



NL financial investments

## Exit advice ASR Nederland

*November 2015*



# Contents

Foreword	4
Summary & conclusions	6
Research dual sales process	7
IPO	7
Governance with a possible IPO	8
Other	9
History parliamentary discussion of ASR sale	12
Preconditions for sale	12
Parliamentary debate sales advice August 2013	12
Parliamentary debate sales advice May 2014	13
Sales readiness and price expectation	16
Results achieved and strategy of ASR	16
Readiness for a transaction	18
Strategic	20
Price forecast	23
Stability of financial markets	26
Stability vision of the supervisor	26
Future proof ASR	28
Sale options, time frame and the market for IPOs	32
Sale options	32
Sale time frame	33
The market for IPOs	34
Development of an IPO	38
Costs of an IPO	40
Advisors on behalf of a selling shareholder	41
Cost minimisation	42
Governance after initiating sale by means of an IPO	45
Introduction	45
Public interest	45
Further details on governance	46
Qualified majority (protecting remaining interest of the State)	46
Embedding the social role	47
Protecting the continuity of the company	48
Response time and rights of the works council	53
Stable shareholder base	54
Appendix: responses of the works council and the company to the exit advice	58



# Foreword

In this letter the Trust Office Foundation for the Management of Financial Institutions (*Stichting administratiekantoor beheer financiële instellingen*), acting under the name of NLFI, provides the Minister of Finance with its advice on returning the ASR Nederland N.V. (ASR) shares held by NLFI to the private sector. This advisory report is a follow-up to our earlier advisory reports of August 2013 and May 2014, in which we discussed the various sales opportunities regarding ASR together with future plans for other financial investments held by NLFI. This advisory report includes an independent opinion of NLFI regarding:

- i. the readiness of ASR to return to the private sector
- ii. the IPO as advised sale route
- iii. the recommended governance and protective measures

This advisory report is partly based on an intensive and constructive collaboration between NLFI and ASR.

We also owe our gratitude to the Ministry of Finance for providing its opinion on draft versions of this report. While drafting this advisory report, we also exchanged views with De Nederlandsche Bank.

In addition, discussions were held with a number of investment banks, financial and legal advisors, umbrella organisations for institutional and other investors, as well as other experts who shared their views with us. We are very grateful to all those who helped us produce this document.

NLFI,

*November 2015.*



## Summary & conclusions

This letter contains NLFI's advice on the exit strategy for returning ASR shares held by NLFI to the private sector. This is in line with NLFI's legal purpose as laid down in the Trust Office Foundation for the Management of Financial Institutions Act (*Wet stichting administratiekantoor beheer financiële instellingen*, the NLFI Act).<sup>1</sup> On authorisation by the State of the Netherlands, NLFI shall implement the exit strategy on behalf of the State.

Parliamentary debate to date has established that ASR may return to the market when the financial sector is sufficiently stable, when there is sufficient interest from the market and when the company is ready. The objective is to recover as much as possible of the total capital expenditure of the State with respect to ASR. Capital expenditures, excluding interest costs, amounted to EUR 3.65 billion for ASR. Since financial year 2011, the State received EUR 397 million in dividends from ASR.

As further explained in this advisory report, NLFI believes these preconditions are now met. If the Minister of Finance and the House of Representatives agree with the exit strategy proposed by NLFI, the near-term priority will be the preparation of a sale through the successful implementation of an IPO of ASR. The goal here - depending on market conditions - is to enable an IPO as from the first half of 2016.

ASR's robust solvency, its strategic plan and the expected trend in its results in the coming years give rise to the expectation that it is possible to recoup the capital expenditure over the period in which the entire shareholding is reduced. The exact proceeds will only be known at the time of actual sale of the last share. NLFI advises that no further statements about the expected proceeds be made prior to the sale.

NLFI and ASR and their respective advisors have jointly completed the research into the dual track sales process. This research did not reveal any alternative that would provide additional added value with regard to the IPO scenario, with respect to the strategic development of ASR and the risk / return profile of the State as shareholder. NLFI therefore advises to prepare for an initial public offering (IPO<sup>2</sup>) so as to enable an IPO in the first half of 2016.

NLFI requests an authorization to execute the sales process as described in this advisory report.

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<sup>1</sup> Article 3, second paragraph, section b, at 1° of the NLFI Act.

<sup>2</sup> Abbreviation of Initial Public Offering.

## Research dual sales process

In May 2014, NLFI indicated that some parties had expressed interest in the acquisition of ASR as a whole, but this had not led to a concrete proposal. This has not changed. The research phase of the dual track sales process conducted by NLFI, its advisors and ASR in the past few months on a potential private sale, showed that sufficient practical and attractive proposals are not expected in the short term. Potential interest is rated on, among other things, financial and economic appeal, e.g. against the expected IPO proceeds, as well as on the strategic added value to ASR.

Successfully attracting conditional funding for ASR in 2014, for a possible acquisition of Vivat / Reaal, showed that the rationale of consolidation in the Dutch insurance industry is shared by investors. It is noted here that it is mainly more opportunistic investors who saw an opportunity to take advantage of the synergistic benefits achieved from consolidation. Research by NLFI and ASR has shown that these investors are not sufficiently interested in the acquisition of ASR as a whole without the immediate prospect of synergistic benefits. In early 2015, ASR decided not to draw up an offer for the Vivat / Reaal shares since, in ASR's view, it produced insufficient added value for ASR's strategy in relation to the risk estimated by the company. ASR has indicated that the assessment of a merger with Vivat / Reaal remains unchanged after the sale by SNS REAAL to Anbang.

The preliminary investigation has indicated that running a process for potentially interested parties, parallel to preparing for an IPO, is not considered to be promising. Because of the disadvantages associated with such a demanding process, it is advised to make it a priority to ensure that a successful implementation of an IPO is realised as soon as possible, and to focus on the process of preparing for an IPO.

## IPO

The track record that ASR has built up, including in the areas described in earlier advisory exit reports by NLFI, is good. ASR performs at a high level within the sector, both with regards to solvency and profitability. Additionally, supported by the monetary expansion of central banks internationally and the European Central Bank in particular, stock valuations by investors have increased market wide. The combination of these aspects advocates that an IPO process is prepared and carried out in the short term. It is expected that ASR will be ready to realize an IPO as early as the first half of 2016. Final improvements are being made to ASR's positioning and reporting. The market for IPOs has recently proved to be very attractive and we hope that this will continue for some time. Recent IPOs in the Netherlands and those of insurers in Europe have proved to be possible at appealing valuations and positive price developments after introduction. The most interesting example is the IPO of Nationale Nederlanden in 2014. As of 1 October 2015, ING Group has reduced its stake in Nationale Nederlanden to around 25% since the IPO. On November 20th 2015 the sale of the stake held by the Dutch State in ABN AMRO Group N.V. has been

initiated through an IPO. The experience gained during that process will be utilized whilst preparing the sale of the shares held in ASR.

The minimum size of the IPO will be partly determined by the level of valuation at IPO, the *free float*<sup>3</sup> required to achieve the desired liquidity of its shares after introduction and the related target group of investors. NLFI believes that, given the current market conditions and valuation levels, a relatively large size of the IPO tranche is possible. NLFI is of the opinion that an IPO of 30% to 50% is realistic.<sup>4</sup> NLFI recommends, while preparing for a possible IPO, to investigate the use of various options, including, among others, the use of a *greenshoe*, attracting *cornerstone investors* and the issuance of *warrants* by ASR to NLFI.

## Governance with a possible IPO

At present, the less stringent form of the rules for the mitigated structure regime applies to ASR.<sup>5</sup> At the time of the IPO, the full structure regime applies to statutory two-tier entities. This means, among other things, that the authority required for appointing and dismissing members of the management board shifts from the general meeting of shareholders to the supervisory board. As such, the rules applying to two-tier entities - indirectly - offer a de facto form of protection against shareholders with an undesirable takeover bid or activist shareholders' intentions because these shareholders are unable to appoint members of the management board.

Before initiating the sale, NLFI therefore advises, in line with ASR's wishes, that you amend the articles of association of the companies<sup>6</sup> in order to guarantee continuation of their social role. This applies to the role that the companies fulfil in the economy, their duty to offer adequate service to customers and that they will operate within acceptable risk limits.

NLFI advises that, in line with an earlier advisory report, the remaining financial interest of the State in the company is protected after an IPO, by using statutory anchored qualified majorities in decision-making within the shareholder meeting on certain important topics. This effectively means that NLFI will have control up to the time when the State's interest falls below one third of the outstanding issued share capital. NLFI advises that you keep the additional control powers limited, but to ensure that it is reflected in respect of, among others, the decisions on major changes in the identity or character of the company.<sup>7</sup> This authority enables NLFI to exert influence as a shareholder in, for instance, instances of undesirable shareholder activism.

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<sup>3</sup> Relates to the market value of the free float of the listed shares.

<sup>4</sup> NLFI does not exclude that, at appealing valuations and with a sufficient level of interest, it may be considered to increase the size to a small majority of ASR shares.

<sup>5</sup> The mitigated structure regime applies because the State owns 100% of the shares in ASR Nederland NV.

<sup>6</sup> ASR Nederland NV and the associated legal entities under DNB supervision.

<sup>7</sup> See Article 107a of Book 2 of the Civil Code. The chapter on governance contains a limited but comprehensive list.



Partly in response to the Nijboer motion in 2013 on the sale of ASR, NLFI is of the opinion that further protection of ASR is desirable and can be achieved without compromising the goals of the selling shareholder. For an IPO, NLFI therefore advises you to provide ASR with a protection structure. NLFI advises that, similar to listed peers and a commonly used structure, a continuity foundation based on preference shares is created for ASR. In 2014, Nationale Nederlanden did this prior to its IPO. The listed insurer Delta Lloyd has a similar form of protection. AEGON has a slightly different form of protection with Vereniging AEGON as the holder of a separate class of shares.

When the remaining interest of NLFI drops below one third of the outstanding issued share capital, a protection instrument linked to the company can be activated with preference shares. In certain circumstances, the Continuity Foundation has the opportunity to choose (via a call option) to temporarily hold a range of preferred shares that effectively gives the Foundation control. This instrument can offer protection against any undesirable takeover bids in a situation where NLFI can no longer offer this protection. As long as NLFI holds more than a third of the shares in ASR, the Continuity Foundation requires the prior approval of NLFI to exercise the call option to acquire preference shares. Upon exercise of the call option, the Continuity Foundation will have to apply for a declaration of no objection from the relevant supervisor(s), which in the current constellation is De Nederlandsche Bank. The chapter on governance explains why certification was not chosen, as was the case in the advisory report on ABN AMRO.

Finally, in this advisory report, NLFI discusses the question of whether the sale of ASR loyalty shares would have to be introduced. Due to uncertainty about the advantages to the application of loyalty shares, and that there are also significant disadvantages and risks to it - also according to investors - NLFI recommends that this not be pursued.

## Other

When drawing up this advisory report, NLFI acted in accordance with its purpose as described in its articles of association. In performing its statutory duties and exercising the rights associated with the shares, NLFI has primarily focused on the financial and economic interests of the State<sup>8</sup>, while taking into consideration the interests of the company, its subsidiaries and affiliates and the employees that are involved.

Among other things, this means that NLFI has taken the interests of the various stakeholders of ASR into consideration. In the preparation of this report, NLFI has maintained contact with among others DNB and the company itself. Attached you will

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<sup>8</sup> The financial and economic interests of the State are linked to the exchangeable certificates for shares issued by NLFI (commercial name) rather than a shareholding in the companies.

find letters from the company's board of directors and supervisory board and the works council of ASR.

During the sales process, NLFİ will maintain contact with the supervisor in order to ensure that the interests of policyholders are guaranteed. During the preparations and after the sale starts, NLFİ shall conscientiously respect the advisory rights to which co-determination bodies are entitled pursuant to the Wet op de ondernemingsraden (Works Council Act) subject to the boundaries of good governance relationships as laid down in legislation, regulations and codes.



# History parliamentary discussion of ASR sale

In recent years, the sales opportunities for ASR have been the subject of discussion several times between you and the House of Representatives.

## Preconditions for sale

As discussed in the House of Representatives in 2011, ASR may return to the market if the financial sector is sufficiently stable, there is sufficient interest in the shares and the company is ready. These preconditions are also mentioned in the coalition agreement of October 2012<sup>9</sup> and NLFI has included them in this advisory report. The objective is to recover as much as possible of the total capital expenditure of the State. You also expressed this objective in your letters to the House of Representatives dated August 2013<sup>10</sup> and June 2014.<sup>11</sup> Furthermore, the State has indicated in the process with the European Commission on ABN AMRO Bank and Fortis Bank that it does not have the intention to be a long-term investor in the entities nationalized in 2008.<sup>12</sup>

## Parliamentary debate sales advice August 2013

NLFI's sales advice of August 2013 extensively considered the sales potential of ASR. The Minister also gave his vision on the sales possibilities in his letter of the same date. Here you followed NLFI's recommendation that ASR could continue preparing a dual track sales process. After a debate in the House, several motions have been filed. One motion (# 47) of member Nijboer with respect to ASR was passed. This report deals with the subject of this motion. In the motion, you are asked to also consider creating a protection mechanism for ASR. At that time, you said the following about this in the House of Representatives:

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9 "... [Financial Institution] may only return to the market when the financial sector is stable. There must be adequate interest on the market, the business must be ready for this transition and as much as possible of the State's total investment must be recovered. Against this background, we are investigating the other options that exist alongside a full stock market flotation...". Coalition agreement between VVD - PvdA, "Bruggen slaan" (Building bridges), 29 October 2012.

10 Parliamentary paper: Tweede Kamer der Staten Generaal, vergaderjaar 2012-2013, 32 013, nr. 36 (House of Representatives, session 2013-2014, 32 013, no. 36).

11 Parliamentary paper: Tweede Kamer der Staten Generaal, vergaderjaar 2013-2014, 33 532, nr. 36 (House of Representatives, session 2013-2014, 32 013, no. 36).

