UN Global Compact and the OECD Norms for Multinational Enterprises provide the basis for NBIM's corporate governance work. Each is broadly phrased, and neither is written in language that is readily enforceable. Accordingly, NBIM has undertaken to develop its own standards for measuring the progress of its corporate engagement activities.

31. NBIM identified six priority areas for its engagement activities. Four of these six priorities are traditional shareholder rights issues:

- the right to vote;
- the right to participate in board elections;
- the right to sell shares; and
- the right to information.

32. The two remaining priority issues concern social and environmental issues:

- the rights of children; and
- the prevention and mitigation of global climate change.

33. We look first at whether NBIM correctly interpreted the Guidelines in its choice to establish priorities, then at the specific choices made.

34. NBIM was right to select priorities in order to implement Article 3.1. The breadth of the UN and OECD guidelines, combined with the approximately 7,000 companies in the Fund's portfolio, make it impossible to articulate policies for every situation or to assert governance policies for all situations. NBIM's decision to develop an expertise on select governance issues fits well with the Guidelines' mandate to improve Fund returns over the long term through active ownership on governance issues with ethical implications, since a targeted program protects the Fund's returns by allocating NBIM's management resources efficiently.
35. The decision to select priorities cannot, of course, be used to justify inaction on other issues that implicate the Guidelines. Questions of child labour, for example, are only one example of the challenges that companies face in monitoring their supply chains, and we would expect the question of responsibility in supply chains to be part of the broader review of the Guidelines. One answer, we believe, is for NBIM to be opportunistic as problems arise. Another is to collaborate more closely with other investors and organizations; this division of labour will extend Norway's reach and provide opportunities to shape the market more broadly. (Collaboration with the Council on Ethics will be considered in section 110.)
36. NBIM began a concentrated effort to develop its corporate governance priorities in the fall of 2005, with the arrival of the then-head of unit. Much of the next year, understandably, was spent in learning the field and developing a strategy, which was approved in the internal strategy document for 2007-2010.
37. The process for deciding on child labour and climate change as priorities was extensive. The corporate governance group, joined by several outside experts, conducted a year-long examination of possible issues. NBIM considered a number of issues, including corruption, corporate activity in areas of armed conflict, risks related to nuclear power, and access to medicines for poor populations. The analysis was thorough, and the selected priority areas were approved by the Executive Board of Norges Bank. First, the Bank considered the importance of the priority areas to the Fund's long-term returns. Secondly, the Bank considered the likely impact of investor engagement on corporate behaviour with regards to these issues. Thirdly, the Bank considered the feasibility of identifying relevant companies and sectors for targeted engagement on its priority issues. Finally, the Bank weighed the ability to leverage support from other investors on its priority issues within the field of environmental and social governance (ESG). The Bank outlined these criteria in its 2007 feature article on ESG issues and financial returns, appended to the 2007 Annual Report.
38. The priorities chosen by this process are consistent with the principles laid out in the Ethical Guidelines. The consideration of feasibility and resources in the selection of ESG priority areas is practical and consistent with the Ethical Guidelines' mandate that NBIM protect the Fund's resources for future generations.
39. We are concerned, however, that the process was insular. It did not include public comment while priorities were formed, and the result was not debated



outside the Bank before the priority areas were adopted. Since then the Storting has reviewed and in essence approved the priorities, but broader involvement in the selection of priorities, especially on social and environmental issues, is advisable before new priorities are selected. NBIM should have discretion to manage the Fund's assets, but it is unclear that NBIM is the organization best suited to lead a societal conversation about how national values should be reflected in investments. A priority set by a small group may lack the stability needed to withstand political changes, shifts in administration, and any shifts in attention to new issues. Norway will be a universal investor for a long time. Its engagement with companies should be based on a predictable, stable foundation.

**Recommendation 3.** In the broad review of the Guidelines, a transparent, inclusive process should be considered as a way of promoting broad agreement among stakeholders. This can then serve as a stable foundation for NBIM's engagement with companies.

40. NBIM's implementation of its priorities is clear, professional, and appropriate. On issues of traditional shareholder rights, NBIM has adopted well-understood priorities that protect investors' rights to information and to challenge management. For corporations that the corporate governance unit is engaging in dialogue on child labour, NBIM presents its goals for portfolio companies as its "Investor Expectations on Children's Rights." For corporations that the corporate governance unit is engaging in dialogue on climate change, NBIM presents its goals as a more abstract alignment of corporate lobbying activity with the interests of the Norwegian Fund.
41. The next sub-sections consider implementation of traditional shareholder rights before examining NBIM's approach to child labour and climate change.

### *C. Shareholder Rights*

42. NBIM bases its traditional corporate governance efforts on the connection between broad shareholder rights, efficient markets, and sustainable investment returns. Its focus areas within the field of shareholder rights are selected to promote smooth, efficient market functioning across state borders, and adequate ownership influence on corporate management appointments and practices.
43. According to NBIM, in 2007 the corporate governance unit voted on more than 38,862 proposals affecting 4,402 companies, with 85% of the votes pertaining to routine management considerations, strategic business decisions, and traditional shareholder rights issues.
44. NBIM's corporate governance unit votes on resolutions brought to its attention by a third party proxy firm, Risk Metrics. Approximately half of the workload and staff resources are dedicated to traditional shareholder rights, with

particular emphasis on access to information, equality of voting rights among investors, and the ability to elect directors.

45. Like all of NBIM's corporate governance work, voting on shareholder rights is handled by the corporate governance unit. NBIM portfolio managers are informed of the corporate governance unit's activities, but voting and engagements are carried out independently by the corporate governance team.

#### ***D. Social and Environmental Issues***

46. The Bank bases its policies and priorities in environmental and social governance primarily on the connection between sustainable markets and long term financial returns. The Bank asserts that current market externalities, namely climate change and the societal impacts of child labour, are detrimental to its portfolio over the long term. In a feature article of its 2007 Annual Report, the Bank refers to "the relationship that exists between well-regulated and morally legitimate markets and companies on the one hand, and long-term returns for diversified investors on the other." NBIM thus considers its corporate governance policies to be a component of its long term pursuit of financial returns, and has established its priorities and practices based on this financial rationale.
47. NBIM justifies the inclusion of these two priorities in its corporate governance activities by referring to its position as a long-term, universal investor. NBIM holds shares in more than 7,000 companies across many sectors and geographies and intends to maintain that profile for generations. Exceptional performance in some sectors over the short term may result in negative consequences for the larger portfolio over the long term. For example, NBIM argues, child labour may benefit specific companies today but depress markets tomorrow, both by promoting illiteracy and by provoking a backlash against markets that encourage the exploitation of children.
48. The broader review should examine these arguments and determine whether there is broad stakeholder support for these priorities within Norway. The issue is not an academic debate on the merits of the positions but rather a practical consideration of the sustainability of the engagement policies adopted by NBIM. It is important that NBIM's priorities be ratified by stakeholders outside NBIM itself so that NBIM and its portfolio companies can have confidence that the work will continue despite inevitable changes in public attention, political direction, and NBIM management over the years.
49. In practice, NBIM selects companies for engagement using a top-down targeting approach. Based on information that the corporate governance unit gathers about environmental and social risk factors, the corporate governance team assesses geographic and sector-level risks of child labour violations and adverse climate lobbying activities, then initiates engagements with companies operating in those countries and sectors. NBIM's corporate governance team

engages directly with portfolio companies via correspondence and meetings with Board level representation of the corporations.

## 1. Child Labour

50. NBIM's work against illegal child labour is path-breaking. NBIM, working closely with UNICEF, has correctly identified the difficulties of eliminating illegal child labour by declaration or disinvestment, and it has selected a topic that would benefit from the intensive engagement of an investor of NBIM's scale and long-term horizon. NBIM focuses on engagement as its preferred tool on child labour.
51. NBIM has identified 200 multinational companies in the agriculture and metals sectors for examination of corporate governance practices related to child labor; this research effort has occupied 60-70% of its time, it reports. Fifty-nine companies have been contacted, with 20 meetings held at the management or board levels.
52. NBIM's work on child labor deserves praise in several respects. First, it has formulated clear expectations of companies. Second, it has made those expectations public. This increases its role in influencing other investors. Finally, in this area NBIM has collaborated with peer investors and leading nongovernmental organizations.

## 2. Climate Change

53. NBIM has chosen to focus on a single approach to managing the risks of climate change to its portfolio: in its engagement activities on climate, NBIM urges portfolio companies not to lobby against effective carbon regulation, particularly in the United States. NBIM has analyzed the activities of more than 100 companies and engaged in dialogue with more than 20 companies on this issue, mostly in the transport and energy sectors.
54. Given the scale of the challenge presented by climate change, this focus seems narrow. NBIM describes its current strategy as the first stage in a broader approach to the issue. The work thus far on climate-related lobbying has opened doors and helped establish NBIM as a reliable, knowledgeable investor, it argues, paving the way for additional future engagements on ownership issues surrounding climate change. We welcome this acknowledgement and urge the rapid expansion of the climate change efforts. We believe that progress toward a broader strategy would allow NBIM to address the portfolio risks posed by climate change in a more comprehensive manner. Peer investors and NGOs alike point to the importance of a strategy for managing the risks of climate change, both regulatory and physical, to individual holdings in an investment portfolio.
55. From our conversations with other institutional investors and third party organizations, we have identified a number of interrelated approaches to

climate change that may be understood collectively as best practices of the industry. Within their corporate engagement work, many leading investors identify corporate lobbying on climate change as one important area of activity. However, most investors also engage on additional aspects of climate-related governance, beyond lobbying, in their efforts to manage the portfolio risks of climate change. In this regard, we welcome NBIM's support of the Carbon Disclosure Project (CDP) and encourage NBIM to engage its portfolio companies on information disclosure of greenhouse gas emissions. This information helps investors assess the regulatory risk to the holding, for companies in regions not already covered by climate change regulations. Similarly, large investors like NBIM can engage portfolio companies on gathering and disclosing information about the possible physical risks of climate change to business operations, such as supply chain disruption, labor problems in affected regions, and possible resource scarcities. A dialogue on both the regulatory and physical risks associated with climate change can encourage corporations to account for and mitigate these risks in their business models. NBIM should also consider becoming more involved in investor consortia on this issue, as best practices for managing the risks of climate change to investors are rapidly changing across the industry. Additional discussion with NBIM's peers will provide the basis for a dynamic policy on corporate governance related to climate change. Investor engagement on climate change is evolving rapidly, and NBIM can help shape best practices through its collaboration with others.

