



Memorandum

To: The Norwegian Fund and Asset Management Association
Att: Vibeke Engelhardtsen

From: Mats Ring

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NOMINEE REGISTRATION IN THE UNIT HOLDER REGISTER FOR SECURITIES FUNDS – NOMINEE OBLIGATIONS

1. INTRODUCTION

We have been asked to prepare a memorandum which sets out the obligations for a party that is registered in the unit holder register of a Norwegian securities fund in the place of the unit holder and which deals with the management company on the unit holder's behalf ("Nominee").

Pursuant to the securities funds regulations section 13-2 paragraph 1, a Norwegian or foreign bank, investment firm¹, securities register or management company for securities funds that is subject to public supervision in its domicile jurisdiction may upon application to the Financial Supervisory Authority of Norway (the "NFSA") be authorised to act as a Nominee in a unit holder register.

This memorandum aims to present the obligations of the Nominee on a general basis, and provide relevant references to applicable laws and regulations.

2. THE OBLIGATION TO MAINTAIN A UNIT HOLDER REGISTER

A manager of a securities fund is obligated to maintain a unit holder register for securities funds pursuant to Act of 25 November 2011 no. 44 on Securities Funds (the Securities Funds Act) section 4-10.

Pursuant to regulations of 21 December 2011 no. 1467 (the securities funds regulations) section 13-1 paragraph 1, a Nominee with necessary authorization may be entered into the unit holder register in the place of the beneficial owner.

3. NOMINEE'S DUTY TO REGISTER INFORMATION ON THE UNIT HOLDER

The securities funds regulations section 13-3 states that the Nominee shall maintain a list of the beneficial owners for whom it acts as Nominee and record information as set out below in paragraphs 3.1 and 3.2. The information must be stored for 10 years.

¹ Investment firms must be licensed to provide one or more of the following investment services as mentioned in Act of 29 June 2007 no. 75 (the Securities Trading Act) section 2-1 paragraph 1, no. 1, 2 or 4:

- reception and transmission, on behalf of clients, of orders in relation to one or more financial instruments,
- execution of orders on behalf of clients, or
- active management of investors' portfolios of financial instruments on a client-by-client basis and in accordance with investors' mandates.

3.1 Information about unit holders regardless of which country they are taxable in (information pursuant to the Anti Money Laundering Act section 8)

The Nominee shall record information as stated in Act of 6 March 2009 no. 11 relating to measures to combat money laundering and the financing of terror, etc (the Anti Money Laundering Act) section 8.

Nominees shall register the following data concerning the unit holders:

- full name of the unit holder (name of physical person or name of undertaking),
- personal identity number, organization number², D-number³ or, if the unit holder has no such number, another unique identity code,
- permanent address⁴,
- reference to proof of identity used to verify the unit holder's identity,
- if the Nominee is aware that the unit holder holds dual nationality, this shall be recorded,
- data identifying the beneficial owner.

3.2 Information about unit holders which are taxable to Norway

The Nominee shall further record the information required by Regulations of 22 December 2003 no. 1779 on the delivery of tax returns by management companies and the central securities depository to the tax assessment authorities (the "Tax Regulations") section 3, section 4 and section 4a.

Based on the preparatory works we believe that the funds regulations section 13-3 paragraph 1 shall be interpreted so that the Nominee is obligated to register information as specified in the Tax Regulations only for unit holders which are taxable to Norway.

The information that the Nominee shall register in the unit holder register regarding unit holders which are taxable to Norway pursuant to the Tax Regulations, is somewhat different depending on whether the securities fund constitutes an equity fund or a bond fund. Thus the following list of information distinguishes between the two types of funds.

According to Norwegian tax rules, a fund will constitute an equity fund when the fund is invested in one share (equity) or more.

² In the case of legal persons not registered in a public register, data shall be recorded concerning the form of organization and date of establishment as well as the name of the general manager, managing director, proprietor or corresponding contact person. If the contact person is a legal entity, a natural person shall also be registered as contact person and data as referred to in the first paragraph shall be recorded concerning the person concerned.

³ In the case of natural persons who have not been assigned a Norwegian personal identity number or D-number, the date of birth, place of birth, sex and nationality shall be recorded.

⁴ The obligation to record the customer's permanent address will not apply if the National Population Register has decided that the customer's address is to be classified as "in confidence" or "strictly in confidence".