12 Commission Decision of 5 April 2011 on the measures C 11/09 (ex NN 53b/08, NN 2/10 and N 19/10) implemented by the Dutch State for ABN AMRO Group NV (created following the merger between Fortis Bank Nederland and ABN AMRO), punt 87-88, OJ L 333/1, 15 December 2011.

*"... I am certainly willing to consider this. I have emphatically argued what, in my opinion, is the difference between the insurance industry and ASR's position in this, and for example ABN in the banking landscape. [...] With ASR and in the insurance market, this is really a lot more nuanced, consolidation will take place here. You can see it from afar. The necessary changes will take place in the Dutch insurance world over the next few years. ASR, and the insurance part of SNS Reaal, for that matter, will play a role in this. This means that a takeover itself is conceivable as one of the future scenarios. I would also like to note that the motion, by definition, is not intended to prevent a takeover of ASR. I will take it into further consideration and we will discuss it later, when we discuss the concrete plans for ASR ..."*

You also promised in the parliamentary debate that you would take the relationship between consolidation in the insurance sector and maintaining adequate competition into consideration when making your decision. NLFİ has observed that the insurance market is very competitive, with some parts even having overcapacity with providers. DNB has also made such observations in its annual report of 2014. DNB has stated in the report that the general insurance market is very competitive because of the large number of players and the rise of internet sales and online comparison sites. DNB has stated that the life insurance market is faced with an excess capacity due the loss of a large part of the demand for individual life insurance. The existence of overcapacity has led to more competition in this sub-segment, as well as other segments of the life insurance market. NLFİ cannot respond to the policy vision that you may have about the level of competition and the opinion of whether this is sufficient.

## Parliamentary debate sales advice May 2014

Some time later, in May 2014, NLFİ informed you about the developments regarding ASR. The advisory report stated that ASR is ready for the commencement of a dual track sales process. An important development was also the expected sale of Vivat / Reaal SNS Reaal. NLFİ recommended that you give ASR the opportunity to investigate an acquisition of Vivat / Reaal and to temporarily put the sales process on hold for this period. In your letter to the Lower House,<sup>13</sup> which referred to this recommendation of NLFİ, you stated the following:

*"... In the short term, both the sale of Vivat / Reaal and an IPO of Nationale Nederlanden are on the agenda ... For this reason, NLFİ recommends deferment of the ASR sale process. Therefore, once Vivat / Reaal has been sold and an IPO of Nationale Nederlanden has been carried out, I will advise you further on the precise sale process for ASR ..."*

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<sup>13</sup> Parliamentary paper: Tweede Kamer der Staten Generaal, vergaderjaar 2013-2014, 33 532, nr. 36 (House of Representatives, session 2013-2014, 32 013, no. 36).

*"... NLFI advises to permit ASR to bid for Vivat / Reaal. I see no reason to rule ASR out in advance from bidding on Vivat / Reaal ... I shall advise your parliament as to whether or not to agree with a takeover of Vivat / Reaal by ASR, when it comes up for discussion ..."*

You and the House of Representatives are aware that ASR has done thorough research into the possible acquisition of Vivat / Reaal, but has decided not to issue a binding bid in the process that was initiated for this. SNS Reaal agreed with the sale of Vivat / Reaal 2015 with the Chinese Anbang Insurance Group. In line with your commitment in the letter to Parliament you can inform the Parliament about the further development of the sales process ASR.



# Sales readiness and price expectation

## Results achieved and strategy of ASR

In May 2014, NLFI informed you that ASR is ready for the commencement of a dual track sales process and the management of ASR has successfully continued to build a track record when it comes to achieving results. In the area of financial management, accounting and reporting, ASR was deemed ready and the strategic challenges identified by NLFI were addressed. ASR was also ready for an IPO in terms of compliance with relevant corporate governance codes.

ASR ended the year 2014 well and continued the initiated upward trend. While the segment of property, casualty and liability insurance was a very important focus area in 2013, ASR has demonstrated that this was well under control by reducing the cost base and improving the claim ratios. The upward trend of the overall performance of ASR that started in 2010 is evident from Figure 1 of the profitability and dividend payments since 2010, despite the decline in premium income from the individual life insurance product category. Despite the decline in interest rates, the solvency (Solvency I) of ASR is very strong. ASR has recently reported that, depending on the final calculation method determined by the regulator, the standard model Solvency II ratio at end of June 2015 amounted to approximately 185%.<sup>14</sup> Both Solvency I and Solvency II are adequate and sufficiently robust, also when compared to peers.

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<sup>14</sup> ASR's presentation for analysts in the wake of the publication of the interim results 2015. Solvency II based on standard c. 185%.



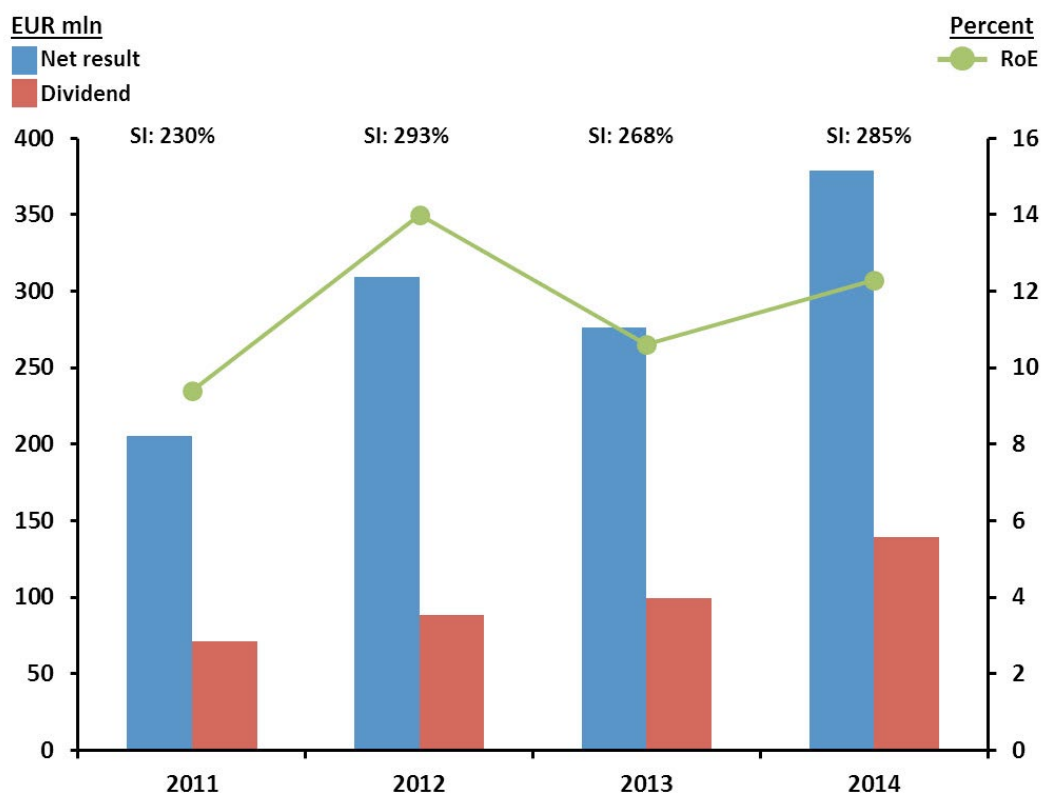


Figure 1: Profitability and dividend payment 2010-2014.<sup>15</sup>

If ASR is compared to the sector on several key metrics, the performance is very good. Figure 2 shows the average return on investment, the efficiency in loss<sup>16</sup> and in life and the return on equity compared to the Dutch market average. The combination of this with the sound solvency position, Figure 3, shows the strength of ASR.

<sup>15</sup> Data from annual reports and not adjusted for changes in the calculation method. Dividend was calculated in 2011-2014 by 40% of the 'net profit minus regular costs for hybrid loans'.

<sup>16</sup> Combined average ratio of traditional insurance, health insurance and disability.

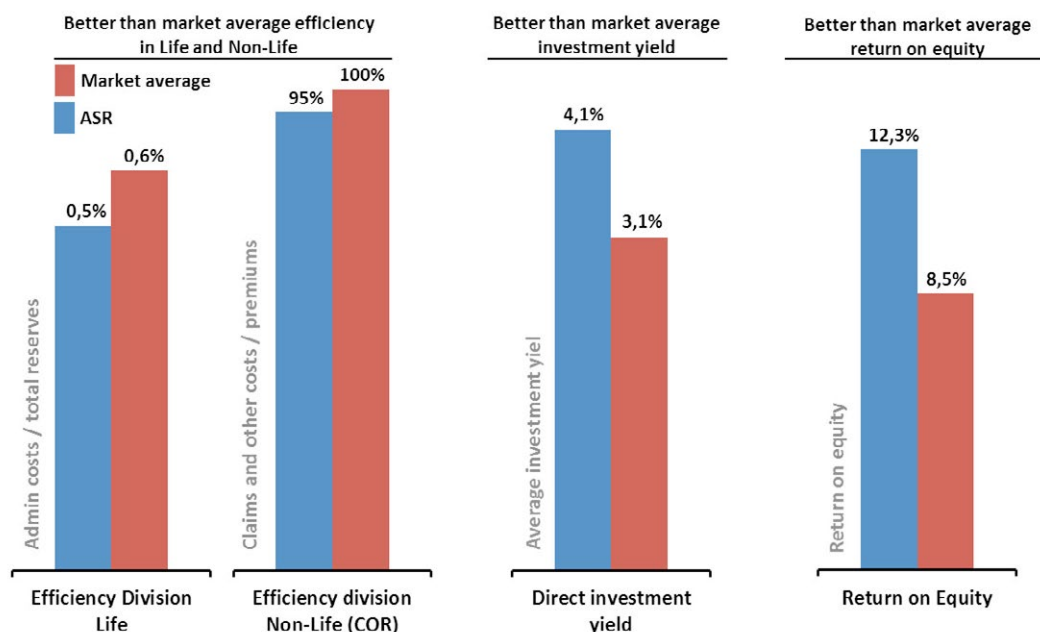


Figure 2: Return on investment, efficiency and return on equity (2014).<sup>17</sup>

The Dutch insurance sector is characterized by only limited potential for growth, as was noted by the Commission Insurers.<sup>18</sup> In light of the market saturation, the high level of competition and the low interest rate, the development of the business model to a model with sustainable profitability by ASR, is very good. The current robust solvency is therefore required and enables the company to continue to pay dividends. The payment and amount of any dividends in the future will still be subject to, among other things, the laws and regulations applicable at that time, market conditions and the capital position of ASR.

Looking ahead to the potential IPO of ASR, NLFi expects that potential investors will approach the valuation as a yield stock, rather than a growth stock. For such a yield stock, investors want a relatively stable dividend supported by strong *cash generation*.<sup>19</sup> Since 2011, ASR has paid an annually increasing dividend and has therefore already established a strong track record in this respect.

## Readiness for a transaction

### Financial

Financial management has been further improved and is adequate. This applies to both internal and external reporting. These have accelerated and improved, which is also evident from the feedback received from banks and analysts following the presentation of the interim results for 2015. The aim is to further accelerate the processing of internal reports. ASR is at an advanced stage in its preparations for

<sup>17</sup> Data based on analyses of various investment banks.

<sup>18</sup> Commission Insurers report 'New life for insurers', March 5, 2015.

<sup>19</sup> Subject to the freely available cash flow generated annually.

Solvency II<sup>20</sup> and is in a position to prepare suitable reports in this respect. An external consultant also assessed the readiness for an IPO on behalf of ASR, and indicated that the company can be ready for an IPO in the first half of 2016. Ultimately, it is also up to the syndicate banks (the global coordinators), and possibly supervisors, to assess whether they are of the opinion that ASR is ready to go public.

Credit rating agency Standard & Poor's (S&P) has: i. reconfirmed the rating of an "A"-rating with a stable outlook for both ASR Levensverzekering NV and ASR Schadeverzekering NV<sup>21</sup> and ii. rated the (business and financial) risk management of ASR as a (very) strong.

In the past two years, ASR has issued two successful new hybrid loans of EUR 500 million each. This partially replaced the existing, more expensive, hybrid loans and also increased the total outstanding size to EUR 1.201 million on 22 September 2015. Because of the relatively low coupon interest rates compared with the interest to be paid on the 'old' hybrid loan, the total interest to be paid for hybrid loans, despite the increased size, increased relatively little. ASR has therefore responded well to the strong market appetite and the relatively low interest rates in the past two years.

With a Solvency II ratio, depending on the final method to calculate the standard model, to be determined by EIOPA,<sup>22</sup> of approximately 185%<sup>23</sup> in the first half of 2015, ASR is financially robust and compares well with peers, see Figure 3. From a financial perspective it can be said that ASR is ready to prepare for a sale from the first half of 2016.

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<sup>20</sup> When it is introduced, which is expected on 1 January 2016, this second solvency directive will aim to harmonise the capital supervisory framework within the European Union.

<sup>21</sup> It concerns both the FSR (financial strength rating) and CCR (counter party credit rating) by S & P on 24 August 2015.

<sup>22</sup> European Insurance and Occupational Pension Authority.

<sup>23</sup> Based on the ECAP model of ASR, which pursues an internal model for Solvency II specified on ASR, the ratio is c. 190%.