**Recommendation 4.** NBIM should expand its strategy on climate change to include (i) advocacy for information disclosure about climate change impacts and risks, (ii) engagement on managing those regulatory and physical risks, and (iii) involvement in investor consortia on the issue of climate change.

56. We note also that climate change requires a global response well beyond shareholder activism. Norway has already taken strong positions in favour of effective international action against climate change. In the review of the Ethical Guidelines it may wish to consider ways to incorporate this commitment further into investment strategies, such as allocations for renewable energies (as peer investors have done) or other technological advances. Norway's work on carbon capture may play a role in those discussions. This review notes that any aspects of the decision which affect investment strategy should be agreed upon by a wide audience.

## *E. Effectiveness*

57. Does NBIM's style of engagement work? The 2007 Annual Report reflects the general understanding among large, long-term investors that active ownership, including engagement, protects returns.
58. NBIM has been pursuing engagement actively for a short time, and engagement takes time. NBIM evaluates its engagements according to the

portfolio company's receptivity to continued dialogue with NBIM, the company's internal policy changes, such as signature to widely accepted norms of governance, and the company's disclosure of information on governance issues of concern to NBIM.

59. Several benchmarks suggest that NBIM has laid a promising foundation for further work. Management has been willing to enter into discussion with NBIM on governance concerns. Several companies have changed practices in the direction supported by NBIM. It remains difficult, as NBIM acknowledges, to attribute these changes to NBIM's involvement. NBIM has not definitively judged any of its corporate engagement efforts to have failed, although the corporate governance unit identifies one engagement effort that has not produced the desired change to date.
60. Stakeholders, both in NBIM and outside, will need several attributes for engagement to succeed:
  - *Patience.* NBIM's consistent, conservative approach is important for ensuring that changes in corporate behaviour are equally long-lasting. At times, some stakeholders may ask for NBIM or the Ministry to act quickly.
  - *Clarity.* NBIM's approach to traditional shareholder rights informs companies of issues to be addressed, in particular voting rights and the ability to elect directors. Its set of expectations on childrens' rights is effective in providing shape and direction for dialogues with management. NBIM should undertake the same exercise to produce a set of expectations on corporate governance related to climate change.
  - *Verification.* Especially in priority areas, NBIM must know what is happening in the field as well as — and perhaps better than — the senior management it engages.
  - *Decisiveness.* Engagement can fail. NBIM must have policies and a culture that encourages officials to acknowledge when the field is barren.
  - *Collaboration.* The more that other shareholders align with NBIM in its expectations on governance, the more likely it is that management will be responsive to those expectations, and the less chance there is that multiple demands will distract from NBIM's objective.
61. As described in the following paragraphs, the final three points currently give rise to concern. As NBIM gains experience, we expect it will improve in these areas. We recommend that NBIM report on its progress in annual reports, and that these areas receive special emphasis in regular meetings between the Ministry and NBIM.
62. Engagement works when it changes reality on the ground, not only corporate policies. Peer investors point to the difficulties of verifying changes in corporate governance as a key obstacle to effective engagement, and suggest third-party verification of operations-level changes in corporate governance.

**Recommendation 5.** NBIM should allocate resources to validate the reported conditions and changes in corporate behaviour on the ground. This is especially relevant for the corporate governance unit's activities on child labour, where third party validation of effective oversight of child labour in corporate operations may provide critical information.

63. Engagement will not always yield sufficient progress, and certain governance violations are (or should be) too problematic to ignore or accept. At times, a lack of progress may necessitate the removal of some or all management or the disinvestment of shares. There is as of now no clear process for NBIM to conclude that engagement has failed or for the corporate governance personnel within NBIM to recommend a change in portfolio holdings as a result. This separation seems out of step with NBIM's emphasis on governance. Comparable funds are moving to integrate governance concerns into investment decisions to divest, under-weight, or over-weight particular equity assets. Within NBIM, the corporate governance unit is rightly restricted in its influence on the investment decisions of portfolio managers, but a capacity of the office to voice governance risks as legitimate considerations in the Bank's broader investment strategy would be an improvement in the implementation of the Ethical Guidelines, as well as a step in the direction of evolving peer practices.

**Recommendation 6.** NBIM should enter each engagement with clear timelines by which to measure progress. The decision points identified should be reported to senior management within NBIM. The timelines will need to be adjusted in the light of unexpected events, but they should provide times when NBIM justifies to itself a decision to continue engagement.

**Recommendation 7.** The corporate governance office in NBIM should be authorized to recommend to the CIO changes in holdings based on the results of engagement.

**Recommendation 8.** NBIM should identify and change its own policies in order to remove any disincentives to ad hoc exclusion. Steps should be taken so that managers do not feel disadvantaged by decisions to disinvest on the basis of governance concerns.

64. We recommend in another section of this report (Recommendation 22) that the Bank formally be alerted by the Council on Ethics to the possibility of a recommendation for exclusion in quarterly discussions of a watch-list of companies, and that the Bank have the option to engage with such companies on the relevant governance concerns. If such a policy is adopted, the importance of timelines and benchmarks for progress will be particularly important and should be agreed upon in advance by both bodies.
65. For the most part, NBIM exercises its ownership rights and engages with corporations independent of other investors or NGOs. NBIM communicates with other investors through networks such as the ICGN, the CII and the UN PRI, and the experiences of other investors have been instrumental in the development of NBIM's own corporate governance policies and strategies, but

in most cases NBIM's corporate governance unit acts independently in its dialogues with portfolio companies. NBIM has been clear: it prefers to work by itself on its own behalf.

66. Perhaps as a result of this self-reliance, a consistent theme in our conversations with peer investors and others is that few know about NBIM's corporate governance activities or benchmarks. We believe that this will begin to change with the publication of the 2007 Annual Report, but as of early 2008 NBIM's standards and practices in corporate governance are not widely known. Peer investors and NGOs alike point to transparency as an important element of leadership in shaping the global market.
67. Although the Fund is large, it holds small stakes in its 7,000 portfolio companies, so leveraging the resources of peer investors could be quite useful for improving the CG's leverage in dialogues with portfolio companies. NBIM has developed a strong basis for collaborating with others, and we believe that its networks can be used for increased collaboration quickly and without taxing its resources. Furthermore, increased collaboration on the two priority issues of child labour and climate change would contribute to shaping the overall market in relation to these two issues, by leveraging the resources and ownership rights of more investors toward that end. The Graver Commission noted that the Fund can "play a role as a model for other funds or investors," and we regard this to be an important if subsidiary objective of the Guidelines. By enhancing its leadership in the investor community through collaboration and transparency, NBIM will improve its effectiveness in shaping the future market with regards to its two priority issues, child labour and climate change.

**Recommendation 9.** Collaboration with other investors on NBIM's two priority environmental and social governance issues will be the quickest way to establish a leadership profile. NBIM could do more to leverage activities of other investors on these and other issues; this may enhance NBIM's ability to promote a sustainable global market over the long term by magnifying its efforts on child labour and climate change.

## *F. Reporting*

68. Article 3.2 of the Ethical Guidelines requires that NBIM "report on its exercise of ownership rights" both with regard to investment strategy and the other objectives set forth in Article 3.1. This is now done well, particularly in NBIM's Annual Report for 2007. That report profiled NBIM's corporate governance activities for the year and also explained its policies and strategy on engagement and voting, in a chapter on "Ownership and ethics" and in a feature article entitled "Social issues, the environment, and financial returns." The publication of this report marks a major step forward in Norges Bank's efforts to communicate its policy and strategy on ethical issues in corporate governance to the public, to shareholders, to portfolio companies, and to peer investors. The 2007 Annual Report, which was provided in an informal

translation late in the process of preparing our report, is a clear, concise statement of NBIM's rationale and practices. It is to be commended. Special attention should be paid to NBIM's decision to publish every vote.

**Recommendation 10.** NBIM should continue to publish reports on its corporate governance efforts, to inform the public, peer investors, and portfolio companies of its strategy and standards. This transparency will make NBIM's positions known and predictable to portfolio companies, and will enhance NBIM's leadership among the institutional investor community, more effectively shaping the global market on the governance issues of greatest interest to NBIM.

