



NORGES BANK

HOVEDSTYRET

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Memo on the appointment of Nicolai Tangen as NBIM'S CEO

1 Introduction

The Executive Board decided on 24 March 2020 to offer Nicolai Tangen the position of CEO of NBIM. Tangen has accepted the offer. The Executive Board's decision was based on Tangen retaining an ownership interest in the investment management firm he has built up, AKO Capital LLP ("AKO"), during the time he heads NBIM. The Executive Board also accepted that he will retain substantial personal investments abroad.

The Executive Board made it a condition that Nicolai Tangen relinquishes all directorships and roles at AKO and associated companies, and no longer has control of AKO's management. His dividends from AKO during the time he heads NBIM will be donated to the AKO Foundation, a charitable foundation.

Based on these premises, work has continued on identifying and addressing potential conflicts of interest and ensuring that sufficient distance is established between the GPFG on the one hand, and the AKO system and Nicolai Tangen's personal wealth on the other. Reference is made to the Executive Board's letter of 29 April to the Supervisory Council. The Executive Board has subsequently considered the matter at meetings on 20 and 27 May.

Key aspects of the appointment of Nicolai Tangen as NBIM's CEO are discussed below. Section 2 looks at the structure for and restrictions on Tangen's financial affairs to be put in place during the time he heads NBIM. Section 3 discusses relevant measures to address potential conflicts of interest, while key aspects of Tangen's contract of employment are presented in Section 4.

2 New structure for Nicolai Tangen's financial affairs

Roles and ownership

The main lines of the structure now being put in place for Tangen's relationship with and ownership in the AKO system can be summarised as follows:

- The AKO Trust will be wound up, and companies and investments there will be transferred to Tangen himself, sold or donated to the AKO Foundation.
- Nicolai Tangen's direct and indirect interests in AKO Capital LLP (AKO) will be brought together in a new company, DSHN Philanthropy LLP (DSHN). His overall voting influence in AKO will be reduced to 43 percent.
- An independent agent (the lawyer Erik Keiserud) will be given full discretionary powers to exercise Nicolai Tangen's (100 percent) voting rights in DSHN and ensure that the

board has a majority of members without close ties to Tangen. It is this board that will administer DSHN's voting rights in AKO.

- All dividends from AKO received by DSHN will be donated to the AKO Foundation.
- Nicolai Tangen will relinquish all directorships in the AKO companies. The composition of all relevant boards will change such that they do not have a majority of members with close ties to Tangen.
- Nicolai Tangen and relevant AKO companies will provide various undertakings and guarantees to Norges Bank to prevent communication and exchange of information between Tangen and personnel in the AKO system during the time he heads NBIM. These undertakings will also cover an irrevocable delegation of voting rights and other measures to avoid consolidation of securities held by AKO funds and by the GPFG respectively.
- Tangen currently has a profit share in AKO of around 66 percent, which will be reduced in two steps to around 46 percent.

Management of Tangen's personal investments

Besides his interests in DSHN/AKO, Nicolai Tangen has considerable personal investments in AKO funds and a number of other funds. A key part of the work has therefore been to put in place an arrangement whereby Tangen's personal investments are managed independently of Tangen himself during the time he heads NBIM. Investment in the AKO funds will be transferred to discretionary active management at Gabler, see below. Other funds and investments are to be sold or donated to the AKO Foundation. The arrangement now being established to ensure independent management of Tangen's investments can be summarised as follows:

- Nicolai Tangen will enter into an agreement with Gabler Investments AS (Gabler) on discretionary active management of his personal wealth in the AKO funds. Gabler will be authorised to take all decisions on the composition of the fund portfolio, including transfers of capital to funds outside the AKO system.
- Nicolai Tangen will appoint a proxy (the lawyer Haakon Blaauw) to handle all dialogue with Gabler on his behalf and ensure that unwanted information does not flow to Tangen.
- For the management of capital in the AKO funds, Nicolai Tangen will pay a standard management fee in line with other external investors.

The structure for ownership in AKO and Tangen's personal investments is presented in more detail in Appendix 1, which also contains an overview of the changes made since the Executive Board's letter to the Supervisory Council of 29 April.

3 Management of conflicts of interest The Executive Board has accepted that Nicolai Tangen will retain ownership interests in AKO and investments abroad. The purpose of establishing the structures described above is to create sufficient distance between the GPFG, the AKO system and Tangen's personal wealth. The work on addressing various forms of conflicts of interest and risk has mainly concerned:

- Changes to roles, ownership and governance models for the AKO system, including Nicolai Tangen's own directorships and holdings, and those of people close to him.
- Ensuring that decision lines in the AKO system are completely independent of Nicolai Tangen. The same applies to independence in the disposition of and voting for shares held in the portfolios of the AKO funds.