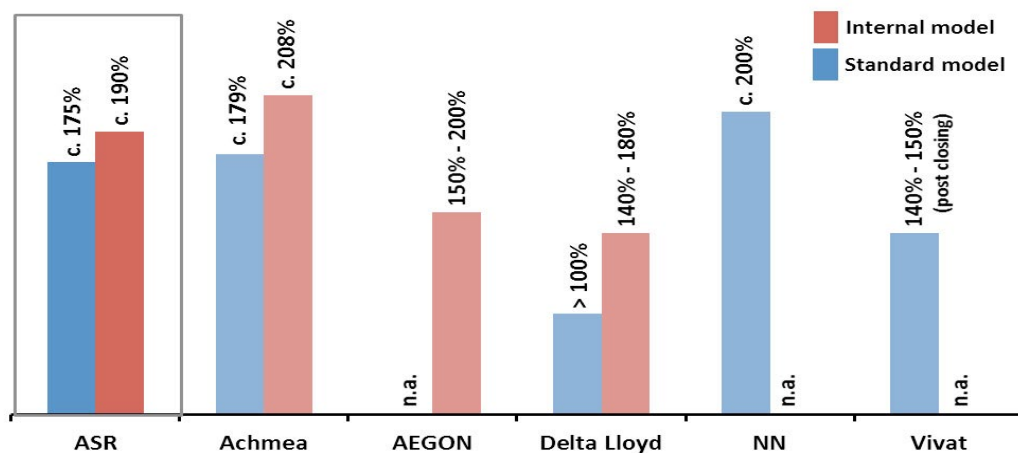


Figure 3: Solvency II standard model comparison peers at the end of 2014.<sup>24</sup>

## Strategic

ASR is an insurance company offering both non-life and life insurance and has a leading position in both segments in Netherlands. In addition to traditional insurance (including property and vehicle), ASR offers health insurance and disability insurance (AOV). In the latter category, disability insurance, ASR is the undisputed market leader. In the life insurance segment, ASR has a leading position in funeral insurance. The combination of segments (non-life and life) poses diversification benefits, mainly for the capital to be maintained. The subdivision of these segments can be found in Figure 4. In terms of annual revenues (gross written premiums), ASR had approximately 60% as non-life insurer and approximately 40% as life insurer.

<sup>24</sup> Standard model for the published estimates of the insurers of this methodology at the time of publication. Internal model does not yet concern the assessments of the insurers of Solvency II approved by the supervisory. For ASR, the internal ECAP (economic capital) ratio which is closely linked to the definition of an internal model, is included. It is not an internal model for which an application is or will be submitted to DNB. Indicative per year end 2014 and dependent on volatility of solvency and model adjustments by company since year end 2014.

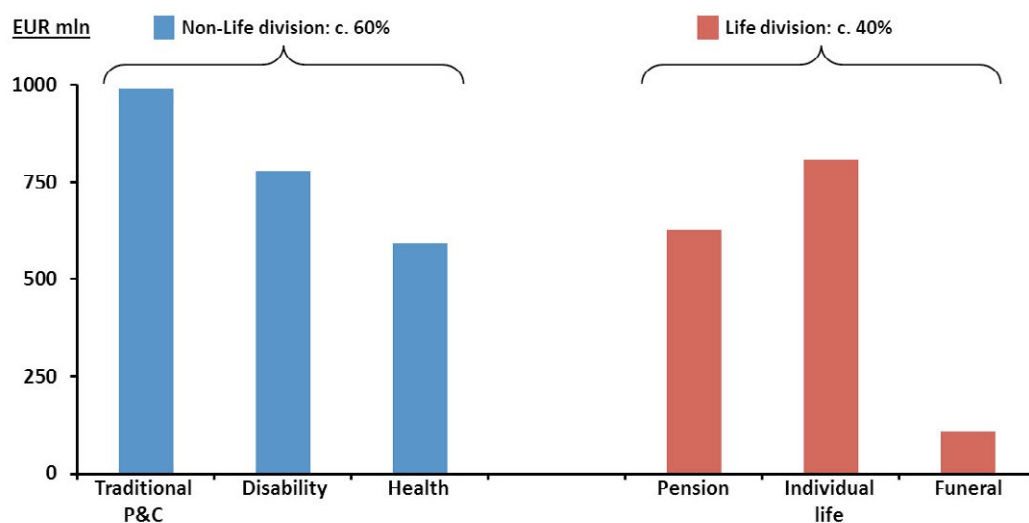


Figure 4: Distribution of turnover and market position for non-life and life (2014).

With respect to addressing the strategic challenges, ASR's approach over the past years has already borne fruit. The combined ratio<sup>25</sup> and profitability of the Non-life segment have improved thanks to cost management and improvements to the claims management process.<sup>26</sup> In 2014, the combined ratio was 95% for the non-life segment as a whole and below 100% for the various businesses that fall under the non-life segment for ASR,<sup>27</sup> which is very good compared to peers. In the first half of 2015, ASR continued this trend.

Now that the performance of the portfolio appears to be under control, ASR can possibly identify and capitalise on growth opportunities. Part of this may be the selective acquisition and integration of life and / or non-life insurers of a lesser magnitude than ASR itself, as announced by the Chairman of ASR in the publication of the annual and half-year figures. This path is already being followed by ASR and visible in the acquisition of the Van Kampen Groep dated 1 January 2015, which facilitates the strengthening of ASR's distribution. Recently, ASR reached an agreement on two acquisitions, namely funeral insurance company Axent<sup>28</sup> and pension insurance company De Eendragt.<sup>29</sup> These acquisitions contribute to the company's long-term strategy, in which cost and capital synergies of integration are emphatically the basis for the two acquisitions. In the summer of 2015, the required declaration of no objection (DNOs) received from the supervisor and the acquisitions have been completed. On October 30th 2015 ASR announced the acquisition of Dutch ID, both an independent intermediary and a service provider.

<sup>25</sup> The combined ratio of an insurer is a measure of the total costs (payment of damages, costs of customer acquisition and operational costs) incurred for insurance policies and opposing premium income.

<sup>26</sup> Management of the process that results in the payment of claims.

<sup>27</sup> At product level, there are some products with a combined ratio of over 100%.

<sup>28</sup> AXENT Nabestaandenzorg N.V.. The acquisition required and got the approval of the shareholder.

<sup>29</sup> De Eendragt Pensioen N.V.

As explained in previous opinions, the market for (individual) life insurance has long been under pressure. Recently, this market image was also described by the Commission Insurers. In 2013 and 2014, ASR demonstrated, despite the decline in premium income, its ability to maintain the profitability of the existing portfolio levels by providing good cost control. In addition, with regard to the investment insurance file, ASR made the necessary provisions in the context of cost compensation. The independent external auditor concluded that the facilities are adequate for this file.<sup>30</sup> In the pensions market, ASR has maintained its market position in collective guarantee products. ASR has successfully introduced new products as a premium pension institution (PPI) and the employees' pension (Werknemerspensioen). ASR advertises its presence in the pension market supported by robust solvency.

Given the nature (long term contracts) of the life portfolio, it appears that ASR will continue to be able to generate attractive returns for some time, depending on other developments such as capital market positions, from the Life segment. With new initiatives through pension products and banking (ASR Bank), ASR can also continue to build a sustainable business model in this market segment. The positioning and presentation of the activities of ASR in the life segment, is of great importance in the context of a possible IPO.

#### *Other*

In the second half of 2014, ASR has gone through a process to attract financing for a possible acquisition of Vivat / Reaal. ASR was able to attract the interest of several parties for a minority interest in the potential merged company and was able to attract funding under good conditions. Due to the decision not to bring out a bid for Vivat / Reaal, the financing agreement has not been implemented. ASR is organizationally able to provide the necessary information for investors on a timely basis. The management has demonstrated that it is capable of presenting the company well. In September 2014 and in September 2015, ASR successfully issued new hybrid loans totalling EUR 1.000 million and has thereby taken an important step in strengthening the interaction and familiarity in the (inter) national capital markets. Potential investors regard ASR as a professional and reputable insurer.

#### *Conclusion*

It can be concluded that, in recent years, ASR has taken the right steps prepare for a sales process. ASR's efficiency in both the life insurance and non-life insurance market is very good, the return on equity is strong and solvency is robust. Optimizing the (strategic) positioning and the final acceleration of reporting disclosure, is of the utmost importance in the final preparations for a sale.

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<sup>30</sup> Obviously, based on the already available information on arrangements and possible future claims.

## Price forecast

The valuation of insurers has displayed a clear downward trend during the financial crisis. Since 2012, this has reversed into a positive trend, as can be seen from Figure 5 of the development of Euro STOXX Insurance. The average ratings of insurers has returned to the level of early 2008. Remarkable is the fact that, in the past period, the valuation of composite (non-life and life) insurers in particular has improved relatively, where the valuation recovery previously lay primarily with insurers that are positioned as life insurer.

The rise in stock prices of insurers is part of a trend for the stock market as a whole. The existence of a prolonged low interest rate environment and positive expectations regarding economic growth led investors to allocate more capital in the equity segment within their portfolio. This in order to achieve a higher or adequate return on the portfolio. An important factor here is the monetary expansion by central banks globally and, for Europe, by the European Central Bank (ECB) in particular. With the presentation of the current monetary expansion, the ECB stated that the programme shall continue to (at least) September 2016. During this period it can be expected that capital interest rates will be low and investors will put more emphasis on the importance of equity in the portfolio.

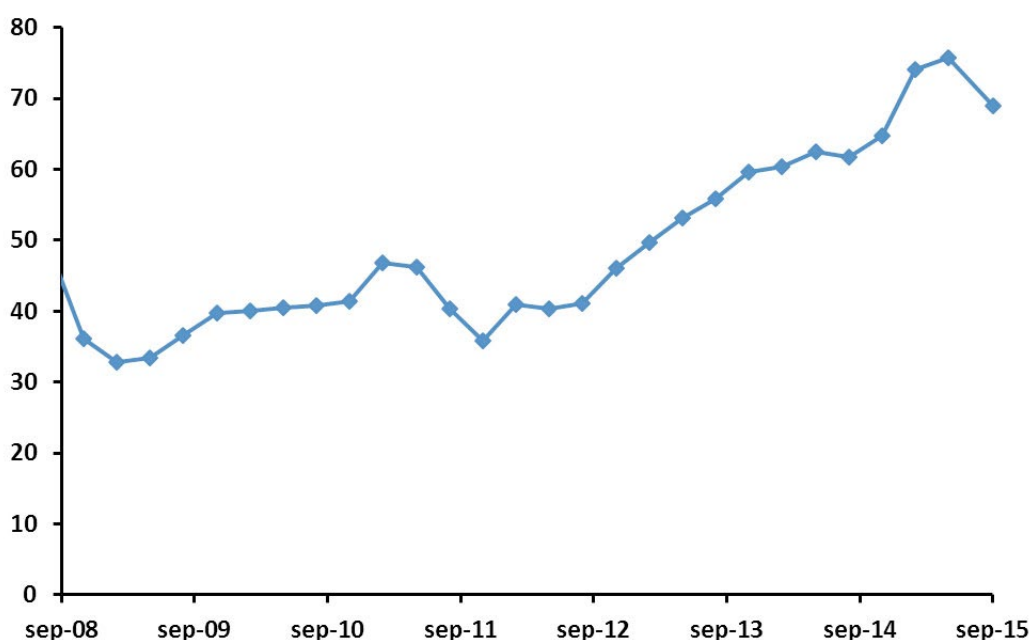


Figure 5: Euro STOXX Insurance<sup>31</sup> development since September 2008.

The financial results achieved by ASR in the past year provide evidence of improvement. The robust solvency and the ability to pay dividends, the strategic plan and the projected trend in result development in the coming years, give rise to the

<sup>31</sup> Index value of a (sector) group of international insurance companies.

expectation that the possible capital expenditure by the Dutch State can be recouped by the sale of all ASR shares. NLFİ recommends that the size of the IPO should depend on, amongst others, the valuation at IPO. The total proceeds from the sale of ASR will only become apparent once the full interest of the State has been sold. In a sale through the stock market, this could take several years. NLFİ advises that no further statements about the expected proceeds be made prior to the sale.

The valuation at IPO will depend on a large number of factors at the time of the listing. Important elements are, among other things, the selected size of the placement, financial market conditions such as volatility, specific interests of investors, the ultimate governance of the insurer and corresponding voting rights of investors and price movements of comparable listed insurers.

The fact that investors in Dutch listed insurers expect consolidation in the Dutch insurance sector on the (medium) long term can lead to any expected future synergistic benefits of the consolidation to already be factored in IPO (option value).

The proceeds of a sale of ASR are offset by the amount invested by the State in ASR. The relevant amount that was already included in previous advisory reports, was EUR 3.65 billion. This amount covers the portion of the purchase price in 2008, allocated to ASR. No State aid has been given to ASR. The cost of capital of the State are not included therein. The dividend payments or other sums received such as taxes have not been taken into account either. In total, the dividend received over the years 2011-2014 was EUR 397 million. If there is a sale through an IPO, the State will continue to receive a share of future dividends during the period that it still holds an interest.

The Parliamentary Inquiry Committee of on the Financial System (*Parlementaire Enquêtecommissie Financiële Stelsel*) concluded<sup>32</sup> in 2012 that, while the investments in October 2008 certainly had economic value, it was unlikely that the total investment would be recovered. It is obviously the objective and the legal role of NLFİ to recoup as much as possible of this amount. It is not excluded that the total proceeds could eventually come close to that of the invested amount.

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<sup>32</sup> Findings of the Parliamentary Inquiry Committee on the Financial System, 11 April 2012.





# Stability of financial markets

## Stability vision of the supervisor

In 2011, one of the conditions that your predecessor defined was that the financial sector should be stable. Any doubts about interbank transactions, the quality of the assets held by individual system banks and their solidity needed to be removed. In the exit advice on ABN AMRO (May 2015), NLF I discussed this requirement, which was particularly aimed at the banking sector. It was concluded that the financial markets are stable enough for an IPO of ABN AMRO. This advisory report further describes the challenges that lie ahead of the insurance industry in the Netherlands, as well as the future-proofing of ASR.

According to DNB<sup>33</sup> calm has returned to the financial markets at a level comparable to the situation before the crisis. Strong intervention by governments and central banks has contributed significantly to this state of affairs. However, the recovery remains fragile and, according to DNB, a contravening market sentiment should not be excluded. Therefore, it is clearly important that the financial sector is sufficiently prepared for countervailing winds. To this end, crucial steps have been taken in the reform process at national and European level over the past years in order to strengthen the stability of the financial sector.

DNB, in its policy conclusions for insurers in the Spring of 2015, eludes that the low interest rate environment is forcing a rethinking of business models, which are already under pressure with life insurers due to the changing market conditions. DNB expects that life insurers will make their business models more future-proof, so that they can continue to fulfil the long-term obligations to policyholders. In view of the fact that the sector is shrinking, it is important that insurance companies control their costs. DNB repeated the call in its *position paper*<sup>34</sup> for a round table meeting on the future of the insurance sector with the House of Representatives (11 June 2015) and in its letter to the House of Representatives on the financial stability risks<sup>35</sup> for the public conversation with the House of Representatives in this regard (16 June 2015).

