SWEDISH
CORPORATE
GOVERNANCE BOARD

Annual report 2016

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Foreword

At first glance, 2015 was a relatively quiet working year for the Swedish Corporate Governance Board. This can be regarded as a positive – in order for regulations to be perceived as legitimate and workable and for users to really be able to learn and understand the principles behind and the purpose of a system, the stability of a functioning regulatory framework has a value in its own right. This is also something that is constantly reaffirmed in the dialogues the Board has with the Code's many stakeholders.

Nevertheless, 2015 of course brought a number of challenges for the members of the Board. In this context, I would like to discuss three of these, namely the European Union's continued manic obsession with writing new rules, gender balance on the boards of listed companies and individual ballots and vote counting at the election of directors.

During the past year, as in previous years, the work of the Board has to a great extent been characterized by the flood of regulatory proposals from Brussels. Unfortunately, the EU continues to attempt to micromanage in the field of corporate governance, despite its failure to harmonise the underlying company law concerning public companies. And this is a major and serious threat to the Swedish, and Nordic, corporate governance model, which has proved so successful for very many years. It may appear to be a small matter when a specific issue runs the risk of being handled in a way that is tailored, for example, to the Anglo-Saxon corporate governance model and perhaps even works well in that context. But it only needs a few such changes to creep into Swedish corporate governance for the basic principles on which our model is built to be destroyed, leaving us with a regulatory framework which is a concoction of rules without a common thread.

Sweden is one of the most export-dependent countries in the world, and our companies are a marvel of efficiency and flexibility. We have more multinational companies per capita than virtually any other country in the world. Therefore, the prosperity of the Swedish corporate sector is ultimately a question of Swedish prosperity and the Swedish welfare state. And the Swedish, principles-based, governance model, constructed to provide flexibility for company management and, often, clear majority shareholders in the face of increasing international competition, is one of the lynchpins that enable companies to continue to develop in the optimal way for the individual company.

On the issue of gender balance on the boards of listed companies, it is with great satisfaction that I note that the trend remains positive. The proportion of women, i.e. the proportion of what the Swedish civil service calls the "underrepresented gender", continues to increase. In my opinion, the most important key ratio to track is the proportion of women among the newly elected directors on listed companies' boards each year. In 2014, this figure exceeded 40 per cent for the first time, and in 2015 the figure increased to 50 per cent. That means that, in 2015, the balance between newly elected men and women was completely even!

At the time of writing, the figures for 2016 have not yet been finalised. The provisional figures, however, suggest an outcome in the neighbourhood of the proportion seen in 2015. If this proves to be the case, it is very gratifying and shows that listed companies have taken this issue extremely seriously. That some politicians are still threatening to introduce legislation on this issue is therefore tragic and a show of genuine political populism. In order for the development to go even faster, companies would be obliged to implement changes at board level beyond those which they deemed suitable, which would be a devastating requirement which would mean the tail wagging the dog.

A letter to the Corporate Governance Board from a number of institutional investors and Norges Bank Investment Management contained a proposal that rules for mandatory individual ballots and the counting of votes at the election of directors be introduced into the Swedish Corporate Governance Code. On this issue, the Board came to the conclusion that the reasons provided in the proposal were not sufficient to introduce the proposed rules into the Code. That the election of directors at Swedish listed companies' shareholders' meetings often takes place through a single vote on the whole proposal rather than per director is linked to the unique Swedish way of preparing these elections in an owner-led nomination committee. The Board's cautious approach is because we see few benefits with the proposed changes, while there are potential dangers for the Swedish corporate governance model and especially the role of the nomination committee. This is another example of the problems I touched on above, where elements from other corporate governance models may gradually undermine the Swedish system. It is worth emphasizing, however, that the Board only considered the advisability of introducing the proposed rules into the Swedish Code, and it is obviously up to each individual company to decide upon its voting procedure for electing directors to its board.