- Changes intended to reduce the legal risk of shares in the same companies held by the GPFG and the AKO funds being consolidated in the calculation of various regulatory limits.
- Identification of other potential conflicts of interest and assessment of measures to address them.
- A review of Nicolai Tangen's wealth and his relationship with and ownership in AKO in the light of Norges Bank's ethical rules.

The risks relating to regulatory conflicts of interest can be addressed through steps to ensure that AKO operates independently of Nicolai Tangen. Conflicts of interest that relate to compliance with ethical rules can be addressed through new measures and existing internal controls. Potential conflicts of interest and relevant measures are presented in more detail in Appendix 2.

3.1 Regulatory conflicts of interest

One issue in the work has been whether Nicolai Tangen's ownership interests and foreign investments in AKO might result in regulatory authorities consolidating AKO's holdings and the GPFG's holdings in the same companies for various regulatory purposes.

The issue of regulatory consolidation is relevant in all jurisdictions where the GPFG and AKO are invested in parallel, and such a consolidation of holdings could have different legal implications from country to country. Following a risk assessment, the legal review has focused on three jurisdictions: the UK, the US and France. The review and assessments against the proposed AKO structure have been carried out by the law firm Allen & Overy.

It is primarily rules on consolidation, flagging of large shareholdings, ownership limits in regulated companies and mandatory bids that have been seen as particularly relevant. In the US, the rules on foreign investments in US companies have also been assessed (the CFIUS regime).

In all jurisdictions, the assessment concerns whether Nicolai Tangen can be said to exercise control over or be controlled by AKO and/or NBIM, directly or indirectly, formally or informally. With Tangen's overall voting rights in AKO reduced to below 50 percent, he will no longer have a majority of votes in this entity and will not be able to use his voting rights to exercise formal control of AKO's voting in portfolio companies. However, questions could still be asked about whether Tangen has the power to exercise, or actually exercises, dominant influence or control over this entity given his 43 percent holding (45 percent including two other members with close ties), and whether it could be claimed that there is *concerted action* on the part of AKO and NBIM in relation to individual companies.

To avoid such regulatory consolidation, the Bank's legal adviser A&O has identified a number of measures that will together help reduce the regulatory risk. These are measures that are to be implemented in the new structure for Nicolai Tangen's financial affairs, cf. Section 2 above. The Executive Board believes that the risk of consolidation is substantially reduced by establishing such a structure for Tangen's ownership in AKO.

3.2 Other conflicts of interest

The Executive Board has laid down "Ethical principles for employees of Norges Bank" setting out requirements for all of its employees. The main aim of the principles is to

“safeguard Norges Bank’s reputation and maintain public trust in the Bank”. In addition, NBIM’s CEO has issued more detailed rules for employees at NBIM. NBIM’s CEO is covered by both the ethical principles for Norges Bank and the supplementary rules for employees at NBIM.

Section 9 of the ethical principles states that employees “may not hold external positions of trust, secondary occupations or ownership interests that are, or may appear to be, in conflict with the interests the employee is to protect as an employee of Norges Bank.”

Per se, Nicolai Tangen’s ownership interests in AKO and holdings in AKO funds constitute a conflict of interest under Section 9. Extensive changes are now proposed in the structure for Tangen’s relationship with AKO, cf. also the measures presented in Sections 2 and 3.1 above.

Section 9 of the ethical principles states that employees must in their work “avoid relationships of dependence on or closeness with persons, enterprises or institutions outside Norges Bank if the nature of the relationship is such that it could compromise trust in Norges Bank’s independence and authority”. The new and amended board composition in the AKO system, and requirement that close relatives must not be in the majority on the boards of DSHN or the funds, will ensure the necessary independence.

NBIM’s CEO will have access to large amounts of information on the strength of his role, his previous role and his personal relationships. Section 8 of the ethical principles prohibits the misuse of inside information or other confidential information. The misuse of inside information is also prohibited by Section 3-3 of the Norwegian Securities Trading Act. Employees sign confidentiality undertakings, and there are procedures and controls for managing information at both AKO and NBIM.

