SWEDISH
CORPORATE
GOVERNANCE BOARD

Finansinspektionen
Box 7821
103 97 Stockholm
finansinspektionen@fi.se

Fi Dnr 11-5610

Comments regarding proposed new regulations and guidelines on governance, risk management and controls in credit institutions

The Swedish Corporate Governance Board has been invited to comment on the Swedish Financial Supervisory Authority's proposals. The views of Board are outlined below.

1 Introduction

The Board has limited its comments to issues concerning corporate governance. The rules may generally be regarded as reasonable and balanced. A general observation, however, is that the Swedish Financial Supervisory Authority does not consider or refer to the Swedish Corporate Governance Code at all in the memorandum that it has circulated for comment, even though the Code must be applied by those credit institutions whose shares are admitted for trading on a regulated market and the Code's rules are generally regarded as demonstrating what constitutes good Swedish Corporate Governance.

2 Division of tasks between the company board and the executive management

Chapter 3 of the proposed regulations contains the Financial Standards Authority's interpretation of what the Companies Act (2005:551) stipulates with regard to the division of responsibility between a company's board and its executive management and the tasks of these decision-making levels. For obvious reasons, this interpretation is not complete, and this should be made clear.

In the opinion of the Board, the Authority's interpretation of which tasks may or may not legally be delegated from the company board is open to question in certain areas, as the possibility to delegate allowed by the Companies Act is dependent on many factors according to the individual case. It would have been better if the Authority had introduced clear rules in the regulatory text.

The regulation in Chapter 3, Section 7 of the proposal imposes on the Chief Executive Officer the responsibility to ensure that the company board receives adequate information. According to Rule 6.3 of the Code and case law related to Chapter 8, Section 21 and the third point in Chapter 8, Section 21, Paragraph 1 of the Companies Act, the Chair of the Board of the company is also responsible for the information to the Board, which should be addressed in the regulatory text.

3 Company routines regarding board member qualifications

The first sentence of Chapter 3, Section 4 of the proposed regulations stipulates that the company is to have a routine for ensuring that each member of the board at all times is sufficiently qualified to carry out his or her tasks. The Corporate Governance Board believes that it cannot be the institution's responsibility to ensure that the directors appointed by the shareholders' meeting have the requisite qualifications. The shareholders' meeting may give an instruction to the nomination committee for its work, but the regulatory responsibility regarding qualification requirements lies with the Financial Standards Authority. If the Authority does not consider that the person elected by the shareholders is suitable, it has tools at its disposal to remove him or her from the board. Should the company be liable for sanctions if a director has not participated in the training it has organised, and therefore does not meet the qualification requirements? Furthermore, the stipulation as it currently stands is misplaced among responsibilities and duties of the company board, in that it is not addressed to the board, but the company.

Under Rule 5.2 of the Code, it is the individual board member's responsibility to acquire the knowledge of the company's business, organisation, markets etc. required for the assignment. Meanwhile, the chair of the board has the responsibility to ensure that new board members receive adequate induction training and any other training the chair and the individual director agree is appropriate, see Rule 6.3 of the Code. This should be included in the second sentence of proposed Chapter 3, Section 4, which currently only states that the company is responsible.

4 Conflict of interest in the company board

Chapter 4, Section 7 of the proposed regulation states that the company board is to have internal rules that specify how it will identify and manage conflicts of interest that may arise in its work. The internal rules should describe everything that could give rise to a conflict of interest. The Corporate Governance Board believes that the proposal requiring special internal guidelines only for the company board would be an unnecessary burden on them. Since most of the activity in most companies can involve a conflict of interest, guidelines could be very extensive but of little value. Describing in advance in a structured framework any and all conflicts of interest that may arise in a board and how these are to be handled would be a very laborious task for most companies.

Requiring the individual board member to disclose potential conflicts of interest to the entire

board, not only the chair, should be sufficient, and this is in line with requirements that already exist with regard to directors' general duty of loyalty. The company board must be considered capable of managing conflicts of interest if and when individual cases arise.

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THE SWEDISH CORPORATE GOVERNANCE BOARD

Hans Dalborg	Björn Kristiansson
Chair of the Board	Executive Director