Stockholm, June 2016

Arne Karlsson
Chair of the Board

I. ACTIVITY REPORT

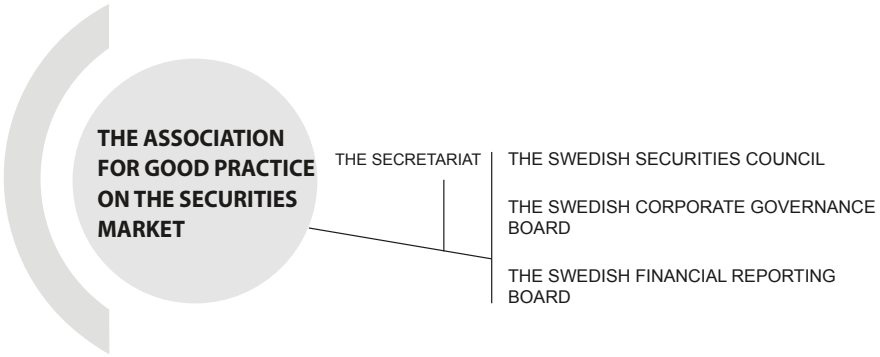
This part of the annual report describes the work of the Board during 2015–2016 and discusses current issues regarding the Code and Swedish corporate governance in general.

The Mission of the Swedish Corporate Governance Board

The Board is one of three bodies that constitute the Association for Generally Accepted Principles in the Securities Market, an association set up in 2005 to oversee Swedish self-regulation within the securities market. The other two bodies in the association are the Swedish Securities Council and the Swedish Financial Reporting Board. The principals of the Association are a number of organisations in the private corporate sector. See the illustration below and www.godsedpavpmarknaden.se for more details.

The original and still primary role of the Board is to promote the positive development of Swedish corporate governance, mainly by ensuring that Sweden constantly has a modern, relevant and effective code for corporate governance in stock exchange listed companies. The Board also works internationally to increase awareness of Swedish corporate governance and the Swedish securities market, and to safeguard and promote Swedish interests within these fields. In May 2010, the role of the Swedish Corporate Governance Board was widened to include responsibility for issues previously handled by Näringslivets Börskommitté, the Swedish Industry and Commerce Stock Exchange Committee, namely to promote generally accepted principles in the Swedish securities market by issuing rules regarding good practice, such as rules concerning takeovers. The work of the Board in these areas is described separately in this annual report

The role of the Board in promoting Swedish corporate governance is to determine norms for good governance



of listed companies. It does this by ensuring that the Swedish Corporate Governance Code remains appropriate and relevant, not only in the Swedish context, but also with regard to international developments. The ongoing work to review the Code is also described separately in this report. The Board is also an active contributor to international forums, including the European Union, promoting Swedish interests in the field of corporate governance. Another area of continued importance for the Board in recent years has been as a referral body on corporate governance issues.

The Board has no supervisory or adjudicative role regarding individual companies' application of the Code. Ensuring that companies apply the Code in accordance with stock exchange regulations and the Annual Accounts Act is the responsibility of the company auditor and the respective exchanges. The responsibility for evaluating and judging companies concerning their compliance or non-compliance with individual rules in the Code, however, lies with the actors on the capital markets. It is the company owners and their advisers who ultimately decide whether a company's application of the Code inspires confidence or not, and how that affects their view of the company's shares as an investment. Interpretation of the Code is not a matter for the Board either. This is the responsibility of Aktiemarknadsnämnden, the Swedish Securities Council, which issues interpretations on request. This is discussed in detail later in this report.

The Work of the Board during the Year

In 2015, the Board initially consisted of Arne Karlsson (Chair), Staffan Bohman (Deputy Chair), Carl Bennet, Peter Clemedtson, Eva Halvarsson, Per Lekvall, Annika Lundius, Tomas Nicolin, Lars Pettersson, Lars Thalén and Caroline af Ugglas, as well as Executive Director Björn Kristiansson. At the parent organisation's annual meeting in May 2015, Lars Pettersson and Carl Bennet left the Board, and Ulla Litzén was elected. Also, Andreas Gustafsson continued as a co-opted member of the Board.

The Board held four formal meetings during the year. Additionally, discussion and consultation took place by e-mail and telephone when required. A number of meetings for sub-committees and working groups also took place.

The Board's work during the year is summarised below.

Administrative changes

On 1 January 2015, the Board moved to new premises on Väpnargatan in Stockholm. The three self-regulatory organisations which make up the Association for Generally Accepted Principles in the Securities Market now have their own premises.