In its policy conclusions, DNB also stated that the insurance stress test has demonstrated that the solvency of some insurers in the current interest rate is weak, especially based on the new Solvency II regulatory rules. In addition, it is important that insurers are aware of the difference between the regulatory capital position,

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<sup>33</sup> DNB, Overview of Financial Stability, Spring of 2015, no. 20.

<sup>34</sup> DNB Position Paper for the round table meeting "Future of the insurance sector" [Toekomst verzekeringsector] dated 11 June 2015.

<sup>35</sup> DNB, Macro-economic risks for the financial system, dated 08 June 2015.

based on the UFR,<sup>36</sup> and the (less favourable) underlying exposure based on market valuation. They will have to take it into account in their capital and dividend policy in order to prevent their capital position from eroding. Ahead of the formal introduction Solvency II is already an important benchmark for DNB to assess dividend paying capability.

The European stress test for insurers in 2014 gave insight into the sector's interest rate sensitivity and confirmed the significant impact of a scenario with a prolonged low interest rate. In this stress test, insurers were assessed based on preliminary Solvency 2 rules, which will apply from 2016.

The effect of low interest rates on insurers is only partly reflected in the financial reports, due to the use of the so-called ultimate forward rate (UFR). In addition, the UFR also contributes to the stability of the calculation of solvency. The discrepancy between the UFR curve and the observed long-term interest rates has increased in recent years. A persistent discrepancy can lead to high expectations among participants, unrealistic promises to policyholders and distorted incentives for institutions. For example if insurers use the distorted capital as the basis for determining the dividend policy.

The IMF also points out the dangers of low interest rates. In its Global Financial Stability Report of April 2015, the IMF states that under-capitalised Western European medium sized life insurers are at high and increasing risk because of low interest rates. Prolonged low interest rates may lead to weak capitalized insurers being regarded as insufficiently insolvent. The IMF points out that the quest for long-term investors as insurers for sufficient returns - to continue to meet the partially guaranteed liabilities - is not without risks. This can lead to an increase in credit and / or liquidity risks in the portfolio which should remain manageable for insurers and supervisors.

In March 2015,<sup>37</sup> the Commission Insurers found that the insurance industry, especially life insurers, face major challenges. The commission pointed out the following developments that pose challenges to the industry: decline in potential investment returns due to low interest rates, changing structure of the labour market (rise of self-employed), ageing population, a retreating government and technological developments. These developments pose challenges, but also offer opportunities for insurers since a demand for new products may arise.

In its annual risk reporting<sup>38</sup> to the House of Representatives, the CPB describes a similar analysis as the Commission Insurers and the Overview of Financial Stability. The CPB describes the benefit of consolidating the life insurance sector in order to keep its revenue stable in the long term, in this declining sector.

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<sup>36</sup> UFR is an abbreviation of Ultimate Forward Rate. This is a discount rate calculated after (in time) the last liquid point in the swap features market.

<sup>37</sup> Commission Insurers report 'New life for insurers', March 5, 2015.

<sup>38</sup> CPB Risk Reporting for the Financial Markets in 2015 to the House of Representatives, 5 June 2015.

The Financial Markets Authority (AFM) recently<sup>39</sup> added the following to ensure that the insurers themselves, in the coming years, will focus on necessary changes that lead to a legitimate restoration of confidence. According to the AFM, this can be achieved by being critical of the organization and conduct of the people who work in it, by innovating and using technology and effectively responding to the needs of the customer.

In the summer of 2015, doubts were raised in the 'market' regarding the capitalization of some Dutch insurers. These doubts are no reason to think that there could be increased volatility of the sector, but indicate that there may be insurers per sector for which additional steps are expected. NLFi believes that there is both sufficient indication of a stable sector to make a sale, and that a sale would have no adverse effect on the stability of the sector.

## Future proof ASR

ASR has demonstrated compliance with the requirements of the European stress test and also reports interest rate sensitivity of solvency in stress scenarios. On this basis it can be argued that ASR has a very robust solvency that measures up to the better ones in the industry. Even with regard to solvency excluding UFR, ASR can compete with the leading group in the sector. ASR reports its solvency both with and without UFR. Even without using UFR, ASR is sufficiently solvent under stress scenarios.

In recent years, the company has demonstrated that it responded well to both changing market conditions and the low interest rate environment. Examples largely cover the risks associated with a decline in interest rates, for example through the use of interest rate derivatives. And the variability of costs in the declining segment of individual life insurance ensures future-proofing.

The investment yield of ASR, given the low interest rate environment, has decreased but still is above average and well above the average level of the guarantee of the portfolio. The company ensures that, in the search for adequate returns, the risks remain manageable in its portfolio. ASR maintains the balance between the risk level of its investments and its capital buffer. This can be demonstrated by, among other things, the development of the share of asset classes in the portfolio, see Figure 6.

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<sup>39</sup> AFM input round table meeting on the future of the insurance industry, 8 June 2015.

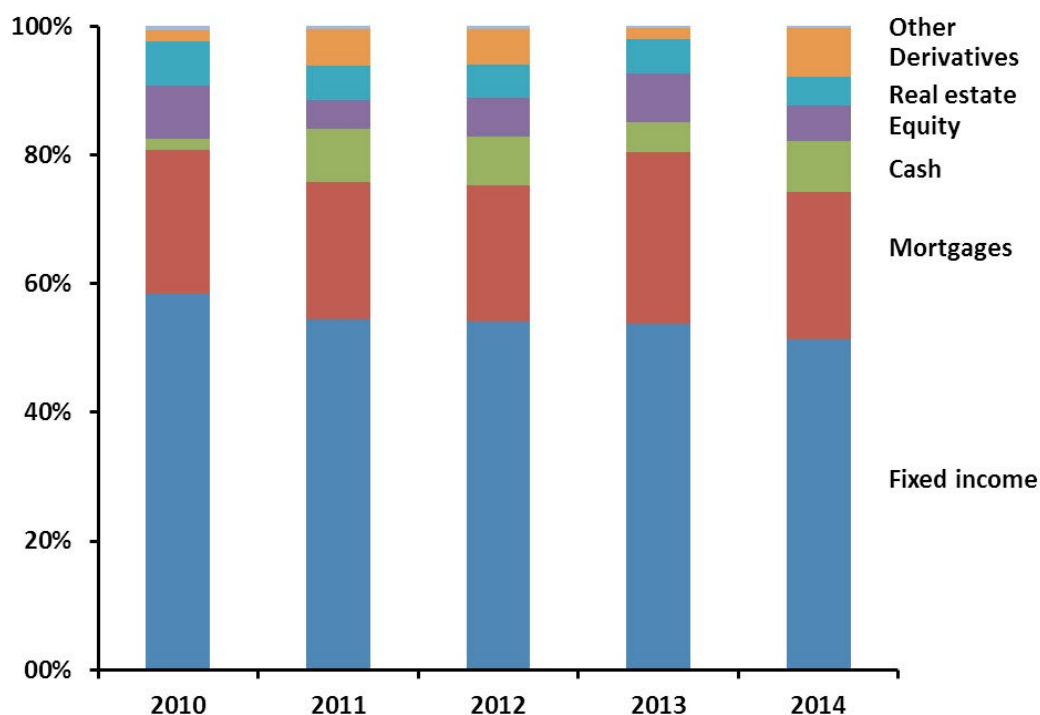


Figure 6: Development of investment portfolio.

As of the financial year 2011, ASR has paid dividends. Before it is decided to pay a dividend, it is assessed to what extent this is prudent.<sup>40</sup> The dividend that was paid out in 2014, approximately EUR 140 million, was supported by a robust underlying and normalized profit of around EUR 400 million and a solvency capital structure of the same magnitude in 2014. Approximately 40% of the net income<sup>41</sup> is paid out when calculating the amount of the dividend, provided there is sufficient solvency remaining.

Finally, the investment-linked insurance file plays an important role in the sector. Since 2008, ASR has made settlements with foundations and is on track regarding compliance with those agreements. The independent external auditor has concluded that the facilities are adequate for this dossier. ASR recognizes that the file is not closed, but no probability can be attached to any future claims costs. By comparison, Nationale Nederlanden has drawn a similar conclusion and described this in its prospectus and other manifestations of (potential) investors. In 2015 the European Court ruled on a claim against Nationale Nederlanden. This statement makes references to the national judicial system. The ruling does not lead to new insights on the likelihood of future costs.<sup>42</sup>

NLFI concludes that despite the concerns that have been expressed by DNB regarding the solvency of relatively weakly capitalized life insurers in different scenarios, there are sufficiently stable market conditions for ASR to carry out an

<sup>40</sup> The same applies to dividends from OTSOs to the Holding.

<sup>41</sup> After distribution of fees to other capital providers, such as hybrid loans issued by ASR.

<sup>42</sup> European Court Ruling, dated 29 April 2015, case C-51/13.

exit. Additionally, a potential IPO provides access to the stock market to raise additional core capital (equity), as Delta Lloyd demonstrated in March 2015 with a share issue of approximately EUR 340 million. This does not mean that an insurer is more stable when it is listed on the stock exchange, but that it has more options at its disposal to raise capital.



# Sale options, time frame and the market for IPOs

## Sale options

Both in the NLFI's advisory report of August 2013 and May 2014, it was indicated that ASR is deemed by various Dutch insurers to be an interesting company to consider merging with. Consolidation in the Dutch market was the starting point of the anticipated interest. In the advisory report of May 2014, NLFI indicated that, in the preceding period, several parties had shown interest in ASR as a whole, but this had not yet resulted in a concrete proposal. In the period that followed - particularly the last few months - NLFI and ASR have further probed the interest in the market as part of the research phase of the dual track sales process. Based on this research, NLFI and ASR have concluded that there are insufficient concrete and attractive proposals for private sales, with respect to the strategic development of ASR and the risk / return profile of the State as shareholder, to generate added value in the short term compared to the IPO scenario as a whole.

The option of a sale of ASR in parts is covered in the NLFI advisory report dated August 2013 and is rated as unattractive. NLFI sees no reason to change this position. This partly is related to the risk that the State retains ownership of the less attractive parts, which may prove unsaleable or which sale could take a very long period. The total value of ASR is probably<sup>43</sup> more than the sum of its parts because of the capital diversification benefits (Solvency II) which exists within the life segment (pensions and funeral), and between the life and non-life insurance segment. Operational separation of business units and activities is complex and entails additional costs, particularly if a split within the supervised life sector would be contemplated. If several parties possibly interested in the different parts of ASR were to form a consortium, then it may be possible to sell ASR to the consortium as a whole through a single contract. The process by which a DNO must be obtained from DNB by the consortium for buying and separating the businesses is complex. The related execution risk will inevitably become entwined in such a scenario in the assessment.

Based in part on the findings of the above analyses and the preliminary investigation, it has been determined that running a process for potentially interested parties, parallel to preparing for an IPO, is not deemed promising. Because of the disadvantages associated with such a demanding exercise for the Management of ASR, NLFI recommends giving priority to preparing for an IPO to ensure a successful implementation in the short term.

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<sup>43</sup> It is noted that this depends on the valuation by buyers of the whole and parts of.



The size of ASR, both in terms of assets and revenues and expected valuation, fits in with a listed environment. In terms of size ASR is comparable to the AEX listed insurer Delta Lloyd. A possible IPO allows ASR access to the stock market to raise additional core capital (equity), should this be necessary in certain circumstances. The company would therefore be less dependent on the State. The IPO of Nationale Nederlanden with foreign cornerstone investors, and the stock price increase after IPO shows that investors do have confidence in comparable shares. Delta Lloyd was also able to complete a successful capital emission earlier this year, partly supported by Fubon, a Taiwanese party. In NLFI's opinion, an IPO is a very good and effective exit option for ASR.

The preparation of the IPO will be aimed at being ready for the implementation of an IPO in the first half of 2016 - depending amongst other things on market conditions.

If, however, an interest for a private sale is expressed during this preparation period, NLFI and ASR will deal with this in an orderly and appropriate manner. Any interest will be assessed on, among others, financial economic aspects for the State (taking into account the risk / return profile of the State as shareholder) and also with respect to the strategic development of ASR. The inherent execution risks of a private sale (including the application for declaration of no objection to the relevant regulator(s)) will also have to be taken into account. It should also be considered whether and to what extent entertaining an expression of interest could potentially harm (the preparation of) an IPO.

With the potential evaluation of private interest, NLFI's preference to receive cash for any sale will be taken into account. If another form of consideration would offer distinct advantages (such as liquid listed shares), this may be considered. There is also the ambition to provide as little as possible, out of the ordinary,<sup>44</sup> warranties and indemnities. Any guarantee or warranty relating to the investment insurance file is not an issue.

## Sale time frame

You and your predecessors have indicated since the nationalisation of ASR, as part of the rescue operation of ABN AMRO and Fortis Bank, in October 2008 that the interim nature of the investments, which were made in the interests of securing the stability of the financial sector, has always been a priority; a return to the private sector was and is the cabinet's intention.<sup>45</sup> This also applies to ASR. The sale of ABN AMRO commenced as per November 20th 2015.

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<sup>44</sup> The usual guarantees shown on guarantees of NLFI's competence to enter into the purchase agreement and having a valid title for NLFI to transfer the shares, as well as guarantees regarding the ownership of ASR, directly or indirectly, of the shares in ASR group companies.

<sup>45</sup> Parliamentary paper: Tweede Kamer der Staten Generaal, vergaderjaar 2010-2011, hoofddossier 28165, nr. 117 (House of Representative, session 2011-2012, main dossier 31789, no. 41).