## II. The Council on Ethics

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*How has the Council on Ethics carried out its mandate as laid out in Article 4 of the Ethical Guidelines, including the preparatory work to the guidelines? The assessment encompasses both substance and procedure, relating in particular to Articles 4.4 and 4.5.*

69. The five members of the Council on Ethics include three academics at the University of Oslo,<sup>26</sup> a professional scientist,<sup>27</sup> and a professional economist.<sup>28</sup> The Council is given a broad power to make recommendations on its own initiative.<sup>29</sup> The first basis for exclusion of a company is for "production of weapons that through their normal use may violate fundamental humanitarian principles".<sup>30</sup> In addition, the Council may issue a recommendation

because of acts or omissions that constitute an unacceptable risk of the Fund contributing to:

- Serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other forms of child exploitation
- Serious violations of individuals' rights in situations of war or conflict
- Severe environmental damage
- Gross corruption
- Other particularly serious violations of fundamental ethical norms.<sup>31</sup>

70. This allows, clearly, wide discretion on the part of the Council, which is not constituted as a judicial body but is nevertheless required to "gather all necessary information at its own discretion and ... ensure that the matter is documented as fully as possible."<sup>32</sup> When the Council is considering recommending exclusion, "the company in question shall receive the draft recommendation and the reasons for it, for comment."<sup>33</sup>

71. The Council is also tasked with reviewing "on a regular basis" whether the grounds for exclusion of a particular company continue to apply; on the basis



of new information it may recommend to the Ministry of Finance the revocation of a decision to exclude.<sup>34</sup>

72. In its first three years to January 2008, the Council published eleven recommendations to exclude one or more companies from the investment universe.
73. In its negative screening capacity, three recommendations led to the exclusion of ten companies for their production of cluster weapons components;<sup>35</sup> a further three recommendations excluded nine companies for the production of nuclear weapons components.<sup>36</sup> One company had previously been excluded for its production of anti-personnel landmines.<sup>37</sup> The Council also published a decision revoking its exclusion of one company for production of cluster munitions, but keeping the exclusion in place as the company (and a subsidiary) were involved in the manufacture of nuclear weapons components.<sup>38</sup>
74. In its ad hoc exclusion capacity, one recommendation led to the exclusion of two companies for human rights violations.<sup>39</sup> Three recommendations led to the exclusion of five companies for severe environmental damage,<sup>40</sup> one of which was also excluded because of human rights violations.<sup>41</sup> A further recommendation led to the exclusion of one company for “other particularly serious violations of fundamental ethical norms”.<sup>42</sup>
75. No recommendations have yet been published on exclusions for serious violations of individual rights in war and conflict or gross corruption.
76. The Council has published two recommendations considering allegations of improper activity but not calling for exclusion of the relevant companies: the first concerned whether two weapons systems in development constituted violations of the Ottawa Convention;<sup>43</sup> the second whether the Fund should disinvest from Total S.A. because of its operations in Myanmar (Burma).<sup>44</sup>
77. Two recommendations were issued revoking decisions to exclude companies. Just over a year after it excluded Kerr-McGee, the Council revoked its decision on the basis that the company had ceased operations off the coast of Western Sahara.<sup>45</sup> On the same day that it published the recommendation on Rheinmetall, the Council revoked its decision on the basis that the company did not, in fact, produce cluster munitions.<sup>46</sup>
78. The Norwegian Ministry of Finance has followed all published recommendations, and in January 2008 a total of 27 companies were excluded. The Fund’s portfolio presently includes about 7,000 companies.<sup>47</sup>
79. Criticisms of the Council fall broadly into three categories: first, arguments that the Council should not have made a specific decision, in particular that it unfairly recommended exclusion of a particular company; secondly, arguments that the Council should recommend exclusion of *more* companies, either on the basis of the existing Ethical Guidelines or an expansion of those guidelines. A third consideration, which tends to be less publicly debated, is whether the Council has made the best use of its resources. These may be

summarized as questions as to whether the Council has been *fair*, whether it has been *effective*, and whether it has been *efficient*.

## A. Fairness

80. The first critique was most publicly aired in the aftermath of the Council's decision to recommend exclusion of Wal-Mart.<sup>48</sup> The decision drew a sharp protest from the U.S. ambassador, Benson K. Whitney, who accused Norway of a sloppy screening process and unfairly singling out U.S. companies.<sup>49</sup> In a speech to the Norwegian Institute of International Affairs, he outlined a more nuanced critique:

I respectfully ask the Norwegian government and people to fully recognize the seriousness of what Norway is doing with divestment decisions like these. Norway is not just selling stock — it is publicly alleging profoundly bad ethical behaviour by real people. These companies are not lifeless corporate shells. They represent millions of hard working employees, thousands of shareholders, managers and Directors, all now accused by Norway of actively participating in and supporting a highly unethical operation. The stain of an official accusation of bad ethics harms reputations and can have serious economic implications, not just to the company and big mutual funds, but to the pocketbooks of workers and small investors.<sup>50</sup>

81. These criticisms are not without merit. The Council should act with great care, because the governmental role in approving its recommendations gives it special weight.
82. The chair of the Council, Gro Nystuen, responded to these and related criticisms in an article published in the newspaper *Dagens Næringsliv*, including claims that the Council did not allow companies the opportunity to rebut accusations of improper activity, and that companies that did answer accusations were nevertheless excluded anyway. Nystuen explained that allegations are substantiated with “concrete references to sources” and that companies being assessed for exclusion are sent a letter and invited to “comment on the allegations”.<sup>51</sup>

I would assume that this process represents a more or less universal method for processing allegations and accusations. Whether one wants to complain about an administrative decision, respond to a complaint from the neighbor or challenge a criminal indictment, it is a basic requirement that the claims which are presented are concrete and that they are well substantiated and documented. It is much more difficult to respond to, or counter, vague allegations or rumors.<sup>52</sup>

83. The response was suggestive of the unusual nature of the Council. Technically it is not a legal tribunal bound by rules of due process; technically it focuses on the risk of contribution on the part of the Fund rather than proof of allegations against a given company. In practice, however, it has justified its decisions on quasi-legal grounds, establishing precedent and following or distinguishing prior decisions. Building on the provisions of Article 4.5 it has

also adopted a quasi-adversarial procedure, allowing companies the opportunity to know allegations and respond to them, though without the full trappings of legal process.

84. One solution to such concerns would be to avoid public justification altogether. If the purpose of the Council on Ethics is genuinely and solely to reduce the risk of Norwegian contribution to unethical activities, it could make ad hoc exclusion recommendations secretly, implemented with discretion by NBIM as part of its regular trading. There might be speculation as to why the Fund is moving assets, but as the Fund is limited to owning at most five percent of the voting rights in any one company<sup>53</sup> the trades are unlikely to be noticed or regarded as significant. (The Ministry intends to increase the limit to ten percent, pending approval from the Storting.) If the Council on Ethics eschews ad hoc exclusion either as a tool to change behaviour<sup>54</sup> or as a form of punishment,<sup>55</sup> the need for public scrutiny of such decisions is not justified as an element of natural justice: if a company is not being penalized or accused directly of wrongdoing, it has no right to hear charges against it or be given an opportunity to rebut them.
85. As explained below, we strongly recommend the continued practice of publishing recommendations once they are approved by the Ministry. Secrecy is proposed here only hypothetically — apart from anything else, public scrutiny of how Norwegian public funds are invested is appropriate — but is intended to highlight the ambiguous role of the Council as both avoiding Norwegian contribution and also in potentially improving the behaviour of companies.
86. Three concrete areas where the Council's fairness might be reconsidered are the process through which companies are identified, the opportunities given to impugned companies to challenge a proposed exclusion, and the manner in which an excluded company may seek to be removed from the exclusion list.

## 1. Selecting Companies

87. The process through which the Council selects cases for investigation is — or at least is seen to be — opaque. Some critics have alleged that the process operates to the disadvantage of U.S. companies, about which more information tends to be available. In particular, the Council has been criticized for reliance on mass media and advocacy material published on the Internet.
88. The Council should consider how it might clarify the way in which it chooses cases. We understand that the Council employs a regular, systematic process to identify potential investigations, targeting worst-in-class corporations in high-risk sectors. This process leaves the Council dependent on third party service providers and media reports in identifying sectors of concern. More transparency would assist both companies and the general public (in particular the Norwegian public) in being able to understand and to follow the implementation of the Guidelines.

**Recommendation 11.** The Council on Ethics should make public its

process for directing its resources and consider whether to adopt publicly identified priorities, such as specific sectors, to make its focus clear to companies and the public.

89. An additional measure to increase transparency to the Norwegian public in particular would be to formally welcome suggestions for improving its methodology or alerting it to specific companies. Since 2005 the Council has met annually with Norwegian NGOs who express an interest in the Council's work, and enjoys good relationships with Norwegian and international NGOs. A more formal invitation to such engagement, perhaps through the Council's website, may enable the Ministry of Finance to refer submissions of this nature which it receives directly to the Council.

**Recommendation 12.** The Council should, through a new facility on its website, formally welcome submissions from the public. It should be made clear that such submissions are received for information purposes only and do not guarantee either inclusion on the watch-list, investigation, or a recommendation to exclude a given company.

## 2. Informing Companies

90. At present the Council engages in a form of unilateral investigation of companies, assisted by the Secretariat and outside companies and contractors. Companies become involved only when NBIM submits a request for information together with a document from the Council outlining its concerns, typically followed by further exchanges directly between the Council and the company. In other circumstances, the company becomes involved only when the Council, through NBIM, transmits a draft recommendation for exclusion and invites the company to comment in accordance with Article 4.5.
91. In the case of Vedanta, for example, a draft recommendation was sent on 15 March 2007 with a request for comments by 10 April 2007, and further notification that the Council would submit its recommendation on 15 May 2007 if no satisfactory reply was received. A request for an extension from 10 to 20 April was granted, but in the absence of any further communication the recommendation was submitted on the promised date.<sup>56</sup>
92. Greater consistency in Council practice would be desirable from the perspective of both natural justice and pragmatism. Presenting a draft recommendation may — perhaps erroneously — be interpreted as a fait accompli, with comments being solicited only to justify the process. Involving companies earlier in the process would be fairer but also increases the likelihood of a response.