The proposed structure with an independent agent and discretionary management of fund investments will help create the necessary distance between NBIM and Tangen’s ownership interests and investments. In addition, the following actions will be taken:

Existing general controls

- Declaration of ownership interests on commencing employment, and an annual declaration of ownership interests including any changes.
- Norges Bank must pre-approve agreements on discretionary investment management.
- Any personal trading by NBIM’s CEO must be pre-approved by the Bank’s General Counsel in line with the ethical principles. This will follow a prior assessment and recommendation from NBIM Compliance.
- Retrospective reporting of approved personal trading to NBIM Compliance.
- Checks on counterparties for personal trading by NBIM employees.
- Checks on personal trading for investments in suppliers participating in major procurement processes.
- All employees sign a confidentiality undertaking on commencing employment.
- Established guidelines and controls for the management of inside information at NBIM. For example, any receipt of inside information must be escalated to NBIM Compliance.
- Employees must declare and escalate potential conflicts of interest relating to external engagements and personal relationships to NBIM Compliance.

New measures

- In connection with the contract of employment, Nicolai Tangen will sign a number of undertakings covering the handling of his ownership interests in AKO and fund investments managed by Gabler.
- Restraint-of-trade clauses are included in the contract of employment.
- The Governor of Norges Bank must pre-approve all external roles, directorships and positions, and any changes in interests in and connections with the AKO system for NBIM's CEO. This is to be documented and registered with NBIM Compliance.
- Procedures will be put in place for monitoring NBIM's CEO's interests in the AKO system and handling of information.
- Restrictions will be imposed on NBIM employees to ensure that NBIM has no commercial contact with AKO employees.

The Executive Board believes that the new structure and measures proposed, including an independent agent to tend to Nicolai Tangen's ownership interests in AKO and discretionary management of his fund investments, will limit potential conflicts of interest to the extent that this ownership and his personal investments will not contravene the Bank's ethical principles.

3.3 Other matters

The AKO Foundation is a charitable foundation set up by Nicolai Tangen with the objectives of advancing education, the arts, culture, heritage and science. The governance of the foundation is now organised independently of Tangen.

The AKO funds are offered globally and have a wide range of investors. Norges Bank cannot obtain a list of all of Tangen's fellow investors in the AKO funds. This is confidential information that the management company is not at liberty to disclose. Administrative services for the AKO funds, including customer checks, are supplied by Citco Fund Services (Ireland) Limited, which comes under the supervision of the Central Bank of Ireland. Citco complies with, among others, Irish Know Your Customer (KYC) rules based on requirements in EU/EEA law for measures to combat money laundering and terrorist financing.

AKO and Nicolai Tangen's investments in so-called tax havens have attracted attention. The AKO funds will continue to be registered in the Cayman Islands, but Tangen's investments will be managed on a discretionary basis by a Norwegian company and may change over time. Appendix 3 provides a more detailed review of various tax matters.

4 Contract of employment for Nicolai Tangen

The contract of employment with Nicolai Tangen is based on the standard text and terms the Bank uses for employees of NBIM. Like other employees, Tangen will be covered by the provisions of the Norwegian Working Environment Act on protection against dismissal and restrictions on "non-compete clauses". As "the undertaking's chief executive", however, he is entitled to agree on exemptions from this in return for severance pay. A number of such exemptions are therefore proposed for Tangen, based on his employment being for a fixed term and the position's special characteristics and independence as CEO of NBIM, as well as market practices for similar positions.

Based on an agreement on severance pay of six months' salary, it is proposed that a number of restraint-of-trade provisions are agreed (Section 17):

- For a period of six months from the termination of his employment, he may not, without written pre-approval from Norges Bank, be employed by, provide services to or have directorships at entities that naturally have or can be expected to have contact with tasks or areas of responsibility falling to NBIM's CEO (restraint of trade). During the same period, Tangen undertakes not to be employed by, provide services to or accept directorships in the AKO system.
- For the aforementioned period of six months, Tangen shall also continue the arrangement with portfolio management of his own investments, including the use of an independent third party to handle his relationship with the management company.
- The same applies to the arrangement with an independent agent exercising his voting rights in DSHN, and compliance with the other obligations that follow from the "Deed of Undertaking by Nicolai Tangen related to his employment as CEO NBIM" (cf. the annex to the contract of employment).
- For a period of one year from the termination of his employment, he may not encourage any of Norges Bank's employees to end or amend their employment.

The contract contains a specific reference and link to various prerequisites for his employment that are being put in place in the form of formal undertakings from Nicolai Tangen on, among others, his roles in and relationship with the AKO system, information barriers with AKO and independent investment management at Gabler. Similar undertakings will also be obtained from AKO companies on AKO's relationship with Tangen and information barriers.

The proposed structure for Nicolai Tangen's roles and ownership in AKO and for his personal investments is a condition for the contract of employment presented. On signing the contract, Tangen will implement all of the remaining changes and measures with a view to everything being in place when he takes up his position on 1 September.

Appendices

- Appendix 1 New structure for Nicolai Tangen's financial affairs
- Appendix 2 Management of conflicts of interest
- Appendix 3 Various tax matters