In February 2016, the Board recruited a legal associate, Karin Dahlström, whose main role is to support the Board's Executive Director in both legal issues and matters of a more administrative nature. Her duties also include being at the Securities Council's disposal to a certain limited extent. Karin Dahlström previous position was as a clerk at Linköping District Court.

In spring 2016, the Board worked on converting its website to the same web environment as the other self-regulatory bodies. The site's design is unchanged following the move, and all who previously subscribed to news updates from the Board will continue to receive them.

Follow up of the Code and Swedish corporate governance

In order to monitor that the Code is working as intended and to ascertain whether any modifications to the Code should be considered, the Board regularly conducts a variety of surveys of how the rules of the Code are applied in practice. The most important of these is its examination of Code companies' corporate governance reports and the corporate governance information on companies' websites, which it has carried out every year since the original version of the Code was introduced in 2005.

Previous to last year's survey, nine surveys had been carried out in this series, using a method that was largely unchanged from year to year. This provides excellent opportunities for comparison during the whole period. Since last year, the survey has been conducted on the Board's behalf by SIS Ägarservice. Even though the aim was to continue to conduct the survey using largely the same questions and methods as before, the change of survey institute meant that comparison with previous years' surveys cannot be achieved entirely.

Revision of the Code

As well as its annual examination of companies' corporate governance information, the Board continuously monitors and analyses how companies apply the Code through dialogue with its users and through structured surveys. It also monitors and analyses the general debate on the subject, changes in legislation and regulations concerning corporate governance, developments in other countries and academic research in the field. Based on this work and other relevant background information, the Board continuously considers the need for limited modifications to the Code or more general reviews of the entire Code.

The Code was revised recently, and the current version came into force on 1 November 2015. The reasons for the latest revision were as follows:

The previous review of the Code took place in 2009, with that version coming into force on 1 February 2010. This long period without any changes was justification enough for a thorough review of whether the rules of the Code are still relevant and appropriate. A further reason for a review was the European Commission's continued

work in the field of corporate governance, resulting in a number of proposed rules. These included the European Commission's recommendation on the quality of corporate governance reporting, ("comply or explain"), an updated Shareholders' Rights Directive, the directive on non-financial information etc. and the directive and regulations concerning auditors and audits.

The Corporate Governance Board had also issued four Instructions since 2010, the latest of which concerns gender balance on the boards of listed companies, (which is described in more detail below), and came into force as recently as 1 January 2015. These Board Instructions needed to be implemented in the Code. A review was also motivated by the stock exchanges' revised rules.

It was against this background that the Board conducted a number of activities in 2013. Between May and September 2013, the Board met around 40 specially invited people at nine two-hour roundtable discussions to discuss the content and application of the Code and adjacent corporate self-regulation issues, as well as the role and work of the Board. The participants have different roles in the corporate governance process – as board directors, chief executive officers, chief finance officers and legal counsels in listed companies, owners or executives from Swedish institutional investors who sit on nomination committees, representatives of interest groups, advisers etc. Each roundtable meeting was attended by the then Chair of the Corporate Governance Board, Hans Dalborg, and its Executive Director, Björn Kristiansson, as well as two other members of the Board, with each member of the Board participating in at least one roundtable discussion.

The Board also issued an open invitation to anyone who would like to submit opinions and suggestions regarding the Code during the autumn of 2013, either through the Board's website or in meetings with the Chair and the Executive Director, and around ten people took this opportunity.

Additionally, the Board discussed possible changes to the Code at its top-level symposium in February 2014, which was attended by almost 100 people who are active in the corporate governance process. The Executive Director of the Board, Björn Kristiansson, presented the findings of the Board's roundtable discussions and the open invitation to submit comments and suggestions on the Code. This was followed by a panel debate on "How Swedish corporate governance can be improved", featuring then Corporate Governance Board member Carl Bennet, the outgoing Chair of the Corporate Governance Board, Hans Dalborg, the then State Secretary Magnus Graner, Kerstin Hessius, CEO of the Third Swedish National Pension Fund (AP3) and Carl-Henric Svanberg, Chair of the Board of BP.

In addition, the Board discussed in detail the need for revisions to the Code at its scheduled meetings in autumn 2013 and spring 2014.