**Recommendation 13.** The Council should, as a matter of principle, first seek more information from a company prior to drafting a recommendation for exclusion. Such requests should in the first instance be communicated through NBIM, in accordance with Article 4.5.

93. When the Ministry of Finance decides to exclude a company, that company is not informed directly by the Ministry, the Council, or NBIM. Though any such company would normally have received at least the draft recommendation of the Council, it would again appear both just and prudent to advise the company directly of the decision. For simplicity and the confidentiality of the decision, the decision should be transmitted after NBIM has finished disinvesting but before the decision is announced. Such an approach would be just in that it reduces the change of a company being surprised by press inquiries about the decision. It would be prudent because such notification may increase the opportunities for subsequent engagement with the company, as discussed below.

**Recommendation 14.** When the Ministry of Finance decides to exclude a company, that company should be informed of the decision after it is implemented but before it is announced publicly. Notification should most appropriately come from NBIM, attaching relevant information such as the Council's recommendation.

### 3. Re-inclusion

94. Article 4.6 of the Ethical Guidelines provides that

The Council shall review on a regular basis whether the reasons for exclusion still apply and may against the background of new information recommend that the Ministry of Finance revoke a decision to exclude a company.<sup>57</sup>

95. Two recommendations to revoke exclusion decisions have been made. The first case concerned a change in circumstances, after Kerr-McGee ceased operations off the coasts of Western Sahara.<sup>58</sup> The second case concerned the revelation of a factual error, when it was revealed that Rheinmetall had in fact ceased production of cluster weapons some years prior to the Council recommendation to exclude.<sup>59</sup>
96. These are perhaps the simplest kind of revocation decisions the Council will have to make. Far more difficult will be consideration of whether, for example, a company's human rights or environmental impact are addressed to the point that it no longer merits exclusion. At least one company that was excluded believed that its attempts to reach out to the Council were met with "shifting goalposts".
97. Though it would be difficult and probably unhelpful to articulate in great detail what a company must do in order to remove itself from the exclusion list, it is both fair and desirable that companies that are excluded be informed, in addition to the reasons for exclusion, of the process through which they may seek re-inclusion. As discussed below, both NBIM and the Council should participate in these discussions. The authority to make such a recommendation to reverse an exclusion would continue to lie with the Council.

**Recommendation 15.** When a company is informed of a decision to exclude it, that notification should also provide information about how

the company may seek to be removed from the exclusion list. This should include, in particular, a request to transmit information directly to the Council on Ethics but also an offer to enter into discussions, conducted by the Council but with the involvement of NBIM, on steps that can be taken to reverse the exclusion.

## ***B. Effectiveness***

98. The second critique has been the subject of discussion in Norway, including within the Parliament, most prominently on the question of whether tobacco companies and companies operating in Myanmar (Burma) should be excluded. It is plausible that the production of cigarettes could be seen as falling within the fifth bullet of Article 4.4 of the Ethical Guidelines (“Other particularly serious violations of fundamental ethical norms”). Nevertheless, the Parliament considered and rejected the exclusion of tobacco from the Pension Fund. We do not regard this as disposing of the question, but this history it makes it reasonable for the Council to decide to put resources to work on other issues until a contrary decision is made.
99. Apart from the question of whether a wider mandate should be adopted, a different consideration of effectiveness is whether Council recommendations should have effect beyond the individual companies concerned. This may be thought of in terms of the demonstration effect of “naming and shaming”, but also the elaboration of more general standards intended for a wider audience.

### **1. Naming and Shaming**

100. At present the Ministry of Finance issues a press release when a decision to exclude a company is published, and maintains a list of excluded companies on its website, with links to its press releases and Council recommendations.<sup>60</sup> The Council publishes recommendations on its website and its Annual Report includes a list of excluded companies. An email list of about 50 people receives notification of changes to the list of excluded companies and about 350 people receive copies of the Annual Report. The Council itself does not issue press releases.
101. More use could be made of this information. The Ministry of Finance list of excluded companies is quite prominent and has a direct link from the Government Pension Fund English language website.<sup>61</sup> Yet it is less a list of excluded companies than a list of Ministry decisions based on Council recommendations. Kerr-McGee, for example, appears on the list with a second listing indicating that the decision had been reversed. The information could be presented more clearly and with greater impact if it was organized thematically rather than chronologically.

**Recommendation 16.** The Ministry of Finance’s website on excluded companies should be revised to present companies excluded under the

various bullet points of the ethical guidelines, rather than chronologically. This should be a list of excluded companies, with removal from the exclusion list entailing removal from the site (thus Kerr-McGee should be removed). The links to press releases and Council decisions should be maintained.

102. Though Council members expressed some reservations about being seen as more “activist” than the Ministry, a press release around the time of its annual report — which has typically corresponded with publication of a number of recommendations — may reach a different audience from a press release issued by the Ministry of Finance.

**Recommendation 17.** The Council on Ethics should issue a press release to accompany its Annual Report, drawing attention to the list of excluded companies, an abbreviated explanation of the reasons for exclusion, and an update on companies that have been removed from the exclusion list and why.

## 2. General Standards

103. As indicated earlier, the Council’s recommendations may be seen as a kind of jurisprudence elaborating its interpretation of, in particular, terms such as “contribution”, “unacceptable risk”, and “complicity”. The published opinions both justify specific recommendations but also assert Norway’s leadership on ethical investing and may affect the evolution of international norms on investing practice. Our conversations suggest that the Council’s opinions influence investment decisions of other public pension funds. Norway’s leadership in shaping international norms may be expanded if the Council were authorized to reach out to other investors with the aim of getting public agreement to its interpretations of those norms. This could also provide greater predictability for companies. This practice of publishing of recommendations like those of the Council is unique among investors. Many principles and interpretations are articulated on issues of ethical investing, but only the Council’s recommendations, once approved, have official imprimatur. They have extra force because, like decisions of judicial or quasi-judicial bodies, they are based on careful readings of international norms, research, and the application of rules to individual factual circumstances.
104. The practice of inferring rules from decisions in individual cases is familiar to those experienced in common law systems or the interpretation of customary international law, but it raises some questions. The discretion granted to the Council is considerable but, in addition to the fairness questions raised above, the approach of interpreting its mandate on an ad hoc basis rather than in advance means that companies could not be expected to know, for example, what “serious violations of individual rights in war and conflict” or “gross corruption” mean as they have not been elaborated in a Council recommendation. Similarly, to understand the Council’s interpretation of the nuclear weapons exclusion or severe environmental damage requires reading its decisions on these subjects.

105. Council members expressed different views on the value of codifying its interpretation of the Guidelines. On the one hand, there was reluctance to constrain the Council's discretion in implementing the guidelines on a case-by-case basis. On the other, there was a recognition that clearer standards might be helpful to determine when exclusion should occur and, in particular, when re-inclusion was appropriate. Different models might be envisaged, including: (i) formally elaborating Article 4.4 of the Ethical Guidelines; (ii) publishing "General Comments" in the manner of the Human Rights Committee;<sup>62</sup> (iii) publishing a "digest" of Council recommendations organized thematically rather than by case; or (iv) developing a confidential manual for internal use in interpreting the guidelines. The first two formal approaches would gain the widest publicity but run the risk of unnecessarily constraining the Council's ability to apply the Ethical Guidelines to new situations. A confidential manual might assist in consistency but given the relatively small number of decisions is probably not needed. A public digest of cases could serve the purpose of elaborating the guidelines, explicitly drawing on previous recommendations but intended for an audience interested in complying with the Ethical Guidelines rather than understanding the reason for excluding a company that had not.

**Recommendation 18.** The Council should publish prominently on its website a digest of its recommendations, organized thematically around the bullets in Article 4.4 of the Ethical Guidelines. This should draw explicitly on past recommendations and elaborate the standards that were adopted for exclusion and re-inclusion. The digest should be drafted in a manner intended to assist companies seeking to remain in compliance with the guidelines.

### *C. Efficiency*

106. A third area in which the Council might improve its implementation of the Ethical Guidelines may be considered in terms of efficiency. In other words, has the Council used resources (including its relationship with Norges Bank and the provisions of Article 4.5) to ensure compliance with Article 4 at minimum cost of time, money, and goodwill?
107. This assessment has not considered in detail the financing of the Council, but it broadly seems to operate within a reasonable budget for its current workload. Council members believe that the resources allocated to them are adequate. Its working methods rely heavily on the resources and capacity of the Secretariat and the willingness of the five Council members to contribute time in exchange for modest compensation. If the Council is expected to increase its fact-gathering activities on the ground, consideration should be given to expanding the budget for appropriate consultants.
108. There is room for greater efficiency. Once the Council sets its priorities, it should consider developing a list of companies that merit close attention. (An internal list of this nature already exists.) Such a "watch-list" would focus on



companies that have not been recommended for exclusion but raise concerns such that the Council believes that active ownership rights should be exercised. Publishing such a list openly would seem inadvisable as it would pose fairness questions raised earlier with respect to those companies included while also begging consistency questions as the list would necessarily be incomplete. It might also complicate NBIM's efforts to engage with such companies. Instead, the watch-list could serve as a confidential agenda for the meetings between NBIM and the Council proposed in Recommendation 22.