Readiness for an IPO of ASR will externally be validated by coordinating banks and has already been validated by an external advisor. To the extent required, DNB will be requested to provide a DNO for the IPO,<sup>46</sup> and AFM will be requested to approve the listing. In practice, this process takes a few months. If this route / these projects are positively completed and the stability of the sector and the absorptive capacity of the market remain well, then, in the opinion of NLFI, an IPO can take place during the first half of 2016. Should any pertinent changes to this situation occur in the coming period, the IPO can be put “on hold”.

NLFI recommends that you give NLFI a mandate to carry out all preparatory actions relating to a sales process of ASR, with the focus on the short term achievement of a successful implementation of an IPO.

Upon agreement from you and the House of Representatives, NLFI and ASR will continue all preparatory actions, together with accompanying banks, so that an IPO can take place in the first half of 2016. This, however, does not imply that the sale will necessarily take place in early 2016, or prior to June 2016, but it can also take place later depending on possible internal (ASR) and external (market) developments. In this preparatory phase, steps will be taken<sup>47</sup> which can only be stopped for good reasons,

Just as interaction with the timing of the IPO of Nationale Nederlanden was relevant in 2014, the interaction with the timing of the IPO of ABN AMRO is of interest. As the sale of ABN AMRO has commenced by way of an IPO and a sale of ASR commencing during the first half of 2016 earliest, there is sufficient time between both processes. This offers sufficient time for the absorption in the market and the public decision making process. NLFI will also consider competing transactions with other parties in the exact timing. This could include further tranches of Nationale Nederlanden and ABN AMRO coming to market, a possible share issuance of Delta Lloyd, as well as potential IPOs in neighbouring countries such as Ethias and Belfius in Belgium.

## The market for IPOs

To find enough investors to buy ASR shares at a good price requires sufficient absorptive capacity of the market is needed. The actual, concrete investor interest will only become apparent during the last weeks before the IPO. There are some indicators according to which a pre-assessment can be made as to whether there is interest in the shares.

Figure 7 shows how many IPOs of more than EUR 100 million have taken place in Europe since 2007. Since late 2013, the number of completed IPOs has increased and

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<sup>46</sup> Officially, only if one or more parties jointly acquire more than 10% control.

<sup>47</sup> including hiring investment banks to assist in the IPO, writing a prospectus for which the approval of the AFM is required, etc.

has returned to the level of before 2008. Table 1 shows the IPOs in the Netherlands since January 2014.

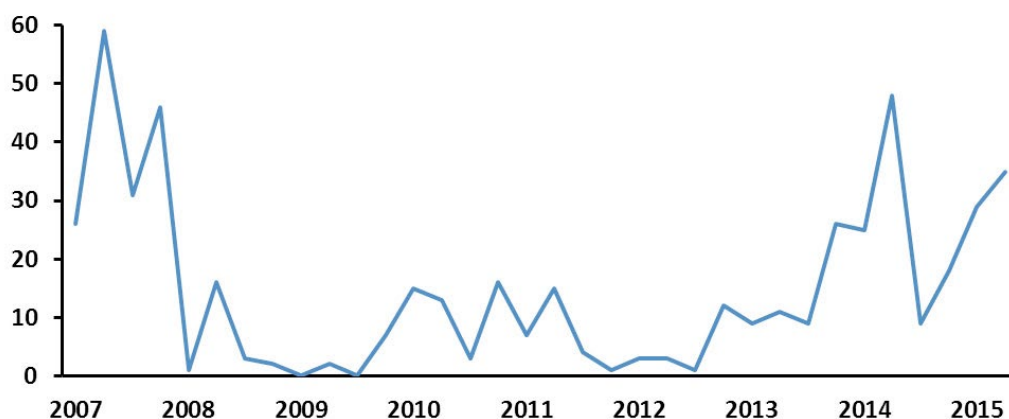


Figure 7: Number of European IPOs (> EUR 100 million) since 2007.

in times of low volatility, capital market instruments can be positioned relatively well. When volatility is high, investors are less willing to invest in capital market instruments. Since 2013, the volatility is at such a low level that it is favourable for IPOs.

Company	Date of IPO	IPO size	Market capitalisation at IPO	Market capitalisation 19 Nov 2015
Altice	Jan 2014	EUR 1.5 bn	EUR 5.7 bn	EUR 15,5 mlrd
Euronext	June 2014	EUR 0.85 bn	EUR 1.4 bn	EUR 3,2 mlrd
IMCD	June 2014	EUR 0.53 bn	EUR 1.1 bn	EUR 1,8 mlrd
Nationale Nederlanden	July 2014	EUR 1.8 bn	EUR 7.0 bn	EUR 10,8 mlrd
Bols	Feb 2015	EUR 147 m	EUR 195 m	EUR 260 mln
Grandvision	Feb 2015	EUR 1.1 bn	EUR 4.9 bn	EUR 6,5 mlrd
Refresco	March 2015	EUR 0.56 bn	EUR 1.2 bn	EUR 1,2 mlrd
Flowtraders	July 2015	EUR 0.60 bn	EUR 1.4 bn	EUR 1,9 mlrd
Intertrust	Oct 2015	EUR 0.5 bn	EUR 1.3 bn	EUR 1,5 mlrd
ABN AMRO <sup>48</sup>	Nov 2015	EUR 3,3 bn	EUR 16,7 bn	

Table 1: IPOs in the Netherlands in 2014 and 2015.

Since late 2015, investors have become more interested in investing in shares, including the shares of financial institutions. Investor interest in IPOs of European insurers are good examples of this, see Table 2.

<sup>48</sup> Based on the share price at allocation of November 20th 2015 and excluding greenshoe.

Company	Date of IPO	IPO size	Market capitalisation at IPO	Market capitalisation 19 Nov 2015
Talanx	Oct 2012	EUR 0.5 bn	EUR 4.6 bn	EUR 7.3 bn
Direct Line	Oct 2012	EUR 1.1 bn	EUR 3.3 bn	EUR 8.0 bn
esure Group	March 2013	EUR 0.8 bn	EUR 1.4 bn	EUR 1.5 bn
Partnership Assu.	June 2013	EUR 0.7 bn	EUR 1.8 bn	EUR 0.8 bn
Just Retirement	Nov 2013	EUR 0.4 bn	EUR 1.3 bn	EUR 1.3 bn
Brit	March 2014	EUR 0.3 bn	EUR 1.2 bn	n/a
Saga	May 2014	EUR 0.7 bn	EUR 2.5 bn	EUR 3.3 bn
Coface	June 2014	EUR 1.0 bn	EUR 1.6 bn	EUR 1.4 bn
Nationale Nederlanden	July 2014	EUR 1.8 bn	EUR 7.0 bn	EUR 10.8 bn
Hastings Group	Oct 2015	EUR 0.3 bn	EUR 1.5 bn	EUR 1.6 bn

Table 2: IPOs of insurers in Western Europe since 2012.

During and after any IPO, it is expected that ASR will expressly also be compared with Nationale Nederlanden and Delta Lloyd.<sup>49</sup> The successful IPO of Nationale Nederlanden, with cornerstone investors from abroad, and the subsequent price increase is valuable for a possible IPO of ASR. Moreover, since the IPO in June 2014, NN has completed several successful sequel placements and ING Group has reduced its stake in NN to approximately 25% per 1 October 2015. The interest of Fubon, a foreign party, with the share issue by Delta Lloyd without significant discount compared to the share price demonstrates that the market is interested in insurers like ASR.

Awareness among investors worldwide is very important for an IPO, because investor interest from outside the Netherlands is necessary for optimal valuation and sale proceeds. Here, ASR will pay specific attention to the preparations for an IPO. At the IPO of Delta Lloyd in 2009, 22% of the issued shares were allocated to Dutch investors (private and institutional). At the IPO of Nationale Nederlanden in 2014, 6% of the issued shares were allocated to Dutch investors. Therefore 80% - 90% of the shares to be issued will most likely be placed with investors from outside the Netherlands in the event of an IPO of ASR. In September 2014 and September 2015, ASR successfully issued loans with a value totalling EUR 1 billion and has thereby taken steps toward strengthening the interaction and familiarity in the (inter) national capital markets.

<sup>49</sup> Delta Lloyd was brought to the stock exchange by former owner Aviva plc in November 2009. The IPO volume totalled EUR 1.1 billion with a market value at the IPO of EUR 2.6 billion. On 1 October 2015 the market value of Delta Lloyd was EUR 1.6 billion.



## Development of an IPO

With regard to the sales process, the NLFI sells the existing shares and issued shares on behalf of the State and receives the proceeds on behalf of the State. This also means, in line with previous recommendations by NLFI, that NLFI has a leading and guiding role in the sales process.

DNB's DNO is not required prior to an IPO of ASR, unless investors acquire an interest (control) of 10% (alone or combined if acting jointly) or more in ASR. For now NLFI assumes that no party/parties, alone or combined, will acquire more than 10% of the shares in an IPO.

An IPO process involves the sale of existing and issued shares by NLFI, on behalf of the State. It is not in line with expectations that new shares will be issued at IPO given that ASR's solvency is very solid. NLFI recommends that the shares of ASR should be listed on the regulated market of Euronext Amsterdam. This is in line with the strong bond that the insurer has with the Netherlands. All large Dutch listed companies are listed on Euronext. With a listing on Euronext, shares are transferable to all investors.

With an IPO, the entire shareholding is not sold immediately. For a company the size of ASR, shares are typically sold in multiple placements. The exact size of the IPO will be determined immediately prior thereto. This will depend on the demand from investors for the shares, the expected price and the minimum volume needed to be generated (i.e. the minimum *free float* of freely tradeable shares which ensures sufficient liquidity). When determining the initial size, account should be taken of the benefits of being included in leading indices (such as Euronext AEX and AMX<sup>50</sup>) after an IPO after a relatively short time, so that investors who follow the share indices include it in their portfolio.<sup>51</sup>

Given that the State wants to maintain sufficient ownership share to benefit from possible future gains, the first tranche (including *greenshoe*<sup>52</sup>) will cover a minority (approximately 30% to 50%). The size of the interest being sold in IPO partly depends on the valuation at IPO.<sup>53</sup> The aforementioned size and *greenshoe* ensures

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<sup>50</sup> Inclusion in the AEX is probably the first review date once ASR has been recorded at least forty trading days. Inclusion in the AEX may possibly be achieved at a later stage.

<sup>51</sup> One of the recommendations in the report *IPOs and Book Building in Future HM Government Primary Share Disposals* dated 16 December 2014 which came into being under the leadership of Lord Myners following the privatisation of Royal Mail, is to focus on index investors as the most reliable long-term investors.

<sup>52</sup> Shares that the banking syndicate has made available to the market place in a relatively short period after an IPO in order to mitigate the possible adverse effect of exchange rate movements.

<sup>53</sup> NLFI does not exclude that under advantageous valuations it may appear appealing to increase the interest being sold at IPO to a small majority of the shares (50% to 60%).

sufficient liquidity of the share on the one hand, while a sufficient interest remains to later profit from selling at any price and increased interim dividend payments on the other hand. The remaining shares will be sold in stages in subsequent years.

At the end of the bookbuilding process,<sup>54</sup> immediately prior to the IPO, the final introductory price of the ASR share is determined. Immediately afterwards, the allocation of ASR shares is determined under registered investors. Basically all interested investors will be given the opportunity to subscribe to shares in the IPO of ASR. The expected and perceived investment style of investors will be taken into account for the allocation of the shares. An optimal mix between the various investment styles will be sought, including long term investors. The actual IPO and first trade will take place after the allocation.

NLFI advises to use<sup>55</sup> the option of a so-called *greenshoe* (or allocation option) with the IPO of ASR, and thus join the market practice.<sup>56</sup> The *greenshoe* is a tool used to stabilise the share price immediately after the IPO and to reduce short-term volatility of a stock after an IPO.<sup>57</sup>

It is common for a selling shareholder to agree to a lock-up<sup>58</sup> period after the IPO, during which time it may not sell shares. This gives investors certainty about the number of shares that can be traded, and they are temporarily protected against an oversupply of shares. The price pressure can thus be reduced. European IPOs generally have a lock-up period of 180 days and NLFI recommends the same.

NLFI recommends, during the preparation of an IPO, to actively explore the possibilities of making use of one or more “cornerstone investors”.<sup>59</sup> Cornerstone investors have often been used in IPOs and are approached early in the process of preparing an IPO to determine if they wish to invest in a company. Cornerstone investors are not crucial to the success of an IPO, but they may generate a positive signal. Any adverse effects, such as reduction of the liquidity of the stock, should also be taken into account. The possibility to grant cornerstone investors additional control must be explicitly weighed against the added value of attracting such an investor. Cornerstone investors have been used quite recently and successfully in several large European IPOs, including AA Plc., Euronext and Nationale Nederlanden (in 2014).

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<sup>54</sup> During the bookbuilding period, investors are invited to subscribe by specifying the number of shares and the price. The ‘book’ is built up on this basis.

<sup>55</sup> In an IPO of 40% and a greenshoe of 15% of the tranche, the first tranche should total 46%.

<sup>56</sup> This will be done in accordance with Regulation (EC) No 2273/2003 of the European Commission of December 2003, implementing Directive 2003/6 /EC of the European Parliament and the Council.

<sup>57</sup> This will be done in conformity with the Regulation (EC) no. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council, insofar as it applies to exemption for buy-back programmes and stabilisation of financial instruments.

<sup>58</sup> In a lock-up period, the selling shareholder is prohibited from selling additional shares for a certain period (180 days). In some cases, this may be deviated from.

<sup>59</sup> Investors who already commit publicly to take a particular interest prior to an IPO. Public support for the introduction can be valuable for attracting interest in shares of other investors. These investors therefore usually receive a guaranteed allocation of the shares they want, at the issue price.

NLFI recommends, during the preparations for a possible IPO, to also examine whether the use of warrants<sup>60</sup> may contribute to achieving the targets for a sale. This could, for example, include a structure as used by Nationale Nederlanden and its shareholder, ING. Nationale Nederlanden issued warrants to ING prior to the IPO, giving the selling shareholder the right to receive up to 10% (of shares outstanding during the introduction) in new shares at a rate of 200% of the price at the IPO, for a period of ten years. This construction offers the advantage that it can profit from any price increase of Nationale Nederlanden. A disadvantage could be that the State could, in time, see its shareholding in ASR increase, with the execution of the warrant, which is not the primary objective of the State. There are various alternatives which accompany the use of warrants. The advantages and disadvantages of the use of the possibilities will be investigated by NLFI in preparation for a possible IPO, together with the appointed (financial) advisors.