The roundtable meetings, submitted opinions, individual discussions and the symposium generated a great number of opinions and suggestions on subjects ranging from the work of nomination committees to information reporting and the Corporate Governance Board's role in Europe. A common theme, however, was that the Code should not be changed too much, as it was deemed to work well and enjoyed a high degree of legitimacy among companies and investors.

At its meeting on 19 May 2014, the Board appointed an internal working group to prepare proposed revisions to the Code that were felt necessary. A proposed Revised Code was published on 5 June 2015 and was left open for comment until 15 September 2015. Over fifteen responses were submitted, and these were analysed by the working group. The revised Code text, which by then had undergone some minor adjustments, then came into force on 1 November 2015.

Revisions to the Code include:

- *A sustainability perspective*. A sustainability perspective has been included in the duties of the board of directors. The board is to establish appropriate guidelines for the company's behaviour in society in order to ensure its ability to create value in the long term.
- *Internal controls*. The board of directors is given

responsibility for internal controls in areas other than just financial reporting, even if the requirements regarding processes are linked to the latter. The corporate governance report must describe the board's measures for following up how the internal controls regarding financial reporting and reporting to the board work.

- *Board evaluation*. The nomination committee is to receive the full results of the evaluation of the work of the board and the corporate governance report is to indicate how the board evaluation was conducted and reported.
- *Remuneration of directors*. The section on remuneration has been simplified, including replacing the rule that board members are not to receive warrants with a requirement that programmes aimed at the board are to be designed by the company's owners and promote long-term share ownership.
- *Nomination Committee Members are to consider potential conflicts of interest*. The new wording requires nomination committee members to carefully consider whether they can act in the company's best interests, for example if they have a position at a competitor.

The Corporate Governance Board's ongoing work with the Code is described below under Key issues for 2016.

Individual ballots and automatic counting of votes at the election of company directors

In October, the Board wrote a position paper, (which can be found in the section Perspectives later in this Annual Report), on the subject of individual ballots and automatic counting at the election of directors. This was prompted by a letter the Board received from international investors regarding the introduction of a rule in the Code about the election of directors. Similar demands had also come from Norges Bank Investment Management and some Swedish institutional investors, as well as in submissions during the consulting process in connection with the review of the Code.

The investors in question felt it should be mandatory for nomination committees of listed companies to present their nominations as a set of individual proposals, one for each proposed member of the board, and that voting at the shareholders' meeting should take place individually for each proposed candidate. Furthermore, each vote count should be conducted individually and each result should be recorded in the minutes.

According to the proponents, this process is standard in most leading countries, and the Swedish model of presenting an overall proposal for the board seems outdated. The proposal would provide better governance by strengthening the owners' ability to hold individual members accountable. The proponents also claim that Swedish company law presents obstacles to investors' opportunities to bring about such a model.

The Board appreciates the international investors' commitment to respect Swedish corporate governance and the rules of the Swedish Code and carefully considered the views they expressed. The Board believes, however, that Swedish company law and the Swedish Code allow individual shareholders to request a ballot for each director and to request a vote count for each decision at the shareholders' meeting. International shareholders can also utilise these opportunities through the proxies who represent them.

Furthermore, the Board emphasised that the process whereby the election of directors at shareholders' meetings of Swedish listed companies often takes the form of a vote on the board as a whole, not per director, is a product of the unique Swedish way of preparing these elections in shareholder-led nomination committees. If no other candidates to the company board are proposed at the shareholders' meeting and no one requests an alternative procedure, a vote on the committee's full proposal is a natural procedure.

In the light of the opportunities that Swedish company law provides and the well-functioning practices that currently exist within companies and their nomination committees, the Corporate Governance Board did not find sufficiently strong grounds for introducing rules into the Code which stipulate individual ballots or automatic counting of votes at the election of directors.

The Board has therefore decided to leave it to each company and its shareholders to decide upon how to conduct its board elections at each shareholders' meeting, while the Board notes that it is in each shareholder's power to request a count of votes if he or she desires.

Gender balance on the boards of stock exchange listed companies

Since its introduction, the Swedish Corporate Governance Code has stipulated that listed companies are to strive for equal gender distribution on their boards. In their explanations of their proposals and nominations, nomination committees are to consider the Code's rule on gender balance.