**Recommendation 19.** The Council should develop and maintain a "watch-list" of companies that have not been recommended for exclusion but raise concerns such that the Council believes active ownership rights should be exercised. This list should be kept confidential but shared with NBIM on a regular basis, perhaps monthly, while also serving as the partial agenda of more regular meetings between NBIM and the Council proposed in Recommendation 22.

109. The watch-list could also form the basis for passive information-gathering about companies.

**Recommendation 20.** Companies included on the watch-list should receive a courtesy letter from the Council, transmitted through the Bank, advising that they are on a confidential list of companies identified as being of concern but that no formal action has been taken. Such companies may wish to submit relevant materials to the Council that may lead to them being removed from the watch-list.

110. The watch-list should, in turn, form the basis for selecting companies for further investigation. In such cases the information-gathering would move from passive to active.

**Recommendation 21.** Companies from the watch-list selected for further investigation should receive a second letter, transmitted through the Bank, advising them that they are under investigation and requesting information about possible non-compliance with specified provisions of the Ethical Guidelines. The Council may pursue additional investigative methods to gather information.

111. On this basis, the Council's recommendation to exclude remains its only tool, but is set in the context of a four-stage process intended to add both nuance and leverage to that single instrument, while also increasing transparency to the public and to companies. The four stages can be understood as follows:

- **(i) General Survey**

- The Council establishes its priorities and methodology, drawing on such information and resources as it has. This methodology is outlined on the Council's website (Recommendation 11) along with a digest of recommendations (Recommendation 18).

- The Council receives submissions from the public. (Recommendation 12)
- The Council identifies companies or sectors of concern; such companies are moved onto the watch-list. (Recommendation 19)
- **(ii) Watch-list**
  - Companies on the watch-list receive a courtesy letter from the Council, transmitted through the Bank, advising them that they are on a list of companies identified as being of concern but that no formal action has been taken. Such companies may wish to submit relevant materials to the Council that may lead to them being removed from the watch-list. (Recommendation 20)
  - Companies on the watch-list are automatically included on the agenda for quarterly meetings between the Council and the Bank. (Recommendation 22)
  - The watch-list is not made public.
  - Where the Council establishes that a company warrants further investigation, based among other things on discussion with the Bank in the quarterly meetings, it is moved into the investigation category of the watch-list.
- **(iii) Investigation**
  - Companies under investigation receive a second letter, transmitted through the Bank, advising them that they are under investigation and requesting information about possible non-compliance with specified provisions of the Ethical Guidelines. (Recommendation 13; Recommendation 21)
  - The Council may pursue additional investigative methods to gather information.
  - Such companies remain on watch-list and thus on the quarterly agenda.
  - The list of companies under investigation is not made public.
- **(iv) Recommendation to Exclude**
  - Where the Council deems that a company reaches the threshold where exclusion is required, it drafts a recommendation and submits a copy, through the Bank, to the company for comments within a reasonable period.
  - If the company provides an inadequate response, the Council transmits its decision to the Ministry. If the recommendation is followed, the company is informed after implementation but before publication.

(Recommendation 14) Information about possible re-inclusion should also be provided. (Recommendation 15)

- Such companies remain on the watch-list, with periodic review of the recommendation to exclude.

### **III. Information-Sharing and Cooperation Between NBIM and the Council**

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*Is the current information-sharing and cooperation between Norges Bank and the Council on Ethics at a level that contributes in an effective way to enhancing each entity's ability to perform its task, and that facilitates the envisaged interaction described above between the policy instruments?*

112. NBIM and the Council carry out different mandates and function independently. In other peer investor organizations, the decision to engage, to exclude by screening, or to exclude on an ad hoc basis is generally joined in one office within the investment manager; several peer investors commented that one outcome of this review might be to merge the Council's function into NBIM. We believe that such integration would prevent the Ministry from achieving the two distinct goals of the Ethical Guidelines: the avoidance of contribution to a wrong and the management of portfolio risk.
113. The independence of the organizations makes sense. The Council's mandate is to provide independent advice on when there is "an unacceptable risk of the Fund contributing to" violations of specific norms, based on its assessment of risk at a specific moment. NBIM's mandate is to exercise ownership rights with a view to the Fund's long-term returns, and it is expected to engage regardless of whether there is a prospect of a violation under Article 4. It has, in short, a mandate to work with many companies in a variety of ways, on issues that may or may not fall within the Council's mandate.
114. Though it is tempting to characterize NBIM and the Council as "good cop" and "bad cop" respectively, in practice the two institutions state that they tend not to focus their attention on the same companies. The Council limits its role to only a subset of the companies in which NBIM may choose to pursue engagement. The Council and NBIM have, in fact, only addressed the same company in a few instances thus far.
115. We believe that there will be more cases of overlapping interest. NBIM and the Council have increased their activities in the priority areas outlined by each body, so overlap is likely to happen. Indeed, we understand that there have already been differences of opinion on specific cases.
116. In addition, the Ministry has occasionally sought advice from NBIM when the Council presents a draft recommendation. It should continue to do so. These

are difficult cases, and the Ministry would be remiss not to draw on the expertise available in both NBIM and the Council.

117. There is, however, considerable likelihood that NBIM and the Council will disagree, especially if each one has already taken a position on how best to manage governance concerns in a given portfolio company. When they do, only the Ministry is in a position to resolve the matter. This is a healthy process, but not all disagreements should percolate to the Ministry. In particular, it is unrealistic to expect the Ministry to resolve factual disputes about changes in corporate behaviour resulting from NBIM engagement. There should be a process to avoid and resolve disputes at the level of maximum expertise — that is, before they are presented to the Ministry. The recommendations below provide elements for such a process.
118. Successful management of the relationship between the Council and NBIM requires recognition that, for all the distinctiveness in their mandates and cultures, they are part of a single system for managing the ethical and financial risks associated with ownership of the Fund. The threat of ad hoc exclusion may promote effective engagement by NBIM. The Council may be approached by companies seeking to avoid or overturn exclusion; this is engagement, in which NBIM will have much to add. And NBIM may need to consider ad hoc exclusion or underweighting of a portfolio company if engagement falters. It may want to undertake this on its own initiative, to avoid the publicity or inflexibility of Council action. Norway will receive the greatest advantage if both organizations' activities are brought to bear in ways that increase the leverage of the other.

### ***A. Routine Interaction between NBIM and the Council***

119. Some disagreements may be avoided — and general decision-making improved — by encouraging greater interaction between NBIM and the Council.
120. Representatives of NBIM and the Council do meet occasionally and exchange information through telephone and email contact. The Council transmits to NBIM a copy of monthly research on specific companies received from the UK-based institution Ethical Investment Research Service (EIRiS).
121. As the workload of both entities and the international attention to Norway's Guidelines increases, this ships-passing-in-the-night approach is no longer tenable. Addressing it would bring two key benefits.
122. First, regular discussion of individual cases would enable a reasoned discussion of whether engagement or exclusion is appropriate for a given company. This might take the form of quarterly meetings, supplemented by additional ad hoc gatherings, in which the watch-list of companies of concern would be discussed on a confidential basis.

123. In this regard, we note that the Council has identified certain companies that merit engagement rather than exclusion and given this information to NBIM. NBIM should reciprocate by notifying the Council of information which might prompt an investigation by the Council or which might affect an ongoing investigation by the Council. This requirement should apply whether the information is received as part of a specific engagement or if it comes to NBIM's attention in other ways. Moreover, should allocations in the Fund to alternative, non-listed investments increase, NBIM will possess more information than is available through the resources now used by the Council. The risk of Norwegian contribution to a wrong, however, will remain.

**Recommendation 22.** NBIM and the Council should meet quarterly, in person, to discuss individual cases on a confidential basis. The agenda would include the Council's watch-list of companies; NBIM's progress on priority engagements; and any information shared by the two organizations.

124. Secondly, periodic discussion of the guidelines themselves would facilitate a common understanding of the roles anticipated by Articles 3 and 4.

**Recommendation 23.** The Ministry of Finance should convene an annual retreat, bringing together key personnel from NBIM and the Council. This meeting, which should take no more than a day, would review practices, identify areas for collaboration, and examine the Guidelines to identify priorities for NBIM, the Council, and the Ministry and to suggest improvements.

## ***B. Interaction Prior to Issuing a Recommendation***

125. The greatest leverage that Norway has over a company is immediately prior to a recommendation for ad hoc exclusion. Though NBIM and the Council have very different functions, as the number of cases in which they consider the same companies is likely to increase it is prudent to establish a mechanism to see if common ground can be established prior to contradictory recommendations being presented to the Ministry.

**Recommendation 24.** Before the Council submits a draft recommendation to a company for response, it should as a rule communicate with the corporate governance unit at NBIM. (Communications to companies have been handled through the General Counsel's office.) If NBIM has begun to engage or intends to do so, NBIM and the Council should explore whether they can agree on a set of specific actions that the company might take in order to render further action under Article 4 unnecessary.

126. NBIM's Investor Expectations on Children's Rights may serve as a guide on those issues, with additional specificity for the particular company under consideration. Special attention might be paid to whether the company is

working to the benefit for people who are otherwise adversely affected by the problematic actions. Such an approach has been used by the Sudan Divestment Task Force (SDTF), which does not target a company for divestment until after considering the extent to which a company benefits the underprivileged. SDTF has also recently moved beyond solely calling for targeted divestment to additionally promoting positive investment in oppressed or conflict torn areas of Sudan. NBIM's work on children's rights is an example of such positive investment. This "positive investment" approach cannot be used to excuse conduct in violation of Article 4, but it may add a dimension to the analysis of the Council and NBIM.