With regard to an IPO, adjustments are normally made to remuneration. Although investors generally welcome adjustment of the remuneration - the alignment of the remuneration incentives with the objectives of investors - NLFI and ASR recommend not implementing any adjustments. In 2014, ahead of the introduction of the Remuneration Policies of Financial Undertakings (Wbfo), ASR eliminated variable remuneration for the entire workforce.<sup>61</sup> It is not the desire for this to be revived again after this IPO. Part of the Wbfo also concerns the prohibition of ASR to introduce variable remunerations for the members of the Board of Directors until the entire interest is sold.

## Costs of an IPO

It is the wish of NLFI, which is shared by you and the House of Representatives, to keep the costs of a sale as low as possible. This mainly concerns the costs of an IPO and this may not compromise the quality of the advisors involved or the execution of the process. If an IPO occurs, there are various advisors who are hired by various parties. NLFI considers it an important task to limit the costs of the advisors hired by NLFI.

Part of NLFI's costs are included in the regular NLFI budget. Costs incurred by NLFI while managing the ASR shareholding are included in the budget and the annual accounts of NLFI. The Minister of Finance shall reimburse these costs to NLFI and pass them on to ASR.<sup>62</sup> The cost of supporting banks in an IPO of ASR are not included in NLFI's budget. The basic principle is that such costs of sale will be deducted from the sale proceeds of shares. These costs are then deducted from the sale proceeds. The net proceeds by NLFI are passed on to the Ministry of Finance.

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<sup>60</sup> A warrant gives the holder the right to buy (prior to) or on a predetermined date in the future, a certain number of shares (call warrant) at a predetermined price.

<sup>61</sup> Except for a portion of the CLA field service.

<sup>62</sup> In accordance with Article 7 of the Trust Office Foundation Management Financial Institutions Act (NLFI Act). Also see the Decree of 29 August 2011, containing rules on cost allocation of the Trust Office Foundation for the Management of Financial Institutions (NLFI).



## Advisors on behalf of a selling shareholder

With regard to costs, it is important to distinguish between costs borne by the selling shareholder (NLFI / State) and costs borne by the company (ASR). Before discussing the possibilities of reducing costs as much as possible, we will first look at the different advisors used by the selling shareholder in an IPO. Other stakeholders, such as the management board, the Supervisory Board and the works council of ASR may hire advisors for their own account.

Following a competitive procurement process, NLFI has hired financial and legal advisors to advise and assist in the sale of ASR. These advisors will support NLFI by specifying respectively financial and legal advice on relevant issues concerning the sale, including the process for the appointment of banks that will accompany any IPO.

Finally, a syndicate of accompanying banks is contracted within the framework of the possible IPO. The tasks of these banks is to guide the entire process, maintain contacts with potential investors, guide the management presentations, conduct due diligence, assist in the preparation of the prospectus, collect and analyse subscriptions from investors and advise on the distribution of shares and investors and the exact price at which the shares must be offered. They also play an important role in trading after the IPO, for example by carrying out (equity) research and ensuring sufficient liquidity.

The fee for the investment banks is usually a percentage of the proceeds of an IPO. NLFI has analysed the fees that investment banks have been paid in European privatisations (by means of an IPO) since 2006 when the size of the offering IPO exceeds EUR 100 million. The average fee for the first tranche was 1.7% and the median 1.3% of sales proceeds. In recent privatisations, the average fee was approximately 1%. NLFI strives to ensure that the fee for the IPO will be less than 1%. This includes a small percentage that investment banks often take into account as compensation for the so-called "underwriting commitment". This is a commitment with which investment banks actually guarantee that investors who are allocated shares will also pay for the shares.

Lower costs will be associated with the subsequent tranches in the coming years, because no laborious IPO process is needed. Investors are already familiar with the share and there is usually no need to write any prospectus (depending on the precise transaction structure).

NLFI has gone through a tendering process for the composition of the panel of banks. NLFI can ask the respective banks for advice on a range of topics related to capital markets (equity) NLFI's need for advice may, in principle, cover all NLFI holdings. To achieve a syndicate of banks that can support the IPO of ASR, NLFI will organize a selection process within the generic NLFI panel based on quantitative and qualitative criteria. The company also has a role here, because it will have to work

with the relevant banks. In order not to weaken the negotiating position of NLFI with respect to banks, this opinion does not contain a detailed negotiating strategy and position. The selected syndicate of banks also hire a legal advisor in order to ensure compliance with all laws and regulations and to conduct due diligence investigation. This is also of great importance for NLFI and ASR.

## Cost minimisation

NLFI assessed whether a non-traditional IPO process can be used from some elements in order to save costs. We looked at options that are possible and acceptable for an IPO of a company such as ASR. The process must be controllable, and the risk of failure should be minimised. When replying to questions of the House of Representatives on this topic, you indicated<sup>63</sup> that the alternatives that would be presented during the round table of 30 October 2013 would result in significantly lower proceeds for the State and / or limited access to capital markets for ASR. This is desirable and, for this reason, the alternatives in question are not discussed in this report

NLFI investigated the following alternatives:

1. *Agreement on a fixed fee rather than a percentage of the proceeds.*

The advantage of a fixed fee is that it gives clarity in advance about the amount of costs. This means that, if there is a smaller initial tranche than initially planned, the fixed fee may be high if recalculated as a percentage. The advantage of a percentage of the corresponding amount follows the size and price of each tranche.<sup>64</sup> It motivates banks to achieve a good price. In negotiations with the banks, NLFI will assess which form of compensation, or a combination of both forms, will ultimately lead to the most optimal.

2. *Limitation of the supervision by investment banks by having certain activities carried out by the Ministry of Finance.*

The Ministry of Finance has examined the extent to which the Agency may play a role in an IPO. NLFI advises not to use the facilities of the Agency.

3. *An auction of the shares, also called a "Dutch Auction", such as in the case of Google.*

A Dutch Auction can work well with a brand that is so well known and unique as Google (there are few listed companies that have similar activities, market share and brand awareness in which investors can invest). Investment banks are not as necessary to attract investors to the share, since the share is already very familiar. At the time of the Google IPO, Google was known as a brand, but at least equally

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<sup>63</sup> Parliamentary paper dated 25 November 2013, reference FIN/2013/U1101.

<sup>64</sup> Calculation example: if a first tranche consists of 50 million shares priced EUR 10 each and the investment banks charge a fee of 1%, then the cost will be EUR 5 million. If the shares only price EUR 8 each, then the cost will only be EUR 4 million.

important was the fact that it was also known as a company with (exceptional) growth potential. Thus the share practically sold itself. In Europe there are very many listed insurers, and investors choose to invest in only a few of them. NLFI believes that a Dutch Auction is not suitable for a company like ASR. NLFI also doubts whether there will be any cost advantage with respect to a 'regular' IPO.

More generally, it can be stated that all selling shareholders would benefit from achieving an IPO at the best possible terms and lowest possible cost. Professional shareholders regularly sell participating interests and make use of an IPO. To date, no alternatives have been developed that substantially reduce the cost of an IPO, without compromising on quality.



# Governance after initiating sale by means of an IPO

## Introduction

In the parliamentary debate on the sales opportunities for ASR, a motion from MP Nijboer on considering a form of protection for the company ASR due to the public (policyholders) interest that ASR serves, was adopted. NLFI proposes, in deviation from the advice of August 2013, to also provide the company ASR with an additional form of protection. These measures include the introduction of a statutory required qualified majority in the ASR shareholders meeting for important decisions, and the establishment of a 'protection foundation' ('continuity foundation'). Both topics are discussed in this chapter. This also applies to the other topics which you have promised the House of Representatives to investigate further. This includes the commitment to "re-explore whether offering loyalty dividends will generate sufficient interest to achieve good yields and whether this could possibly harm investor interest". The question of how to contribute to the creation of a stable shareholder base with a focus on the long term will also be discussed more extensively.

## Public interest

In the debate in the House of Representatives on ABN AMRO, you stressed that the public interests associated with financial institutions are secured in laws and regulations. This also applies to a Dutch insurer such as ASR. Since this public interest has already been adequately secured - as evidenced by the legislation on financial supervision and the ensuing supervision - it was your opinion that there was no reason to take additional measures specifically for ABN AMRO. This also applies to ASR in NLFI's opinion.

In addition to ensuring public interest in financial regulatory legislation, Dutch company law also provides a certain degree of assurance. Case law and jurisprudence suggests that a shareholder of a listed company that has operations in a sector identified by the government as "vital to the preservation of social life"<sup>65</sup> is obliged to always weigh public interest against other interests. For such companies of public interest, corporate interest is partly determined by public interest.<sup>66</sup>

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<sup>65</sup> These vital sectors are mentioned, among others, in the report "Tussen naïviteit en paranoia: Nationale veiligheidsbelangen bij buitenlandse investeringen in vitale sectoren" ((Between naiveté and paranoia: National security interests in foreign investment in vital sectors) by the Working Group on Economic Security (Attached to Kamerstukken (Parliamentary Papers) II 2013/14, 30 821, no. 22). In this report (p. 14 and 22), the financial sector (including banks, investment companies and insurance companies) are identified as vital.

<sup>66</sup> Public interest from the perspective of the shareholder, R. Abma, WPNR, No. 7048, 31 January 2015.

This means that if a private sale of ASR to a party is considered or if a public offer is made for the shares of ASR, NLFI is also obliged, as a shareholder, to take account of public interest in its recommendations to the Minister on the possible decision to proceed or not to proceed with the sale. Under the NLFI Act, NLFI should also take into account the sustainability of the future situation, the continuity of the company, the stability of the financial system and fair competition on the financial markets. That a shareholder of an insurance company with the size and scope of products and clients such as ASR is obliged to weigh up the public interest in its decision-making process, also applies to any Continuity Foundation of ASR. After exercising the call option as provided in the proposed protection structure, this foundation in fact acquires the controlling interest in ASR as (major) shareholder. See below for a more detailed explanation of the proposed restrictions and the Continuity Foundation.

## Further details on governance

If the sale of ASR is initiated by an IPO, new shareholders will then be involved in the company from that moment onward. This means that the interest of the State and the control of NLFI in ASR will decrease in favour of the newly involved shareholders. NLFI recommends that several measures should be taken in order to protect the remaining financial interest of the State and of the company against hostile takeovers or other undesirable influence of activist shareholders:

- the introduction of a statutory required qualified majority in the shareholders meeting for important decisions; and
- the establishment of an independent foundation (Continuity Foundation ASR) to which a call option is granted to the holding of preference shares.

These measures will largely be reflected in the articles of association of ASR. NLFI recommends that these measures will apply from the moment the sale of ASR is commenced. This also applies to the statutory anchoring of the social role of ASR in line with current social trends, as indicated in the previous report. NLFI has enlisted the help of financial and legal advisors and interest organisations on different (sub) topics. In preparing the new articles of association, the usual corporate relationships for financial institutions and best practices for good governance<sup>67</sup> were adopted as the starting point. This section deals with the parts of the recommended future governance of ASR that constitute an elaboration of the described measures.

## Qualified majority (protecting remaining interest of the State)

Previously, NLFI advised you to protect the remaining financial interest of the State in ASR in case of a possible IPO, by stating in the articles of association that a qualified majority in the shareholder meeting is required for decisions on a number

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<sup>67</sup> Netherlands Corporate Governance Code.

of important issues. This is an acceptable measure for investors and avoids the influence that other protective structures<sup>68</sup> can have on the valuation of a company. NLFI recommends adopting a qualified majority customary on the market<sup>69</sup> that also appears in the law as a permitted majority.<sup>70</sup> This is a two-thirds majority of the votes cast representing more than half of the issued capital. As a result, NLFI's control with regard to stipulated important subjects is still effective as long as NLFI maintains a shareholding in ASR that is greater than one third of the issued capital. This means that, as long NLFI holds an interest in ASR of more than a third of the issued share capital of the qualified majority acts as a de facto veto right for NLFI. NLFI could make use of this if, for example, activist shareholders were successful in a campaign against ASR to move the headquarters of the insurer abroad or attempting to bring about a de-merger

NLFI recommends that there is as little deviation as possible from the usual corporate relationships when dealing with a qualified majority in the shareholder meeting. For this reason, NLFI advises that qualified majority voting should be only introduced for subjects that are most essential for the company and that may have the greatest impact on the residual financial interest of the State: important changes in statutory name, statutory registered office and/ or statutory purpose and other important changes in the identity or nature as defined in Article 2:107a of the Netherlands Civil Code and dissolution of the company. In addition to article 2:107a Civil Code and the limit specified therein for approval by shareholders of (dis)investments with a value greater than one-third of the total assets, NLFI suggests that, given the relatively large size of ASR (approx. EUR 50 billion by end of 2014) assets, use is made of the significantly lower boundary. NLFI recommends to determine this limit at a specified percentage of (shareholder) equity, possibly complemented with a specified percentage seizure or impact on the Solvency II ratio of ASR Netherlands and / or its supervised subsidiaries.<sup>71</sup>

NLFI believes that this measure will sufficiently protect the remaining financial interest of the State, while the negative impact on the value of the remaining interest of the State remains as limited as possible. The measure suggested here falls within the boundaries established by Dutch company law and complies with European legal regulations.

## Embedding the social role

With regard to embedding the social role of ASR in the bank's articles of association, NLFI has already indicated in the advisory sales report of Augustus 2013 that this would be a desirable addition to the governance of the bank. NLFI recommends that,

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<sup>68</sup> Such as priority shares. These are ordinary shares to which much additional control can be assigned.

<sup>69</sup> For example: ING Group N.V., AKZO Nobel N.V. and Koninklijke Philips N.V.

<sup>70</sup> Articles 2:133, paragraph 2 and 134, paragraph 2 of the Netherlands Civil Code (Burgerlijk Wetboek).