Towards the end of 2014, the Swedish Corporate Governance Board issued an Instruction which contained several initiatives for achieving improved gender balance on the boards of listed companies, and this came into force on 1 January 2015. The Instruction was then implemented into the Code as part of the 2015 revision.

The Board would like to see owners increase the pace of change and move towards the total share of the least represented gender on boards of listed companies reaching around 40 per cent by 2020. Already by 2017, major companies should have reached an average of 35 per cent and smaller companies should be approaching 30 per cent.

The Corporate Governance Board will annually be carrying out assessments of gender balance on the boards of listed companies ahead of the annual general meeting season and when the annual general meeting season is over. This information is available on the Board's website, www.corporategovernanceboard.se. The statistics for 2015 were collected on 2 January, 15 June and 31 December. The development of greatest interest is that which can be seen between January and June 2015, as the majority of listed companies hold their annual general meetings during the spring. The following calculation models are reported by the Board.

The Corporate Governance Board

The basis of the Board's calculation model is that only Swedish, not foreign companies, whose shares are admitted to trading on a Swedish regulated market (Nasdaq Stockholm and NGM Equity) are to be included, as it is these companies that must comply with Swedish company law. A follow-up of the Board's level of ambition shows the following development between measurements in January and June.

1. *An approximate proportion of at least 40 per cent for each gender following the AGM season in 2020.* This includes all members of company boards, (meaning it includes CEOs who are elected to the board, but it does not include employee representatives), in all Swedish listed companies. On 15 June 2015, the proportion of female board members was 29.0 per cent, compared with 25.6 per cent on 2 January 2015, which is an increase of 3.4 percentage points.
2. *An approximate proportion of at least 35 per cent for each gender in large companies following the AGM season in 2017.* This includes all elected members of Swedish Large Cap companies. On 15 June 2015, the proportion of female board members was 33.3 per cent, compared with 29.5 per cent on 2 January 2015, an increase of 3.8 percentage points.
3. *An approximate proportion of at least 35 per cent for each gender in smaller companies following the AGM season in 2017.* This includes all elected members of Swedish Mid and Small Cap companies and Swedish companies on the NGM Equity exchange. On 15 June 2015, the proportion of female directors was 27.3 per cent, compared with 23.9 per cent on 2 January 2015, which is an increase of 3.4 percentage points.

The European Commission

On 14 November 2012, the European Commission presented a draft directive on gender balance on the boards of listed companies (COM [2012] 614 final), and this calculation model is used throughout Europe. This proposal means:

- All Swedish companies whose shares are admitted to trading on a regulated market are covered, with the exception of SMEs (small and medium-sized enterprises), i.e. groups of companies with a maximum of 250 employees, and an annual turnover of less than EUR 50 million, or a balance sheet total of less than EUR 43 million, (only one of the thresholds of turnover or balance sheet needs to be applied). As of 15 June 2015, 68 Swedish listed companies were defined as SMEs.
- The calculation is to refer to all company directors that are not also members of the executive management (i.e. non-executives) meaning that CEOs who

are also elected to the board of a listed company are therefore excluded.
- Employee representatives are explicitly covered by the proposed directive.

On 5 June 2015, the gender balance according to the European Commission's calculation model was as follows:
- The proportion of female board members on the boards of Swedish listed companies was 32.0 per cent, compared with 28.7 per cent on 2 January 2015, i.e. an increase of 3.3 percentage points.
- On the boards of Swedish Large Cap companies, the proportion of female board members was 33.9 per cent, compared with 30.9 per cent on 2 January 2015, i.e. an increase of 3.0 percentage points.

Employee representatives
The employee organizations appoint the employee representatives. The proportion of female directors among employee representatives in all Swedish listed companies on 15 June 2015 was 30.1 per cent, compared with 29.6 per cent on 2 January 2015, i.e. an increase of 0.5 percentage points.

The final measurement of 2015 and preliminary figures for May 2016
When the final measurement of figures for 2015 was conducted, the proportion of women elected to all boards of Swedish listed companies, (i.e. including the CEOs who are elected to the board of directors, but excluding employee representatives), was 28.9 per cent, which is 0.1 of a percentage point lower than in June 2015. It must be noted, however, that only a small number of listed companies hold their annual general meetings in the autumn.

