

Stockholm, 11 April 2023

Finansinspektionen

Via e-mail to finansinspektionen@fi.se

Comments on the proposed new regulations on owner, owner-management and management suitability assessment

The Swedish Corporate Governance Board (“the Board”) was invited to submit comments on Finansinspektionen’s proposals regarding owner, owner-management and management suitability assessment.

The documentation for assessing the suitability of executives includes a question about whether the manager in question has been a member of a board or been the chief executive officer of a company in the past five years where the board has not been granted discharge of liability. The Board notes that from a company law liability perspective there is a significant difference between whether the decision to deny discharge of liability refers to the individual in question, and between whether the decision to deny discharge from liability was made by a majority of shareholders or by a minority representing at least one tenth of all company shares, and that there should also therefore be a significant difference from a suitability perspective. The Board notes additionally that there are voting advisors on the Swedish market who, since the turn of the year, have guidelines which recommend on principle against the granting of discharge of liability for board members solely on the basis that they are deemed to have been elected with the support of shareholders with greater voting rights per share. Individual board members may thus be denied exemption from liability on grounds that are completely unrelated to the performance of the board or the board member in question.

Against this background, it is the Swedish Corporate Governance Board's opinion that the issue of denial of discharge from liability must be examined and described in further detail in order to be included as a basis for any suitability assessment. The questionnaires should thus:

1. be delimited to refer solely to decisions about denial of discharge of liability that refer to the individual whose suitability is to be assessed.
2. differentiate between decisions on denial of discharge of liability made (i) by majority decision and (ii) by decision of a minority.
3. differentiate between decisions on denial of discharge of liability that are made (i) on the basis that the person in question was elected to the board by shareholders with greater voting rights per share, or (ii) for another reason.

THE SWEDISH CORPORATE GOVERNANCE BOARD

Gun Nilsson

Chair of the Board

Björn Kristiansson

Executive Director