127. NBIM should be notified when a company is under consideration for ad hoc exclusion, and the two bodies should discuss all such companies in their regular meetings. If NBIM elects to engage with a company on the issues that are the basis for the Council's possible exclusion recommendation, NBIM should work with the Council to identify benchmarks for progress that are acceptable to both parties, which the company must meet over a certain timeline in order to avoid exclusion.
128. The communication between NBIM and the Council should continue throughout the Council's deliberations. The decision as to whether the company should be contacted in the context of a Council investigation, and when such contact takes place, should remain with the Council.
129. Current practice suggests that this arrangement may work. The Council recently considered an exclusion recommendation for a company that NBIM had engaged in dialogue, but subsequently elected not to exclude the company, in the hope that NBIM engagement would produce sufficient changes to the unacceptable risks of contribution in child labour violations, in particular. This case demonstrates that exclusion and engagement are both part of a single spectrum of approaches for managing corporate governance concerns.
130. A key point of tension is likely to be the determination of whether engagement is effectively producing satisfactory changes in corporate behaviour. This requires a shared understanding of the facts.

**Recommendation 25.** NBIM and the Council should agree on a process for verifying that reported changes in corporate behaviour have indeed taken place. In many cases this will involve third party verification mechanisms, and we recommend strongly that these include unannounced visits to field sites. The mechanism for assessing progress of corporate engagements cannot be limited to representations made by companies or vendors employed by companies.

### C. Communication with Companies

131. In light of the two entities' separate mandates, it is important to recognize that their two roles nonetheless fall within the single, larger function of managing ownership risks associated with the companies in which the Fund is invested. Particularly in interactions with portfolio companies, the two entities must function as parts of a larger whole, and so communication and coordination of the two entities' activities should be an integral part of their operations.
132. Article 4.5 of the Guidelines provides that "All enquiries to [companies being considered for exclusion] shall be channelled through Norges Bank". In practice this has worked well with NBIM initiating correspondence with companies on behalf of the Council and promptly conveying any reply. In several cases the need for clarification or follow-up has led to an understanding that the Council may continue such correspondence directly with the company in question, copying NBIM. This arrangement has been satisfactory to both NBIM and the Council but formalization may prevent any future misunderstanding.

**Recommendation 26.** Article 4.5 of the Guidelines should be amended to provide that "All enquiries to such companies shall be channelled through Norges Bank *and as necessary supplemented by direct correspondence with the Council. Norges Bank shall be provided copies of all such correspondence.*" If amendment of the Guidelines is deemed unnecessary, the Ministry of Finance should acknowledge the practice of direct Council communication with companies in a memorandum to both entities.

133. Particularly in interactions with portfolio companies, the mechanisms of engagement and ad hoc exclusion are already being applied in coordination, as part of the same toolbox for managing ethical and governance concerns. The Council and the Ministry already give consideration to existing NBIM engagements in their decisions on exclusion. The two activities are interrelated, as the Council and NBIM both interact with companies on behalf of the Ministry, a single shareholder.
134. In this context, greater consideration should be given to thoughtfully and intentionally coordinating the two entities' contact with portfolio companies, to promote a coherent, comprehensive approach on governance issues that are important to both the Council and NBIM. This coordination may take the form of NBIM providing informational support for the Council's dialogues with companies that have been excluded and are no longer part of NBIM's portfolio, as well as Council input on necessary standards for NBIM dialogues with portfolio companies under investigation by the Council for exclusion, as recommended above.
135. As indicated earlier, exclusion should not be seen as the end of the Fund's relationship with a company.

**Recommendation 27.** If a company is excluded under Article 4, it should

be encouraged to seek reinstatement. The Council will retain its role in making recommendations to the Ministry, but NBIM and the Council should share all relevant information on the company's conduct.

## Notes

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<sup>1</sup> Act on the Government Petroleum Fund (Act of June 22, 1990, No. 36).

<sup>2</sup> Tore Eriksen, The Norwegian Petroleum Sector and the Government Pension Fund – Global (Ministry of Finance, Oslo, June 2006), available at <[http://www.regjeringen.no/upload/FIN/Statens%20pensjonsfond/The\\_Norwegian\\_Petroleum\\_Sector\\_te.pdf](http://www.regjeringen.no/upload/FIN/Statens%20pensjonsfond/The_Norwegian_Petroleum_Sector_te.pdf)>, 7.

<sup>3</sup> World Factbook (Central Intelligence Agency, Langley, VA, 2007), available at <<http://www.cia.gov/library/publications/the-world-factbook>>.

<sup>4</sup> Eriksen, Norwegian Petroleum Sector, 7.

<sup>5</sup> Ibid., 4.

<sup>6</sup> Ibid., 6.

<sup>7</sup> Ibid., 6-7.

<sup>8</sup> Council on Ethics, Annual Report 2005 (Government Pension Fund – Global, Oslo, January 2006), available at <<http://www.etikkradet.no>>.

<sup>9</sup> Ibid., arts. 1(1)(c) and 1(1)(b).

<sup>10</sup> The Petroleum Fund Advisory Commission on International Law, Memorandum to the Ministry of Finance: Question of whether investments in Singapore Technologies Engineering can imply a violation of Norway's international obligations (Ministry of Finance, Oslo, 22 March 2002), available at <<http://www.regjeringen.no/en/dep/fin/Selected-topics/andre/Ethical-Guidelines-for-the-Government-Pension-Fund---Global-/Advisory-Commission-Documents/Advisory-Commission.html?id=413581&epslanguage=EN-GB>>.

<sup>11</sup> The Report from the Graver Committee (Ministry of Finance, Oslo, 7 November 2003), available at <<http://www.regjeringen.no/en/dep/fin/Selected-topics/andre/Ethical-Guidelines-for-the-Government-Pension-Fund---Global-/The-Graver-Committee---documents/Report-on-ethical-guidelines.html?id=420232&epslanguage=EN-GB>>, §2.1.

<sup>12</sup> Ibid., §4.2.

<sup>13</sup> The Ten Principles of the Global Compact (United Nations Global Compact, New York, 2004), available at <<http://www.unglobalcompact.org>>.

<sup>14</sup> Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office at its 204th Session, as amended at its 279th (November 2000) and 295th Session (March 2006), done at Geneva, November 1977, available at <<http://www.ilo.org/public/english/employment/multi/download/declaration2006.pdf>>.

<sup>15</sup> OECD Guidelines for Multinational Enterprises (Organisation for Economic Co-operation and Development, Paris, 2000), available at <<http://www.oecd.org/daf/investment/guidelines>>.



<sup>16</sup> Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights), UN Doc E/CN.4/Sub.2/2003/12/Rev.2 (13 August 2003), available at <<http://documents.un.org>>.

<sup>17</sup> Ethical Guidelines (Government Pension Fund – Global, Oslo, 22 December 2005), available at <[http://www.regjeringen.no/en/sub/Styrer-rad-utvalg/ethics\\_council/Ethical-Guidelines.html](http://www.regjeringen.no/en/sub/Styrer-rad-utvalg/ethics_council/Ethical-Guidelines.html)>, art. 3.1.

<sup>18</sup> *Ibid.*, art. 3.2.

<sup>19</sup> Divestment or divestiture, sometimes used in this context, is a more general term meaning the reduction of some kind of asset. Disinvestment is frequently used to indicate the selling of assets for ethical purposes. “Ad hoc exclusion” will be used for the purposes of this report.

<sup>20</sup> Graver Committee Report, §5.1 (“The Committee does not recommend the use of exclusion as a means of exerting influence. The Committee believes that the exercise of ownership rights might be more effective in influencing a company’s conduct. Disposing of holdings in a company in order to influence its conduct presupposes that the publicity around the Fund’s withdrawal would result in the company changing its practices. It is not realistic to believe that by excluding a company the Fund could contribute to reducing the company’s access to capital or causing demand for the company’s stock to decline in such a way that the company would be compelled to change its conduct. Negative publicity, on the other hand, might influence the company.”)

<sup>21</sup> In addition to the more expansive role described below, the Council took on the Advisory Commission’s task of responding to requests concerning Norway’s compliance with international law: Ethical Guidelines, art. 4.3.

<sup>22</sup> Graver Committee Report, §5.4. *Cf.* Anita Ramasastry, “Corporate Complicity: From Nuremberg to Rangoon — An Examination of Forced Labour Cases and Their Impact on the Liability of Multinational Corporations”, *Berkeley Journal of International Law*, vol. 20 (2002).

<sup>23</sup> Ethical Guidelines, art. 4.1.

<sup>24</sup> *Ibid.*, art. 4.1.

<sup>25</sup> The complete Invitation to Tender is attached.

<sup>26</sup> Gro Nystuen (Chair), dr. juris and Associate Professor at the Center for Human Rights, the University of Oslo; Andreas Føllesdal professor PhD in Philosophy at the Center for Human Rights, the University of Oslo; Ola Mestad dr. juris and Professor at the Centre for European Law, University of Oslo.

<sup>27</sup> Anne Lill Gade MSc in limnology (freshwater ecology), Product Safety Manager at Jotun AS.

<sup>28</sup> Bjørn Østbø economist HAE, Chief Executive Officer at Vital Eiendom AS.

<sup>29</sup> Ethical Guidelines, art. 4.4.

<sup>30</sup> *Ibid.*, art. 4.4.

<sup>31</sup> *Ibid.*, art. 4.4.