<sup>71</sup> The current limit for approval by the shareholders is a (dis) investment with a value greater than EUR 100 million. The newly determined border will be substantially higher than the current.

in the new articles of association of ASR, the interests of the company are explicitly stipulated to include the interests of customers (primarily policyholders),<sup>72</sup> and explicitly designate ASR as one of the largest Dutch insurers,<sup>73</sup> should also give consideration to society as a whole. It is advisable to embed these statements in the articles of association because the latter form the foundation of a company. They guarantee that the Management and Supervisory Board of ASR act in the interests of the company when executing their corporate duties, which also includes associated partial interests, such as the interests of customers and society as a whole. This further connects to relevant case law<sup>74</sup> and the general duty of care for financial institutions as specified in the Financial Supervision Act (*Wet op het Financieel Toezicht* (Wft)).

## Protecting the continuity of the company

At present, the less stringent form, mitigated structure regime, (Article 2:155a Civil Code) applies to ASR. If the sale of ASR is initiated through an IPO, the full structure regime will take effect. This means that the authority required for appointing and dismissing members of the Management Board shifts from the general meeting of shareholders to the Supervisory Board. As such, the full structure regime indirectly offers a de facto form of protection against shareholders with 'undesirable' intentions because these shareholders are unable to appoint members of the Management Board. This protection is not complete because the shareholder meeting can terminate the confidence in the entire Supervisory Board.

An IPO will introduce new shareholders to ASR. From that point on, ASR can no longer avoid having to face undesirable shareholder activism that could harm the continuity of ASR or an undesirable takeover bid. As long as NLFI has an interest in ASR that is greater than one-third of the issued capital, NLFI is in a position, as a shareholder, to protect the company from activist shareholders who, for instance, start a campaign against ASR in order to implement certain undesirable changes in the strategy, or to defend the bank against a party considering an undesirable takeover bid for ASR. Once NLFI's interest is reduced to below one third, NLFI will no longer be in this position.

ASR has indicated that, with an IPO, the protection of the interests of all stakeholders is of great importance. NLFI recommends a Continuity Foundation based on preference shares as a protective mechanism. On this foundation a call option granted by IPO for the holding of preference shares with voting rights by purchasing 100% of the shares minus one ASR share. By executing the call option, the foundation may, in

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<sup>72</sup> The relevant provision in the articles of association are: "The interest of the company includes the interests of its affiliated company, including but not limited to the legitimate interests of customers (policy holders), employees, the shareholders and the community in which the company carries out its activities.

<sup>73</sup> In terms of gross premium income and number of policyholders, ASR has a leading position in many segments of the insurance industry.

<sup>74</sup> NJ 2014/167, with annotation by P. van Schilfgaarde and Article 4:24a Act.



situations that threaten the continuity of an insurer, acquire temporary control in ASR in order to fend off unwanted (activist) shareholders.

In the discussion in the House of Representatives of the 'plans of the future' letter on ASR, in September 2013, a Parliamentary majority requested that you, as per the adopted motion, take a protective structure for ASR into consideration. A number of aspects play a role for NLFI to set up a Continuity Foundation in this advisory report, with a possible IPO. First, the role that a (large) insurer such as ASR plays in the Dutch economy and society, is considerable. The insurance offered to facilitate economic exchanges and insurers as ASR play an important role in capacity building of individuals. Insurance is seen as part of a critical sector<sup>75</sup> in which investment in the sector should be thoroughly assessed and cannot simply be allowed. The Commission Insurers<sup>76</sup> acknowledge that the insurance sector plays an important role in the economy. According to the commission, the long-term investment horizon of insurers makes insurers highly suitable to provide the economy with a stable funding stream. The annual risk report of the CPB<sup>77</sup> also describes the core function that the insurance industry has in the economy as a provider of wealth accumulation products and long-term investor.

Secondly, the proposed (temporary) protective structure is not in the way of any consolidation in the Dutch insurance market. The Continuity Foundation provides continuity of the company and offers its stakeholders time to properly reflect on an unwanted bid (or with other unwanted shareholder activism). For shareholders, the reflection period may actually increase the value, which is also one of the findings of the Central Planning.<sup>78</sup> A party that is considering a bid will take into account the interests of all stakeholders, in the knowledge that the board of the Continuity Foundation does the same.

Thirdly, a level playing field is created. All listed Dutch insurers (AEGON, Delta Lloyd, Nationale Nederlanden) use some form of protection that is similar to what is proposed for ASR. AEGON operates a slightly different form of protection with the AEGON Foundation holding a separate share class which is not market practice. If ASR would be listed on the stock exchange without any form of protection, ASR would then be an easier prey for (undesired) shareholder activism or bidding. NLFI strives for a sustainable exit for investments under its management. NLFI therefore takes into account the impact on the relevant stakeholders, even after sales. NLFI deems sector comparable protection as reasonable. If it links up with what is customary in the market, NLFI does not expect any negative impact from the protection structure of the valuation at an IPO.

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<sup>75</sup> Between naiveté and paranoia: National security interests with foreign investment in key sectors; the Working Group on Economic Security (2013/14)

<sup>76</sup> Commission Insurers report 'New life for insurers', March 5, 2015.

<sup>77</sup> CPB Risk Reporting for the Financial Markets in 2015 to the House of Representatives, 5 June 2015.

<sup>78</sup> See previous footnote.

NLFI considers that there is no reason to use the form of protection that has been chosen at ABN AMRO, namely certification. Since protection through a Continuity Foundation is common practice in the market and provides sufficient protection in the company's opinion, this is preferable. Also in relation to the ASR relevant supervisors and the necessary DNO upon exercising a call option, the choice falls on a Continuity Foundation.

#### *Continuity Foundation as protective measure*

The use of a Continuity Foundation<sup>79</sup> is not unusual for most Dutch listed companies. A large part of the Dutch listed companies, including financial institutions such as insurance companies, use this protection structure.<sup>80</sup> The use of protective measures is also not specifically reserved for Dutch companies. Protective instruments are often also used in the countries surrounding the Netherlands. In more distant countries, protective constructions are also not unusual. For example, protective instruments such as *poison pills*<sup>81</sup> and *staggered boards*<sup>82</sup> are used in the United States of America. Not having a protection measure could therefore put ASR in a different position than other listed Dutch financial institutions, including insurance companies, which means that no level playing field would exist.

#### *Impact of a Continuity Foundation as a protective measure*

The House of Representatives has already asked questions about the extent to which a continuity foundation can serve the public interest in invoking the call option. In explanation NLFI makes the following observations: a Continuity Foundation serves to protect the company for which the foundation is established, not for the safeguarding of the public interest. The fact remains that, if the foundation as a shareholder of a major Dutch insurer is to make a consideration in the context of a decision, the company related public interest should also be involved as partial interest of the company.<sup>83</sup> The mandate of a Continuity Foundation is usually defined, in the articles of association of a protective foundation, as dealing with the interests of the Company, its affiliated companies and all those involved, including preventing the influences that could affect the continuity, independence or identity in contradiction with its interests, as much as possible. NLFI recommends formulating the mandate of the ASR Continuity Foundation in the same market conditions.

From previous discussions, the potential impact on the value of ASR shares was raised as a result of protective measures. The idea is that investors, when considering an investment in ASR, will take a possible consolidation in the Dutch insurance market

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<sup>79</sup> The foundation acquires continuity with the invocation of the call option preference shares and, from that time, is shareholder of ASR.

<sup>80</sup> ING Group, Delta Lloyd, Van Lanschot Bankiers, NN Group (Nationale Nederlanden) and Aegon also use a continuity foundation (or association) or similar.

<sup>81</sup> A 'poison pill' is a protection structure in which existing shareholders have the right, in case of an unwanted bid, to buy more shares in a new share issue at a predetermined discount, thus diluting the shareholding of the unwelcome bidder (which may not participate in the issue) and increasing the cost of an acquisition.

<sup>82</sup> A "staggered board" is composed of commissioners with different appointed periods (e.g. 1, 3 and 5 years), which means that the replacement of commissioners - and thus the recruiting of control over a company - is hampered by an activist shareholder.

<sup>83</sup> Public interest from the perspective of the shareholder, R. Abma, WPNR, November. 2014.

into account and the potential contribution that a takeover offer can entail for investors. However, the proposed construction possibly offers space to achieve a better transaction for all stakeholders in negotiations. Such a foundation does not prohibit consolidation in any way, but it offers temporary protection against transactions that could harm the company and its customers. Furthermore, all listed Dutch insurers have a similar protective structure (including newly listed NN) which maintains a level playing field.

In the past, there has also been discussion on the subject of the possible presence of a so-called 'Dutch discount' in association with the use of protective measures in the Netherlands. In more recent times, little reference has been made to this phenomenon and there is also hardly any evidence to support the existence of a discount of this type (this is not seen in the recent listing of NN).

#### *Moment of activation*

By activation, we mean the call option granted to the Continuity Foundation on which the foundation can effectively exercise the call option. At the start of an IPO of ASR, NLFİ recommends creating the Continuity Foundation, appointing directors and granting the foundation the call option to acquire the preferred shares. This is desirable because potential investors will be able to create a proper and reliable picture of (the establishment of) the protection structure, in advance. The foundation can only activate the call option without prior permission from NLFİ, if the remaining interest of NLFİ is less than or equal to one third of the issued share capital of ASR. Activation without prior consent would not be desirable because it can lead to the foundation acquiring the controlling interest while the State still has a substantial financial interest in ASR. NLFİ therefore recommends shaping the protection structure at ASR in such a way that the foundation can only proceed with activating the call option after prior approval from the minister and NLFİ, as long as the interest of the State is greater than one-third of the issued capital. NLFİ can also offer protection through its statutory requirement of a qualified majority for decisions on major changes in the identity or nature of ASR.

#### *Effectiveness (declaration of no objection DNB)*

The effectiveness of a protection foundation is partly determined by the required consent from DNB which can give uncertainty about the timely deployment of the instrument. If an ASR Continuity Foundation wants to exercise the call option in a threatening situation, the foundation must first apply for a DNO from DNB. With the invocation of the call option, the foundation does indeed obtain a qualified majority in a financial institution. The entire procedure for the DNO application may basically cover up to 62 days. This period may be extended by up to 30 working days if additional information is needed. The question is whether the threatening situation for which the continuity foundation wants to invoke the call option, has not been resolved by the time the DSO may have granted the DNO. In NLFİ's opinion, this risk is extremely limited based on the following analysis.

A threatening situation can occur in two ways. Either activist shareholders start a campaign against ASR with a view to establish a certain change in the strategy,

structure or management of the company by, or a party - often a shareholder of ASR with some existing significance - announces an undesirable public offer.

If an activist shareholder wants to put a strategic issue on the agenda<sup>84</sup> for discussion at the meeting of shareholders, the Board of Directors of ASR may rely on the statutory period of sixty days prior to the general meeting, which must be observed before submitting a request for placing a subject on the agenda. The Board of Directors may invoke<sup>85</sup> a response time of up to 180 days (refer to the section on the response time and rights of the Works Council in this chapter). The board may use this period for further deliberation and constructive consultation with the relevant activist shareholders. Meanwhile, the Continuity Foundation can - preferably as early as possible - apply for authorization for a qualified majority from the supervisor.

In case of a threatening unwanted takeover bid, it is also important that the continuity foundation applies for an approval for a qualified majority as soon as possible. In the time that this application process is running, the undesired bidder will also have to go through the process of a takeover bid.<sup>86</sup> In practice, such a procedure at an unwanted bid often takes more than ten weeks. Furthermore, the bidder must also obtain a declaration of no objection from the supervisor for the takeover / the aspired interest.

In NLFI's opinion, the foregoing means that the risk that the foundation cannot bid on its added value on time, is extremely limited.

#### *Function of the foundation*

The purpose of the issue of preferential shares to a Continuity Foundation is to potentially influence the controlling ratio in the shareholders meeting of the company to be protected temporarily and thus to protect the company against unwanted outside influences. By issuing preferential shares, a party that has announced a public offer is prevented from acquiring control of the company in question. By issuing preferential shares, the interest that the unwanted acquirer wants to gain, is reduced. To achieve this effect, it is usually arranged that the foundation must obtain - at most - 50% of the voting rights<sup>87</sup>. If the foundation acquires at least 30% of the voting rights in a financial institution, the mandatory bid pursuant to the Act applies in principle. This would require the foundation to make a public offer for the other shares in the company. This would naturally be undesirable. This is why the Act contains an exemption for protection foundations. A condition to qualify for this

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<sup>84</sup> Shareholders cannot force such subjects to a vote at a shareholder meeting. Only the Executive Board of a company possesses such a right of initiative.

<sup>85</sup> Best practice provision IV.4.4 in conjunction with II.1.9 of the Dutch Corporate Governance Code stipulates that shareholders must take a response time of 180 days into account when scheduling proposals that could change the company's strategy (for example, the resignation of the board or a vote of confidence in the SB). The Cryo-Save ruling of the Amsterdam Court of Appeal ("Enterprise Chamber") in September 2013 has ascribed this provision a high status, making it more or less a legal rule.

<sup>86</sup> The unwanted bidder must announce the offer, issue an update on the proposed offer (the '4-weeks notice'), apply for approval of the offer memorandum from the Netherlands Authority for the Financial Markets, followed by the publication of the offer document, after which the shareholders have a certain period of time to respond to the bid.

<sup>87</sup> Vennootschap & Onderneming, June 2008, no. 6.

is that the continuity foundation does not hold shares for more than two years. During this period, the Executive Board and the Supervisory Board can ascertain the intentions of the shareholder who wants to take over the company and consult with him about the policy that this acquiring party is going to carry. This period can also be used to consult with (fellow) shareholders and to explore alternatives.<sup>88</sup> The foundation may also choose to obtain only 29.9% of the voting rights, so that the mandatory bid is not applicable. In certain circumstances, this may be sufficient to send a signal to an activist shareholder who intends to dismiss the supervisory board, for instance, to appoint its own people. This depends, among other things, on the size of the importance of the activist shareholder.