Preliminary statistics for May 2016 show that the proportion of female elected directors has increased again. These preliminary figures show that of all elected board members in Swedish listed companies (i.e. including CEOs who are elected to the board, but excluding employee representatives), the proportion of women was 31.3 per cent compared with 29.0 per cent on 15 June 2015, i.e. an increase of 2.3 percentage points. The proportion of women among newly elected board directors is approximately 47 per cent according to the preliminary figures. The figures for all elected board members of Swedish Large Cap companies are definitive, and these show that the proportion of female directors in May 2016 was 35.9 per cent, compared with 33.3 per cent on 15 June 2015, i.e. an increase of 2.6 percentage points.

The final statistics were due to be presented on the Corporate Governance Board's website in June/July 2016.

Rules on generally accepted principles in the Swedish securities market

In its role of promoting generally accepted principles in the Swedish securities market, a role it took over from Näringslivets Börskommitté, the Swedish Industry and Commerce Stock Exchange Committee, the Swedish Corporate Governance Board is to:
- monitor the application of rules, including those concerning takeover bids
- monitor legislation and other regulation, as well as academic research into stock market issues in Sweden and internationally, in order to devise any rules or changes to existing rules that are deemed appropriate and ensure that these have the support and acceptance of the actors concerned.

Takeover rules supplemented by rules regarding mergers

As outlined above, the Board is responsible for proposing changes to the rules governing takeovers on the Nasdaq Stockholm and NGM markets. The Board itself issues equivalent rules for the First North, Nordic MTF and AktieTorget trading platforms.

In December 2013, the Board set up a working group, under the leadership of Professor Rolf Skog, Executive Director of the Swedish Securities Council, assisted by Erik Sjöman, a lawyer, and Björn Kristiansson Executive Director of the Board, to propose new rules regarding mergers and merger-like processes. As in previous work to formulate and revise takeover rules, the process took place in close consultation with a broad reference group. The group's work resulted in new rules on mergers and merger-like processes, which came into force on 1 July 2014.

The working group was then given an extended mandate to allow it to handle other proposed changes to the

takeover rules. In December 2014, the Corporate Governance Board announced the results of this work in a proposal to revise the takeover rules further, with the new rules being applicable from 1 February 2015.

The main points of the new rules are:

- A ban on offerors requiring offeree companies to fulfil offer-related obligations, e.g. exclusivity or information commitments or binding break-up fee clauses, but with the possibility of exceptions in certain cases, e.g. where obligations improve rather than restrict competition in an offer situation.
- A specific rule stating that offerors are bound by any unconditional statements made by the offeror in relation to the offer, e.g. whether the offer will be increased or extended.

The primary aim of this revision was to strengthen the role of the boards of offeree companies, with a view to improving conditions for competitive takeover bid processes. Similar steps were taken in the United Kingdom a few years ago.

Rules on private placements in listed companies

One of the key issues in the Swedish Corporate Governance Board's assignment to promote generally accepted principles on the Swedish securities market is the acquisition of capital in listed companies. A number of sources have claimed that the Swedish regulations in this regard are too rigid in an international context, which restricts Swedish listed companies' access to capital.

The Ministry of Justice Memorandum Ds 2012:37 on increased share capital for listed companies contained proposals to facilitate access to capital through private placement of shares, convertibles or warrants. Among other things, it proposed changes to the Swedish Companies Act in order to remove a preamble statement that in normal circumstances forbids private placement offers to people who are already shareholders in the company. It also states that the Swedish Securities Council's accepted practice, primarily its statement 2002:2, which is based on the preamble statement, should also be changed. The conclusion of the memorandum is that implementation of these changes would mean that the Swedish rules on this matter would not differ significantly from equivalent rules in other European countries. The major difference compared with the rest of Europe, however, is the way companies and their owners regard shareholders' preferential rights and how they therefore act at shareholders' meetings etc. The memorandum therefore suggested that the Board produce a recommendation on accepted stock market principles for private placements in listed companies in order to remove the uncertainty that presently exists regarding these rights, thereby improving the conditions for efficient and competitive access to venture capital.

The Government Bill that followed, 2013/14:86, proposed no change to the Companies Act, as it was felt that the existing preamble statement could be rendered invalid by a new statement with a different meaning. The Bill therefore repeated its suggestion that the Board produce a recommendation in this regard.

