

DANSKE BANK A/S

AGM ON 18 MARCH 2019

10 REASONS TO VOTE
FOR AN INDEPENDENT
INVESTIGATION



d e m i n o r
RECOVERY SERVICES

On 4 February 2019, Deminor submitted a motion to have an independent investigator appointed by the shareholders at Danske Bank's AGM on 18 March 2019. This motion is item 12 on the agenda of the AGM.

The purpose of this independent investigation is to ensure that shareholders become aware of the identity of the persons who allowed vast sums of money to be laundered through Danske Bank over the years. Those ultimately responsible at the bank should be identified and held to account.

Danske Bank has indicated in the response to the motion that it **“does not believe that any further investigations are required”** because the Danish law firm Bruun & Hjejle already investigated the matter sufficiently. This reply does little to solve the issue that the report was biased i.a. because the Danish law firm admitted in its very own words that it was **“neither impartial nor independent”**. See item 3 below for further explanation.

We invite you to support this motion for these 10 key reasons:

1. Money laundering is not a victimless crime.

Money laundering is a financial transaction scheme that aims to conceal the identity, source, and destination of illicitly-obtained money ¹. In other words, it is the process of making illegally-gained proceeds (i.e., “dirty money”) appear legal (i.e., “clean”) ². The illicit money is obtained from criminal acts (e.g., corruption) and is run through a number of legitimate businesses in order to conceal its source.

Without money laundering and the support of certain banks, kleptocracy or international organised crime would not be able to function ³. Further, the human cost of financial crime, if indirect, is still very real. The victims of these crimes are multiple, but can include people and communities affected by corruption, prostitution rings, drug trafficking and human trafficking.

The impact of money laundering is summarised well in article 3.1 of Danske Bank’s Code of Conduct (December 2018): **“Financial crime not only destroys the integrity of the financial institutions that are used to carry out criminal acts, it also negatively affects the society we live in, so we must take a proactive responsibility in order to mitigate the risk of misuse”**.

Money laundering impairs the health of economies and leaves a lasting impact on society, very often undermining the world’s most vulnerable communities. For example, in the course of the so-called Azerbaijani Laundromat ⁴, Azerbaijani officials used a scheme involving four shell companies with bank accounts at Danske Bank, which contained USD 2.9 billion. These funds were used to buy political influence or simply to enrich the perpetrators’ friends and families ⁵, to the detriment of others.

As money laundering can do serious and lasting harm to individuals and societies, combating this crime should be a priority for the shareholder community.

2. Personal accountability is the key to good corporate governance.

As of today, neither the former CEO nor any another senior executive has been held accountable for the scandal.

Danske Bank’s former CEO Thomas Borgen “stepped back” in October 2018 and in his own words, he was **“personally cleared from a legal point of view”**. He kept all his benefits from his past employment at the bank. However, from 2009 to 2012, while the illicit money was in full flow, he was directly responsible for the bank’s Estonian operations as the head of Baltic banking activities. This makes his clearance from liability in the Bruun report highly questionable.

Is this an example that Danske Bank is willing to present to its current and future employees? It is unacceptable that, when a gross violation of ethical principles occurs at a bank, top management remains unaffected by the act’s repercussions.

¹ https://www.law.cornell.edu/wex/money_laundering

² <https://www.fincen.gov/history-anti-money-laundering-laws>

³ Please see The Economist’s 2018 book of the year by Oliver Bullough: “Money Land. Why thieves & crooks now rule the world & how to take it back”, Profile Books, London, 2018.

⁴ <https://www.occrp.org/en/azerbajjanilaundromat/denmarks-biggest-bank-hosted-azerbajjani-slush-fund>

⁵ <https://www.occrp.org/en/azerbajjanilaundromat/profiles/>

In terms of governance, Borgen's resignation is far from sufficient. A new CEO does not automatically sweep a company clean. Corporate culture goes beyond the CEO, and particularly considering the scale of the scandal, shareholders need to see a much more impactful response from the bank.

Similarly, reporting a number of employees and agents to the Estonian authorities is not enough and should not allow the bank's senior staff to be exhumed from liability. Basic management principles dictate that senior executives should not have ignored the clear and repeated warnings that the scandal was ongoing. Finding a scapegoat in lower management is a typical response for a company in crisis, but this is insufficient for shareholders who have a real interest for the company to create the transparency it so lacked in the past.