#### *Governance of the foundation*

The Act provides that a Continuity Foundation must be independent from the target company, in this case, ASR, to qualify for exemption from the mandatory bid. This independence is primarily aimed at the board of a Continuity Foundation. In practice, the board of a foundation appoints its own directors (cooptation). In composing the board of the ASR Continuity Foundation, the requirements of independence contained in the law will be strictly and carefully applied.

## Response time and rights of the works council

In addition to an established ASR Continuity Foundation, Dutch corporate law also provides other instruments that ASR could use to exert some influence if the insurer is faced with unwanted shareholder activism.

When activist shareholders wish to discuss the strategy or management of the company with ASR, for instance, they are free to ask the company to place the subject on the agenda for discussion at a shareholder meeting.<sup>89</sup> In that case the management of the company can call upon the period of 60 days prior to the general meeting stipulated in the articles of association,<sup>90</sup> which must be observed for the submission of a request for inclusion of an agenda item. If it is a subject that can lead to a change in the strategy of the company, for example, by withdrawing confidence in the supervisory board, the Management Board may also invoke the so-called “response time” of the Dutch Corporate Governance Code, which must be respected by Dutch listed companies. Best practice provision IV.4.4 in conjunction with II.1.9 of the Dutch Corporate Governance Code provides that shareholders should take into account a response time of 180 days when scheduling such strategic subjects. Invoking this period gives the management of the company the time and opportunity to consider a possible response. The board should use the response time

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<sup>88</sup> The permissibility of protective constructions with companies, Mr. L.M. Mantel and Mr. F.G.K. Overkleef, *Vennootschap & Onderneming*, vol. 10 2009

<sup>89</sup> Shareholders cannot force such subjects to a vote at a shareholder meeting. Only the Executive Board of a company possesses such a right of initiative.

<sup>90</sup> Article 2:114a Civil Code.

for further deliberation and constructive consultation, at least with these shareholders, and should explore the alternatives.<sup>91</sup>

If a takeover bid is made for ASR that is not supported by the management and supervisory boards, it is considered an undesirable takeover bid. The decision of the management not to support a bid is not a decision for which the works council has a duty to provide advice, because it is a decision not to do something. This is different than when ASR would explicitly grant the works council (WC) such advisory powers. In that case, the WC could possibly increase its involvement in the acquisition process by exercising its advisory power.

A strategic change, such as a merger or division can also be brought to a vote by the management board under pressure from an activist shareholder.<sup>92</sup> Such decisions usually fall under the advisory power of the WC, on account of which the WC can increase its involvement.

The WC has no independent legal right to submit a request for inquiry to the Enterprise Chamber. It may do so, but only in accordance with the articles of association or by agreement with the company. The inquiry procedure basically focuses on the behaviour of the Management Board or the Supervisory Board, but can also relate to a shareholder meeting. In general, an (undesired) bidder has already built up a shareholding in the company before making a public offer. With such a right of investigation the WC could attempt to influence the behaviour of the bidder and thus the process of an unwanted takeover bid.

ASR is aware of these possibilities and NLFİ trusts that ASR will deal with them in a sensible way.

In the opinion of NLFİ, the established ASR Continuity Foundation can offer good (temporary) protection for the continuity of ASR. Additionally, NLFİ itself can provide the necessary protection for ASR, partly through the use of the qualified majority. NLFİ recommends that there be no additional protective measures for ASR. This could negatively affect the valuation of ASR and may deter potential investors.

## Stable shareholder base

During the general meeting of 27 November 2013, much attention was paid to the desirability to offer a loyalty to attract (institutional) long-term investors. The expectation is that long-term shareholders bind themselves to the company for longer periods, begin to feel more responsible for the policy, and therefore actively promote the creation of long-term value. Long-term shareholders may offer

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<sup>91</sup> The Cryo-Save ruling of the Amsterdam Court of Appeal ("Enterprise Chamber") in September 2013 has ascribed this provision a high status, making it more or less a legal rule.

<sup>92</sup> Shareholders cannot force such subjects to a vote at a shareholder meeting. Only the Executive Board of a company possesses such a right of initiative.

counterbalance to shareholders who are mainly guided by short-term interests. To reward long-term shareholders with additional dividend (loyalty dividend) would further promote this objective.

The ABN AMRO advisory report, dated 22 May 2015, contains an analysis of the possible advantages and disadvantages of loyalty dividend. The conclusion of the analysis is that there is still much unclear. Further investigation must be made into the consequences of introducing a loyalty dividend in order to decide on the advisability and the manner in which a loyalty program can best be realised. Given these uncertainties in the ABN AMRO advisory report, the lack of interest among investors and the desire to run as many elements of an IPO of ASR in line with the IPO of ABN AMRO, NLFI recommends not introducing a loyalty dividend with an ASR IPO.

#### *Alternative binding of shareholders?*

Jurisprudence describes several other possibilities for a company that might help bind a group of shareholders for a longer term and create a certain stable shareholder base. The important thing is that the company defines a clear course for the long-term and conducts a clear dividend policy. This can lead to shareholders also considering the sustainability of the shareholder value to be objects of the company.<sup>93</sup> It is also important that a constructive dialogue is established between the company and its shareholders, which shall be accounted for in a transparent manner on the current and future policy. The proper use of investor relations can help ensure that shareholders continue to have confidence in the company. At least, more involvement can be created and short term orientation is prevented.<sup>94</sup> NLFI trusts that ASR will optimally use these opportunities.

#### *Employee Purchase Plan*

Employee participation plans are often offered with IPOs. Such plans, in particular where long-term ownership among employees is stimulated by giving discounts or assigning priority shares, may contribute to the creation of a stable shareholder base and emphasize the internal involvement. You indicated earlier that there should be a proposal for an employee participation in financial institutions in State ownership, the necessary wage moderation will be an important consideration in the assessment. Meanwhile NLFI has explored various options for employee participation, also in connection with the ABN AMRO IPO. Assigning a discount or preferential treatment or any other benefit of any kind to employees for the purchase of shares at an IPO may be perceived as an (unintended) form of reward. NLFI does not deem this appropriate in the current social context and therefore not desirable. This conclusion also applies to the members of the Board of Directors. If, during an ASR IPO, private investors are offered the opportunity to buy shares as part of a general placement, then employees will also be free (insofar as applicable) to register for shares.

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<sup>93</sup> Loyalty dividend with listed companies: justified?, Mr. S.F. de Beurs, Corporate Law and Finance, 2011, p. 9.

<sup>94</sup> Note reward loyal shareholders, attachment to 31083, no. 26 and Rewarding loyal shareholders?, V. Dank. 2013, Tilburg, p. 127.

### *Tranche for private investors*

An important part of formulating an allocation policy for the shares ('allocation policy') involves whether or not to actively offer private investors the opportunity to buy shares in ABN AMRO. A consideration could be to maximize the accessibility of the public to ASR shares and, in that sense, to create a 'pricing tension' and level playing field with professional investors. To achieve this, a wide marketing campaign is usually launched, specifically aimed at the target group of private investors. Such an active approach to private investors to buy shares is also called a 'retail tranche'. Apart from the costs that may be associated with such a tranche, other features play a role in this issue. For instance, the report by Lord Myners in response to the privatisation of Royal Mail (IPOs and Future Book Building in HM Government Primary Share Disposals dated 16 December 2014) stated that a retail tranche could make an exchange transaction considerably more complex and inflexible. It was also noted that not all enterprises to be privatised lend themselves to a retail tranche due to, for example, company risk profiles or the expectation that the returns of a given company might display a fluctuating pattern. Against this background a more passive approach to retail investors may also be considered, these investors, although given the opportunity to buy ASR shares through general placement (with or without the right of guaranteed allocation), but without the help of a explicit marketing campaign or other (financial) incentives that could encourage the purchase of shares.





## Appendix:

responses of the works council and the  
company to the exit advice

NL Financial Investments  
Attn: The Board  
Lange Houtstraat 26  
2511 CW DEN HAAG

ASR Nederland N.V.  
Executive Board

Archimedeslaan 10  
3584 BA Utrecht  
Postbus 2072  
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The Netherlands  
[www.asrneland.nl](http://www.asrneland.nl)

Date 20 November 2015  
Subject Privatization of a.s.r.  
Our reference 15/0039/JB/al  
Telephone +31 (0)30-2573301

Dear members of the Board,

In his letter to the Lower House of Dutch Parliament of 22 May 2015, the Minister of Finance wrote that he intended to reach a decision in regard to the privatization of a.s.r. before the end of this year. We were pleased to hear this, because we believe that a.s.r. has accomplished a string of significant achievements and last year demonstrated that it is capable of attracting professional investors. Your recommendation regarding the privatization of a.s.r. confirms this picture and indicates that a.s.r. is well positioned for a privatization through an IPO.

We share your opinion that an IPO is the best option for privatizing a.s.r. It is a logical next step in the development of a.s.r. We are well on track with the preparations we have made over the past few years and both the Executive Board and the Supervisory Board believe that a.s.r. is ready for an IPO.

In line with the State's intention to only own nationalized financial institutions for a limited time, we have worked over the past years to prepare for the envisaged privatization of our organization. The performance we have delivered in recent years and the robust results for the first half of 2015 show that we are on schedule to achieve our targets. Over the past years, the a.s.r. people have worked hard to build a well-capitalized, sustainable and customer-oriented insurance company.

An IPO will not affect our customers and our service. We will continue to pursue our long-term strategy, which focuses on our customers. We feel that the favourable capital market conditions could be capitalized to optimize returns for our current shareholder and to safeguard a.s.r.'s future for its customers, employees and other stakeholders.

Please do not hesitate to contact us if you require additional information. We would be more than happy to elaborate on our views in a personal meeting.

Yours faithfully,  
ASR Nederland N.V.



J.P.M. Baeten  
CEO



C. van der Pol  
Chairman of the Supervisory Board

NL Financial Investments  
Attn: The Board  
Lange Houtstraat 26  
2511 CW DEN HAAG

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Date 20 November 2015  
Subject NLFI recommendation regarding privatization of a.s.r.  
Our reference OR-nr 2015-389  
C.c. Jos Baeten, CEO  
Kick van der Pol, Chairman of Supervisory Board

Dear members of the Board,

On 15 October 2015, the CEO of our company notified us of the NL Financial Investments (NLFI) advise to the Dutch Minister of Finance to return the shares of ASR Nederland (a.s.r.) to the private market. We were also informed that you had requested us to respond to this advise. We are pleased to do so.

The Works Council is pleased that more clarity will be created shortly as to how a.s.r. will return to the private sector. The Works Council agrees in principal with the main points outlined by the NLFI in its advise. The Works Council very much agrees with the recommendation to explicitly formalize in a.s.r.'s new Articles of Association that the interests of the company partly overlap with the interests of its customers (policyholders in particular). It is important to stress specifically that a.s.r., in its capacity as one of the largest insurance companies in the Netherlands, is expected to also have regard for society at large.

The Works Council also agrees with NLFI's opinion that a dual-track selling process would probably not be very successful and that the preferred course of action over the coming period would therefore be to focus on the process that is required for a privatization through an IPO. In the Works Council's opinion, this road to privatization also offers a.s.r. the best guarantee for continuing the current strategy.

Date 20 November 2015  
Subject NLFI recommendation regarding

The Works Council would like to highlight four aspects in particular.

1. Objects clause in NLFI's Articles of Association

You wrote that the advise was based on the objects clause in NLFI's Articles of Association and that, in fulfilling your statutory duty and exercising the rights attached to the shares, you primarily considered the State's financial and economic interests. You indicated that allowance has been made for the interests of the company, its associates and their employees.

The Works Council understands this approach from the perspective of NLFI's responsibilities. However, from our perspective, the primary focus should be on the interests of the company, the employees and other related stakeholders, and it goes without saying that customer interests will be a key aspect in this. With this in mind, it is very important to us that the road to privatization also helps a.s.r. to continue and give further shape to its social responsibility and position in society.

2. Anti-takeover mechanism

NLFI recommends that the Minister puts in place an adequate anti-takeover mechanism. The Work Council agrees with this recommendation. In our view, such foundation should be given a broad mandate to apply anti-takeover measures if a.s.r. is faced with a potential hostile takeover which threatens to jeopardize a.s.r.'s role in society and/or other relevant interests of stakeholders.

3. Stable and socially responsible returns

Based on a.s.r.'s social responsibility and role in society, the Works Council attaches great value to this being reflected in the ambition to achieve stable and socially responsible returns, and hence to a good balance between customer and shareholder interests. The Works Council is a great advocate of communicating this explicitly to the outside world.

Considering this, the Works Council also finds it important that investors who are prepared to invest in a.s.r. are aware of the fact that investing in a.s.r. effectively means that they enter into a long-term relationship with the goal of helping a.s.r. to build 'the different insurer'.

4. Rights of Works Council

The NLFI advise also covers the rights of the Works Council, specifically when it comes to the importance of being involved in the decision-making process. We wholeheartedly agree with this recommendation. In our capacity as the Works Council, we have found that the CEO keeps us well informed of the situation regarding a.s.r.'s privatization and that the dialogue about the role of the Works Council in this process is a constructive one. The NLFI rightly addresses in its recommendation the point that safeguards should be put in place well in advance, to guarantee a strong employee representation body after the privatization.

Date 20 November 2015  
Subject NLFI recommendation regarding

The recommendation specially refers to a situation in which the Works Council has no lawful right to be consulted, but where it may be wise to assign such right to the Works Council anyway. This would be relevant when a party were to issue a public bid for a.s.r. that is not being supported by the Executive Board and the Supervisory Board. The Works Council would normally not have the right to be consulted on such a decision. The Works Council agrees with NLFI's view that, in this particular instance, the Works Council could increase its involvement in the takeover process by exercising its right to be consulted.

*Final comments*

The Works Council will form a final opinion on, and give a detailed response to, the sale of a.s.r. as soon as it is certain what approach will be taken.

Please do not hesitate to contact us if you have any questions or require additional information. We would be happy to elaborate on the matter further.

Met vriendelijke groet,  
Ondernemingsraad van a.s.r.

  
Marcel Hindriks  
Voorzitter

  
Rob van Veen  
Vice-voorzitter