3.2.1 Information which shall be included in the unit holder register for both bond funds and equity funds

The following information shall be included for both equity funds and bond funds:

- Permanent address of the unit holder (including relevant country code)
- Name and organization number of the management company
- Name and ISIN-number of the securities fund
- Number of units the unit holder had per 31 December last year
- The tax related capital value for the units in total per 1 January in the fiscal year
- Acquisition and sale date for each unit

3.2.2 Information in unit holder register of bond funds

The unit holder register for a bond fund must, in addition to the information listed in section 5.1 above, include the following information:

- Number of units the unit holder has realized during the fiscal year
- Sale consideration deducted costs following the sale, calculated for both the unit holder's total holding of units and for each unit separately
- Total acquisition costs and costs following sales
- The input value without any addition for acquisition costs, calculated for both the total holding of units and for each unit separately
- Periodic returns during the fiscal year
- For units acquired before 1 January 2006: the total RISK-amount during the unit holder's period of holding the unit/-s

3.2.3 Information in unit holder register of equity funds

The unit holder register for equity funds must, in addition to the information listed in section 5.1, above include the following information:

- The tax related sales value for the units in total per 1 January in the fiscal year

The following information about each acquisition shall further be included in the register:

- Number of units
- Dividends during the year
- Input value
- For units acquired before 1 January 2006: the total RISK-amount during the unit holder's period of holding the unit/-s
- Unused deductions from previous years
- Taxable dividends
- Unused deductions carried forward
- Unused deductions from previous years which reduce the profit, cf. Norwegian Tax Act section 10-31

- Taxable profit or deductible loss
- Withholding tax in Norwegian kroner of dividends to foreign unit holders

On transfer of units in equity funds through inheritance, gift or gift sales, the unit holder register shall include relevant information related to such transactions.

4. NOMINEE'S DISCLOSURE OBLIGATION

4.1 Continuous disclosure requirements

It is stated in the securities funds regulations section 13-1 paragraph 1 that upon being entered into the unit holder register, a Nominee is obliged to inform the unit holder register that it is a Nominee, and to ensure that it is stated in the register that it is a Nominee.

Pursuant to the regulations section 13-2 paragraph 6, the Nominee is obligated to inform the NFSA of any changes related to the license as Nominee. Such information shall include changes in contact information, name change, information about any mergers or termination of business.

4.2 Disclosure obligations pursuant to the Securities Register Act

Pursuant to the Securities Funds Regulations section 13-4 (1), the Act of 5 July 2002 no. 64 related to Registration of Financial Instruments (the Securities Register Act) section 8-2 no. 1, 2, 3 and 5 applies correspondingly to the Nominee's obligation to hand over information.

This implies that the following rules will apply equally regarding information held by the Nominee:

- An account holder is entitled to receive all information recorded on the account. A mortgagor or holder of any other limited right registered on an account, is further entitled to receive all information recorded on the account that may have a bearing on the right.
- The probate court, the debt enforcement authorities, and the court of guardianship are entitled to be informed of any registered financial instruments belonging to a defendant, debtor or person adjudicated incompetent, and of whether other limited rights are attached to such instruments.
- The court, bankruptcy administrator and chairman of a debt restructure committee appointed by the court, are entitled to receive all information recorded on a debtor in bankruptcy or a debtor undergoing debt restructure proceedings, or on a deceased person in connection with division of the decedent's insolvent estate, including all information of financial instruments entered in the securities register. The same applies to the chairman of the bankruptcy administration committee appointed for a financial institution by the Ministry of Finance or The NFSA.

4.3 Disclosure obligations to public authorities

Where a public authority is entitled by statute to information from the management company, the authority concerned has the right to obtain this information from the Nominee in respect of the unit holders for whom it acts as Nominee.

The information shall be provided when required by the relevant authority. The Nominee, does as a main rule, not have any continuous reporting obligations to public authorities, except to the tax authorities, as referred to in section 4.3.4 below.

4.3.1 Information to the NFSA

A management company of a securities fund is pursuant to the Securities Funds Act section 11-3 obligated to procure the NFSA with all the information which the NFSA requires regarding the company's business, including information about the unit holders in funds managed by the management company.

Section 3 in Act of 7 December 1956 no. 1 on the Supervision of Credit Institutions, Insurance Companies and Securities Trading etc (the Financial Supervision Act) further states that an institution, including a management company for a securities fund, is obliged at all times to furnish all information that the NFSA may require.

As such the management company is obligated to hand over necessary information which is requested by the NFSA, hereunder the company's records, registered accounting information and accounting documentation, ledgers, documents, computers or other technical aids and material that is available via such aids and holdings of whatever kind.

If any of the requested information as listed in the above is kept by the Nominee in its capacity as Nominee, the Nominee is obligated to provide the NFSA with such information and/or documentation.