3. The Bruun Report is “neither impartial nor independent”. It is insufficient to resolve outstanding questions.

In response to media reporting, the board decided to commission a law firm, Bruun & Hjejle, to investigate the bank's Estonian activities. However, the investigation of the scandal by this firm and the subsequent report published in September 2018 (the “Bruun Report”) were never designed to provide an objective picture of the scandal.

While the report laid bare the pervasiveness and extent of the money laundering scandal, its authors were not qualified to pass judgment about directors' liability. The law firm has admitted that, in its very own words, it was “**neither impartial nor independent**” in writing the report. Not only has Bruun & Hjejle provided legal advice to the Bank concerning regulatory investigations several times in the past. The firm, in conducting the investigation, also relied only on documents made available by the board itself to write its report. The board, which commissioned the investigation, was the subject of the very same investigation, which is an unusual set-up. The report, without much deliberation, clears senior management of any liability towards the bank and fails to assess whether members of the executive board and the board of directors breached their fiduciary duties towards the shareholders.

Considering the Bruun Report lacks impartiality and independence, shareholders need a further, more reliable investigation to be performed to determine whether senior management at Danske acted properly.

4. The bank and its senior management have systematically downplayed what has now emerged as the largest money laundering scandal to date.

Danske Bank has admitted that it acted as a pipeline to launder approximately EUR 200 billion for over at least 6.000 “suspicious” clients through its Estonian branch. Danske Bank's customers (mostly from Russia) used this branch to conceal the dubious origin of vast amounts of funds between 2007 and 2015. These numbers speak for themselves.

Danske Bank received multiple tip offs about these activities from the acquisition of Sampo bank from 2007 onwards. Yet, it did not inform the market adequately about the issues until February 2018. One of Danske's correspondent banks in the US had money-laundering concerns in 2013 and consequently terminated its working relationship with Danske. Also, a whistle-blower report

from the firm's head of Baltic trading flagging that the bank was "knowingly dealing with criminals" was sent to the board in December 2013. Another report from the Group Internal Audit team confirming this information was sent to the CEO and the executive board in February 2014.

However, for years the board systematically downplayed the risk associated with its portfolio of non-resident customers in Estonia, until it had to yield to media pressure. Without the work of a consortium of journalists ⁶ that independently investigated the scandal, the full dimensions of the scandal might never have come to light. Now, investors would like to know who facilitated the occurrence of the scandal.

5. Local regulators failed to hold the bank accountable for 10 years. The issues with regulatory oversight will not change overnight.

Have the Danish authorities been too lax in supervising Danske Bank since 2007? Indeed, the European Banking Authority recently announced that it is investigating this question ⁷, as it has now launched a formal investigation into local regulators concerning their supervisory work over Danske Bank. Relying on these same regulators to clear up the scandal should not be an option for investors.

While the Danish and Estonian authorities have expressed serious concerns about the non-resident portfolio of the Estonian branch since 2007, in reality regulators in Denmark and Estonia have failed to take effective counter-measures or impose real sanctions against the bank and its senior executives. Year after year during the scandal, regulators launched new investigations, without coming to conclusive results. The Danish regulator even went so far as to negotiate the text of a reprimand with Danske. It is only when the scandal became public that they imposed fines and reprimanded the bank. However, they have as yet refrained from passing judgment on individual actors' liability. Danske Bank's former CFO was also the chairman of the Danish authority during the investigation, something rather concerning, considering Denmark is a country that prides itself in being one of the most progressive in the world in terms of corporate governance.

One reason for the regulatory inertia surrounding the Danske scandal may be that the bank provided the regulators with false information about the AML concerns for years. This, at least, is the position put forward publicly by the regulators.

Even though the public authorities in Denmark and Estonia have started new investigations, an independent investigation initiated by the shareholders can ensure that all suspicious information is reviewed fairly, especially given that regulators missed the seriousness of the money laundering activities in the past. Also, in seeking the truth, it is essential to disconnect from a possible political agenda, as it has now emerged that relations between Denmark and Estonia on the Danske matter are tepid at best.