<sup>32</sup> *Ibid.*, art. 4.5.

<sup>33</sup> *Ibid.*, art. 4.5.

<sup>34</sup> *Ibid.*, art. 4.6.

<sup>35</sup> Council on Ethics, Recommendation on Exclusion of Companies Producing Cluster Weapons (Government Pension Fund – Global, 16 June 2005, Oslo, published 2 September 2005), available at <<http://www.etikkradet.no>> (excluding seven companies: Alliant Techsystems Inc., EADS Co., General Dynamics Corp., L3 Communications Holdings Inc., Lockheed Martin Corp., Raytheon Co., Thales S.A.); Council on Ethics, Recommendation on Exclusion of Poongsan Corporation (Government Pension Fund – Global, 6 September 2006, Oslo, published 6 December 2006), available at <<http://www.etikkradet.no>>; Council on Ethics, Recommendation

on Exclusion of Rheinmetall AG and Hanwha Corp. (Government Pension Fund – Global, 15 May 2007, Oslo, published 11 January 2008), available at <<http://www.etikkradet.no>>.

<sup>36</sup> Council on Ethics, Recommendation on Exclusion of Companies Developing and Producing Nuclear Weapons (Government Pension Fund – Global, 19 September 2005, Oslo, published 5 January 2006), available at <<http://www.etikkradet.no>> (excluding seven companies: BAE Systems Plc., Boeing Co., Finmeccanica Sp.A., Honeywell International Inc., Northrop Grumman Corp., United Technologies Corp. and Safran SA); Council on Ethics, Recommendation on Exclusion of GenCorp Inc. (Government Pension Fund – Global, 15 November 2007, Oslo, published 11 January 2008), available at <<http://www.etikkradet.no>>; Council on Ethics, Recommendation on Exclusion of Serco Group Plc. (Government Pension Fund – Global, 15 November 2007, Oslo, published 11 January 2008), available at <<http://www.etikkradet.no>>.

<sup>37</sup> The Petroleum Fund Advisory Commission on International Law, Singapore Technologies Engineering Memo, excluding Singapore Technologies Engineering.

<sup>38</sup> Council on Ethics, Supplementary Recommendation on EADS Co. (Government Pension Fund – Global, 18 April 2006, Oslo, published 18 April 2006), available at <<http://www.etikkradet.no>>. The exclusion also covered its subsidiary EADS Finance B.V.

<sup>39</sup> Council on Ethics, Recommendation on Exclusion of Wal-Mart Stores Inc. (Government Pension Fund – Global, 15 November 2005, Oslo, published 6 June 2006), available at <<http://www.etikkradet.no>>. The exclusion also covered its subsidiary Wal-Mart de Mexico S.A. de CV.

<sup>40</sup> Council on Ethics, Recommendation on Exclusion of Freeport McMoRan Copper & Gold Inc. (Government Pension Fund – Global, 15 February 2006, Oslo, published 6 June 2006), available at <<http://www.etikkradet.no>>; Council on Ethics, Recommendation on Exclusion of DRD Gold Ltd. (Government Pension Fund – Global, 24 August 2006, Oslo, published 11 April 2007), available at <<http://www.etikkradet.no>>; Council on Ethics, Recommendation on Exclusion of Vedanta Resources Plc. (Government Pension Fund – Global, 15 May 2007, Oslo, published 6 November 2007), available at <<http://www.etikkradet.no>> (including its subsidiaries Sterlite Industries Ltd and Madras Aluminium Company Ltd).

<sup>41</sup> Council on Ethics, Exclusion of Vedanta.

<sup>42</sup> Council on Ethics, Recommendation on Exclusion of Kerr-McGee Corporation (Government Pension Fund – Global, 11 April 2005, Oslo, published 6 June 2005), available at <<http://www.etikkradet.no>> (for activities off the coast of the non-self-governing territory Western Sahara).

<sup>43</sup> Council on Ethics, Recommendation Concerning Whether the Weapons Systems Spider and Intelligent Munition System (IMS) Might Be Contrary to International Law (Government Pension Fund – Global, 20 September 2005, Oslo, published 13 October 2005), available at <<http://www.etikkradet.no>>.

<sup>44</sup> Council on Ethics, Recommendation on Total S.A. (Government Pension Fund – Global, 14 November 2005, Oslo, published 5 January 2006), available at <<http://www.etikkradet.no>>. See also the Letter to the Ministry of Finance regarding companies with operations in Burma, reproduced in Council on Ethics, Annual Report 2007 (Government Pension Fund – Global, Oslo, January 2008), available at <<http://www.etikkradet.no>>, 82.

<sup>45</sup> Council on Ethics, Recommendation on Suspension of Exclusion of Kerr-McGee Corporation (Government Pension Fund – Global, 24 May 2006, Oslo, published 1 September 2006), available at <<http://www.etikkradet.no>>.

<sup>46</sup> Council on Ethics, Recommendation on Revocation of Exclusion of Rheinmetall AG (Government Pension Fund – Global, 15 September 2007, Oslo, published 11 January 2008), available at <<http://www.etikkradet.no>>.

<sup>47</sup> Council on Ethics, Annual Report 2007, 5.

<sup>48</sup> Council on Ethics, Exclusion of Wal-Mart.

<sup>49</sup> Mark Landler, “Norway Keeps Nest Egg From Some U.S. Companies”, *New York Times*, 4 May 2007.

<sup>50</sup> Benson K. Whitney, “Pension Fund Divestment: Meeting Norwegian Fairness Standards?” (Norwegian Institute of International Affairs (NUPI), Oslo, Norway, 1 September 2006), available at <<http://norway.usembassy.gov/embassy/ambassador/speeches/disinvestment.html>>.

<sup>51</sup> Gro Nystuen, “Response to Criticism Concerning the Exclusion of Companies from the Norwegian Government Pension Fund”, *Dagens Næringsliv* (Oslo), 11 September 2006.

<sup>52</sup> Ibid.

<sup>53</sup> Regulations on Management of the Government Pension Fund – Global, Laid down by the Ministry of Finance on 22 December 2005 pursuant to the Government Pension Fund Act (no. 123 of 20 December 2005), §6, at [http://www.regjeringen.no/upload/FIN/Statens%20pensjonsfond/Management\\_of\\_the\\_government\\_pension\\_fund.pdf](http://www.regjeringen.no/upload/FIN/Statens%20pensjonsfond/Management_of_the_government_pension_fund.pdf).

<sup>54</sup> See above note 20 and accompanying text.

<sup>55</sup> Graver Committee Report, §2.2 (“A third ethical perspective emphasises retribution. Evil actions should be punished, doing good should be rewarded. In the view of the Committee, striving to achieve justice by using the Fund to penalise or reward is beyond the obligations that should be imposed on the Fund. In practical terms, this means that the Committee will not propose an approach whereby the Fund withdraws its investment from a company that has acted unethically in response to the unethical action. It is the opinion of the Committee that if the Fund withdraws its investment, it must do so because withdrawal is considered necessary to avoid complicity in unethical actions in the future.”).

<sup>56</sup> See, eg, Council on Ethics, Exclusion of Vedanta, §6

<sup>57</sup> Ethical Guidelines, art. 4.6.

<sup>58</sup> Council on Ethics, Suspension of Exclusion of Kerr-McGee.

<sup>59</sup> Council on Ethics, Exclusion of Rheinmetall and Hanwha.

<sup>60</sup> <http://www.regjeringen.no/en/dep/fin/Selected-topics/andre/Ethical-Guidelines-for-the-Government-Pension-Fund---Global-/Companies-Excluded-from-the-Investment-U.html?id=447122>

<sup>61</sup> <http://www.regjeringen.no/en/dep/fin/Selected-topics/The-Government-Pension-Fund.html?id=1441>

<sup>62</sup> <http://www2.ohchr.org/english/bodies/hrc/comments.htm> , Page 78

## **Appendix I: Invitation to Tender**

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Ministry of Finance  
Consultancy services  
**INVITATION TO TENDER**  
Direct purchase

Reference: FIN/AFF- 07/3894

### **Introduction**

The Ministry of Finance of Norway wishes to enter into an agreement with a researcher or a group of researchers in the area of corporate social responsibility to assess the implementation of Articles 3 and 4 of the Ethical Guidelines for the Government Pension Fund – Global. This assessment will be an integral part of a larger evaluation process of the Ethical Guidelines in their entirety, where the goal is to establish whether the guidelines so far have worked as intended. Against this background, the Ministry of Finance invites you to participate in a tender for making an assessment of Articles 3 and 4 of the Ethical Guidelines for the Fund.

This procurement will be made under the Act relating to Public Procurement (No. 69 of 16 July 1999) and Regulations relating to Public Procurement (adopted by Public Decree of 15 June 2001). The act and regulation requires us to award the contract through competition. However, the estimated value of this procurement does not exceed the levels that entail specific requirements for announcement of the competition.

### **The Ethical Guidelines for the Government Pension Fund – Global**

The Ministry of Finance is responsible for the management of the Government Pension Fund – Global. The operational management is delegated to Norges Bank, the central bank of Norway. Per October 2007 the Fund was valued at approximately US 370 billion.

Ethical Guidelines were adopted by The Ministry of Finance in November 2004 as an integral part of the framework for the Fund. The Ethical Guidelines and their implementation build on a broadly defined ethical concept which goes beyond international conventions and standards. The obligations and aspirations laid down by international organisations such as the UN, OECD and ILO are all relevant in the implementation of the guidelines, but the ethical considerations are not restricted to convention based standards. The guidelines focus on what reasonable requirements companies should meet regarding fundamental rights and protection of the environment, human life and health.