According to Act of 29 June 2007 no. 75 on Securities Trading (the "Securities Trading Act"), section 3-11 *"Any person conducting or arranging transactions in financial instruments on a professional basis shall report to the NFSA without delay if there is reason to suspect that a transaction might constitute insider trading or market manipulation."*

This implies that if a Nominee suspects that a unit holder for which it acts as Nominee is involved in a transaction which constitutes insider trading or market manipulation, it is obligated to report the transaction to the NFSA without delay.

4.3.2 Reporting obligations pursuant to the Anti Money laundering legislation

If the Nominee is a Norwegian institution, the reporting obligations in the Anti Money Laundering Act will apply, as the institution will be subject to the obligations in the Act. On the other hand, if the Nominee is an institution established outside Norway, the Nominee will be subject to the anti money laundering regulation in its domicile jurisdiction.

4.3.3 Information to the Data Inspectorate

Pursuant to Section 44 of act of 14 April 2000 no. 31 relating to the processing of personal data, the Data Inspectorate and the Privacy Appeals Board may demand any data necessary to enable them to carry out their functions.

The right to demand information or admittance to premises and aids shall apply notwithstanding any obligation of professional secrecy.

This implies that the Nominee is obligated to provide the Data Inspectorate and the Privacy Appeals Board any data which they require regarding the unit holders for which it acts as Nominee (provided the information is relevant to the purpose of their control functions).

4.3.4 Information to the Tax Authorities

According to the Act of 13 June 1980 (the "Tax Assessment Act") section 6-15 the taxation authorities may impose a management company of securities fund to furnish, deliver or send information about third parties, such as the manager's unit holders. Such information can be accounting books, vouchers, contracts, correspondence, control and audit protocols and other documents which are of relevance.

According to the securities funds regulation section 13-4 paragraph 1, the Nominee will have the same disclosure obligations as the management company.

It is clear that the tax authorities may require information about a unit holder where the tax authorities have a suspicion that the unit holder illegally has withheld tax payments. It is however more uncertain whether the tax authorities may, on a general basis, require the Nominee to furnish its complete list of customers, in order to check whether any of the unit holders for which it acts as Nominee are taxable to Norway.

4.3.5 Information to the Police Authorities

According to Act of May 1981 no. 25 relating to Criminal Procedure (the "Criminal Procedure Act") chapter 16, the police authority may on further conditions confiscate information and documentation which are deemed to be significant as evidence in a possible criminal proceedings.

4.4 Disclosure obligations to the management company

Pursuant to the securities funds regulations section 13-4 paragraph 2, the Nominee is obligated to provide the management company with obliged tax information for each unit holder for which it acts as Nominee. This obligation only applies with respect to unit holders that are taxable to Norway (paragraph 4).

The management company shall forward the information to the tax authorities.

How often the Nominee shall report such information to the management company is not stated in the Act, but as the reporting obligations for the management company to the tax authorities normally is once a year, the reporting from the Nominee should not be more frequent.

4.5 Obligations related to the disclosure obligations

As stated in the securities funds regulations section 13-4 paragraph 4, the obligation to disclose information remains in effect even if the Nominee assignment has terminated or the Nominee has relinquished or been deprived of its right to appear as Nominee in the unit holder register.

Pursuant to the securities funds regulations section 13-4 paragraph 5, a Nominee that enters into an agreement regarding a Nominee assignment is further obliged to obtain the principal's prior permission for the Nominee to furnish public authorities with such information as they require pursuant to these regulations. If the principal refuses to give such permission, the Nominee shall be obliged to relinquish the assignment.

5. STORAGE AND RETENTION OF INFORMATION

The Nominee shall retain all information on the Nominee assignment and principals, including an overview of changes in the principals' portfolios of Nominee-registered units, for a period of ten years. This is stated in the securities funds regulations section 13-3 paragraph 3.

6. SUB-NOMINEES

The regulation on securities funds section 13-3 states that the Nominee shall ascertain the identity of the beneficial owner even if its principal is also a nominee.

According to the wording in the provision, the Nominee is required to investigate and find out the identity of the beneficial owner. Based on the current wording in the securities funds regulations, the duty to find out the identity of the beneficial owner lies on the Nominee, and cannot be delegated to a sub-nominee by agreement.

7. VIOLATION OF THE REQUIREMENTS

If any party is listed as a Nominee without being authorised, the NFSA may issue an order to the management company or the securities register preventing the Nominee from disposing over the units or from being registered as the holder of further units. This is stated in the securities funds regulations section 13-6.

The same applies if the Nominee has failed within a stipulated period to comply with an order to furnish information to public authorities or the management company. Transactions approved by the NFSA may nonetheless be executed.

The NFSA may further withdraw authorisation to be listed as a Nominee in a unit holder register if the Nominee fails to fulfill such requirements or to comply with such obligations as set forth in or issued pursuant to these regulations.