⁶ <https://www.occrp.org/en>

⁷ <https://eba.europa.eu/-/eba-opens-formal-investigation-into-possible-breach-of-union-law-by-the-estonian-and-danish-competent-authorities-regarding-money-laundering-activities>

6. Danske Bank failed to initiate the claw-back of past bonuses while it could.

The Bank announced in its 2018 Annual Report that several actions have been undertaken to accelerate its AML improvements. None of those measures address past failures on the part of the senior executives in the money laundering scheme. The bank is clearly trying to shy away from responsibility and divert attention to the future, rather than dwelling on its past failures. In other words, Danske's strategy is to now focus public opinion on its recent objectives and initiatives, but it has taken few genuine measures to clear up the past.

Moreover, Danske is limiting its actions to improving AML, all the while having been implicated in a EUR 200 billion money laundering scheme. This is insufficient, the bank should not be allowed to get away with the scandal without addressing the vital question of personal accountability.

The remuneration policy at the Bank indicates that **“disbursed as well as non-disbursed components are subject to claw back if granted on the basis of data which has subsequently proven to be manifestly misstated or inaccurate”**. However, no claw back has been initiated by the bank against its senior officers' remuneration. It is shameful that the current remuneration policy is not explicit about a claw back when ethical principles were violated. Initiating the claw back of remuneration should have been the first step undertaken by the bank if it was in its interest to effectively clear up the question of personal accountability. Ultimately, this money could cover the costs of the independent investigation instead of rewarding management for its failure to properly oversee its activities.

Senior executives should not be incentivised to make money by breaching laws (e.g. through bonus payments) and leaving the downside risk to shareholders and other stakeholders. On the contrary, they should be the first to bear the financial burden of their own wrongful behaviour, rather than the bank or its stakeholders.

If it emerges from the independent investigation that senior executives have violated their duties, then there will be no more excuses for Danske to refrain from initiating a claw back on past bonuses.

7. Without a clear understanding of what went wrong, it is impossible for shareholders to assess whether proper corrective measures are being implemented.

Danske states on its website that commitment to transparency and collaboration are key values for the bank. If that is the case, then it should be equally important to the bank to find out how far senior executives have failed in their duties, including their transparency and information responsibilities, not only towards the bank but also towards its shareholders.

This will, frankly, not happen soon. Therefore, it is up to the shareholders to actively assist current management by launching an independent probe.

Shareholders need an in-depth evaluation of the obligations that senior staff at Danske breached to make decisions that are key for the bank's health going forward. How can shareholders assess whether or not the bank has installed better internal policies, education programs, internal sanction mechanisms as the case may be if no root-cause analysis has been performed?

Without full transparency, right now, this scandal will haunt Danske Bank for years and public trust in the bank will never be restored.

8. This is an opportunity for the investor community to set an important precedent and secure better governance.

Until senior executives are fairly and unambiguously held accountable, these scandals will continue to occur in the future. In times of crisis, shareholders can steer a company in the right direction. Voting for an independent investigation can bring true reform and the investigator's work will have significant benefits, not only for Danske Bank but for the whole financial sector.

If the mechanism allowing shareholders to instate an independent investigator leads to concrete results in Denmark, the country may see far fewer corporate scandals in the future.

9. Corporate governance without enforcement is meaningless.

Personal accountability of senior executives is one of the fundamental principles of good corporate governance, and this is a measure that is promoted by every corporate governance association and think-tank around the world.

If shareholders choose to accept the negative consequences of managements' wrongdoing without sanctioning the company, they will convey the wrong message to the world.

Shareholders now have the possibility to enforce their rights and make their voices heard. If they do not take this opportunity, commitments to good governance and a more ethical world will remain meaningless and investors will not make the slightest concrete impact on society. When it comes to corporate governance, actions matter.

10. In an age of heightened awareness, this scandal should have never occurred.

While certain behaviours in the financial sector were perhaps tolerated in the 80's, nowadays fighting against money laundering is at the top of every lawmaker's agenda. Money laundering destroys the lives of honest citizens and shakes the foundation of society.

The shareholder community must be vocal in this debate. We believe that shareholders can make a difference by holding individuals accountable and pushing to find the truth. The Danske Bank matter is an opportunity for shareholders to turn an incredibly damaging affair into a beacon of hope in the quest for improved corporate governance.

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