The background and purpose for the Ethical Guidelines are described in the following preparatory works, which will also provide material for interpretation of the Ethical Guidelines: The report and proposal of the Government-appointed Graver Committee (NOU 2003: 22 Green paper) and chapter 4 of the Revised National Budget 2004 (Report nr. 2 (2003-2004)) to Stortinget (the Norwegian Parliament). In addition to this, the Ministry of Finance — as principal for the Fund — has given its overall views on several aspects of the Ethical Guidelines in Report No. 24 (2006-2007) to Stortinget, chapter 4.

The Ethical Guidelines are based on two premises laid down in Article 1:

- The Government Petroleum Fund is an instrument for ensuring that a reasonable portion of the country's petroleum wealth benefits future generations. The financial wealth must be managed with a view to generating a sound return in the long term, which is contingent on sustainable development in the economic, environmental and social sense. The Fund's financial interests should be consolidated by using the Fund's ownership interests to promote sustainable development.
- The Government Petroleum Fund should not make investments that entail an unacceptable risk that the Fund is contributing to unethical actions or omissions, such as violations of fundamental humanitarian principles, gross violations of human rights, gross corruption or severe environmental degradation.

The ethical basis for the Government Pension Fund – Global shall be promoted through two main policy measures, provided for in the guidelines Article 2;

- Exercise of ownership rights,
- Exclusion of companies from the portfolio.

*The exercise of ownership rights:* As operational manager, Norges Bank is responsible for exercising the ownership rights in accordance with the Ethical Guidelines Article 3. Of particular relevance to the assessment is Article 3.1 that reads:

“The overall objective of Norges Bank's exercise of ownership rights for the Government Pension Fund – Global is to safeguard the Fund's financial interests. The exercise of ownership rights shall be based on a long-term horizon for the Fund's investments and broad investment diversifications in the markets that are included in the investment universe. The exercise of ownership rights shall mainly be based on the UN's Global Compact and the OECD Guidelines for Corporate Governance and for Multinational Enterprises. Norges Bank's internal guidelines for the exercise of ownership rights shall stipulate how these principles are integrated in the ownership strategy.

*Exclusion of companies:* Exclusion of companies is carried out through *negative screening* and *ad-hoc exclusion*. The Council on Ethics for the Government Pension Fund – Global is responsible for issuing to the Ministry of Finance recommendations

on exclusion, based on specific criteria as set out in the guidelines Article 4. Of particular relevance to the assessment is Article 4.4 that reads:

“4.4 The Council shall issue recommendations on negative screening of one or several companies on the basis of production of weapons that through their normal use may violate fundamental humanitarian principles. The Council shall issue recommendations on the exclusion of one or several companies from the investments universe because of acts or omissions that constitute an unacceptable risk of the Fund contributing to:

- Serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other forms of child exploitation
- Serious violation of individual rights in situations of war or conflict
- Severe environmental damages
- Gross corruption
- Other particularly serious violations of fundamental ethical norms”

While the negative screening provided for in the first sentence of Article 4.4 relates to the *products* of the companies, the ad hoc exclusion provided for in the second sentence relates to *production methods* and *conduct of companies*.

Further to this, we cite Articles 4.5 and 4.6 that read:

“4.5 The Council shall gather all necessary information at its own discretion and shall ensure that the matter is documented as fully as possible before making a recommendation regarding negative screening or exclusion from the investment universe. The Council may request Norges Bank to provide information as to how specific companies are dealt with in the exercise of ownership rights. Enquiries to such companies shall be channelled through Norges Bank. If the Council is considering recommending exclusion of a company, the company in question shall receive the draft recommendation and the reasons for it, to comment.

4.6 The Council shall review on a regular basis whether the reasons for exclusion still apply and may against the background of new information recommend that the Ministry of Finance revoke a decision to exclude a company.”

The system encourages an interaction between the policy instruments, as emphasized in Report No. 24 (2006-2007) to the Storting<sup>63</sup>. When the Ministry carries out an assessment, based on a recommendation from the Council on Ethics, of whether to exclude individual companies, it will also take in to account the scope for reducing the risk of contribution to grossly unethical activities through ownership influence in the relevant case.

In the preparatory works (NOU 2003: 22 page 169 and Report nr. 2 (2003-2004) page 68) it is presupposed that exchange of information shall take place between Norges Bank and the Council on Ethics, ref. also Article 4.5 as cited above. The degree of information-sharing will be of relevance, not only in relation to each of the entities’

ability to perform its task, but also in relation to the envisaged interaction described above between the policy instruments.

### **Description of the assessment**

The assessment will be part of the Ministry's broader evaluation of the Ethical Guidelines for the Pension Fund – Global. The Ministry will make the assessment publicly available at an appropriate time, possibly in connection with a public hearing that will take place during April – June 2008.

The assessment should examine:

1. How Norges Bank has carried out its mandate as laid out in Article 3 of the Ethical Guidelines, including the preparatory work to the guidelines. The assessment should include an examination of how the principles referred to in Article 3.1 have been implemented through Norges Bank's internal guidelines, "Principles for corporate governance and the protection of financial assets".
2. How the Council on Ethics has carried out its mandate as laid out in Article 4 of the Ethical Guidelines, including the preparatory work to the guidelines. The assessment should encompass both substance and procedure, relating in particular to Articles 4.4 and 4.5.
3. The assessment should also – to the extent possible – address: Whether the current information-sharing and cooperation between Norges Bank and the Council on Ethics is at a level that contributes in an effective way to enhancing each of the entities ability to perform its task, and that facilitates the envisaged interaction described above between the policy instruments.

### **Scope**

You should submit a tender based on approximately 30-40 days of work. Delivery will take place as further agreed in the period 1-15 March 2008.

### **Awarding criteria**

The Ministry will evaluate the tenders based on the price and professional competence of the person(s) who are going to make the assessment. The professional competence will be assessed based on experience from work and/or research within the areas of responsible investment, human rights, environmental issues and/or corporate governance issues, especially relating to financial investments or fund management. The Ministry may take into account publications in acknowledged journals or textbooks, or other relevant, written material. The professional competence will be allotted 70 pct. weight in the evaluation of the tenders.

The tender may be given by two or more persons in cooperation, provided that the scope of work stays within a total of 30-40 days divided between the persons. In case of a division, the results of the evaluation should still be delivered in the form of one, joint report, covering all aspects outlined in this invitation to tender.

Participants in the tender may also limit their tender to question 1 or 2 of the assessment, but must in any case address question 3. This will require contact and

cooperation between the different persons taking part in the evaluation.

The Ministry has the right to accept the tenders as they are when they are delivered, or choose to proceed to negotiations. Even if a participant has given a tender for the whole assessment, The Ministry may choose to accept the tender only for question 1 or 2.

An assessment of either question 1 or 2 separately shall under any circumstance be based on 15-20 days of work.

### **Contents of tender**

A tender must be sent to the Ministry of Finance, stating the price for which you are willing to produce a report as specified in the Ministry's invitation to tender, with the use of approximately 30-40 days of work. The tender must also describe the competence within the above mentioned fields for the person(s) partaking in the tender. This can for example be in the form of a CV (curriculum vitae) with references to your most relevant work and publications. The tender should include a short description on how you plan to conduct the assessment (approach).

### **Language**

English or Norwegian shall be the language of all documents/communication concerning this procurement.

### **Deadlines**

The deadline for submitting a tender document is Friday 14 December 2007.

### **The general address for this procurement is:**

Ministry of Finance, Asset Management Department, P.O. Box 8008 DEP, 0030 Oslo

### **Contact persons:**

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### **Expenses**

Expenses incurred by the provider in connection with the preparation, delivery and follow up of the tender documents will not be refunded by the Ministry.



## Appendix II: About the Authors

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**The Albright Group LLC** works with clients to develop their business strategies while making positive contributions to the larger global community. We work to leverage our diverse set of skills and experience to the benefit of organizations and markets around the world. We are a hands-on firm, working collaboratively with our clients, with each of our partners engaged directly in the way that is most helpful.

Principals of The Albright Group are Madeleine Albright, the former U.S. Secretary of State; Carol Browner, the former Administrator of the U.S. Environmental Protection Agency; Ambassador Wendy Sherman, the former Counselor to the U.S. State Department; Jim O'Brien, the former U.S. presidential envoy for the Balkans and deputy head of policy planning; and Suzanne George, the former deputy chief of staff to the U.S. State Department. We have a professional staff based in Washington, D.C., as well as a network of advisers around the world. Principals of The Albright Group are also Principals of Albright Capital Management, an investment advisory firm established as a unique and innovative partnership with a team of experienced investment professionals.

**Simon Chesterman** is Global Professor and Director of the New York University School of Law Singapore Programme, and an Associate Professor of Law at the National University of Singapore. Prior to joining NYU, he was a Senior Associate at the International Peace Academy and Director of UN Relations at Crisis Group in New York. He has previously worked for the UN Office for the Coordination of Humanitarian Affairs in Yugoslavia and interned at the International Criminal Tribunal for Rwanda. Chesterman's books include *Law and Practice of the United Nations* (with Thomas M. Franck and David M. Malone, OUP, 2008); *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (editor with Chia Lehnardt, OUP, 2007); *Secretary or General? The UN Secretary-General in World Politics* (editor, CUP, 2007); *You, The People: The United Nations, Transitional Administration, and State-Building* (OUP, 2004); and *Just War or Just Peace? Humanitarian Intervention and International Law* (OUP, 2001).