In spring 2014, the Board appointed a working group with eleven participants under the leadership of Board member Tomas Nicolin as chair, Professor Rolf Skog, Executive Director of the Swedish Securities Council, and Björn Kristiansson Executive Director of the Board. In November 2014, the Board presented its recommendation on private placements in companies listed on Nasdaq Stockholm, NGM Equity, First North, Nordic MTF and AktieTorget. The recommendation is applicable to placements announced on or after January 2015.

The recommendation states that rights issues continue to be the preferred option for cash issues. On condition that it is permissible according to the company law, i.e. it is objectively regarded as in the shareholders' interest to deviate from preferential rights, it is also normally acceptable with regard to generally accepted principles in the stock market that a cash issue deviates from the shareholders' preferential rights. Special attention must be paid, however, to ensure that no unfair advantage to any shareholders occurs that is to the detriment of other shareholders. The recommendation also states that any issue price that is set in a competitive manner is acceptable from the perspective of generally accepted principles in the stock market.

The Board accepts that the recommendation is fairly general in nature. In most cases, however, there should be no doubt about whether a new share issue or private

placement is compatible with the recommendation or not, but should any doubts exist, the Board assumes that the matter of whether the share issue contravenes the recommendation will be submitted to the Swedish Securities Council for a ruling. The Board and the Council will monitor developments in this area and the Board is prepared to clarify the recommendation further if necessary.

Referrals etc.

A key role of the Swedish Corporate Governance Board is as a referral body for legislation and the work of committees of inquiry in the field of corporate governance, concerning both the development of rules in Sweden and various forms of regulatory initiative from the EU.

The referral work of the Board has increased each year, not least with regard to regulations from the EU. This is because the European Commission has been intensifying its work to expand and harmonise regulation of corporate governance within the European Union in the wake of the financial crisis. This has led to a series of recommendations, green papers, action plans and proposed directives on various aspects of corporate governance in different sectors in the past five years.

In 2015, the Board submitted written comments on the following:

- The Report on Changes to the Information Requirements on the Securities Market (SOU 2014:70). The Board submitted two comments on the commission's proposal, both of which related to disclosure, firstly regarding endowment insurances and secondly regarding deadlines and the increased complexity of the disclosure rules. Otherwise, the Board supported the report's proposals.
- The Ministry Memorandum on Companies' Reporting of Sustainability and Diversity Policy (Ds 2014:45). The Board was critical of that fact that the implementation of the proposal encompasses far more companies than what is required by the Directive, as well as of certain details in the information disclosure requirements. As regards the requirement for a diversity policy, the Board is of the opinion that Code rule 4.1 should be considered as the equivalent of a diversity policy in the event that none has been decided upon.
- The Report on New Rules for Accounting Oversight (SOU 2015:19). The Board was opposed to the proposal, which would mean that the responsibility for accounting oversight, which today is divided between the Financial Supervisory Authority and the stock exchanges, should be shifted so as to only lie with the Authority.
- The Ministry Memorandum on Effective Protection for Minority Shareholders (Ds 2015:25). The Board endorsed the Memorandum's proposal regarding changes to the scrutiny of institutions and a minority auditor. However, the Board did not share the view expressed in the Memorandum that the Swedish Companies Registration Office should be allowed to investigate whether a shareholder has been wrongly refused entry to or been removed from the share register. Furthermore, the Board rejected the proposal to change the rules on cost allocation when legal action is brought against an arbitration award or a judgement about redemption.
- The Report on New Rules for Auditors and Audits (SOU 2015:49). The Board endorsed the commission's main proposals regarding disciplinary action, but was opposed to the proposed introduction date, as well as the report's proposal on discrimination against financial companies, meaning that they would not be able to extend their audit assignments in the same way as other public interest entities.

Thus far in 2016, the Board has submitted comments on the structure of the Commission's non-binding guidelines for the reporting of non-financial information. The Board's basic position was that it is important that these are voluntary guidelines and that they should be developed on the basis of the framework of regulations that already exists. I addition, the Board has submitted comments on the European Commission's draft directive on amendments to Directive 2013/34/EU regarding the publication of income tax information for some companies and branches. The Board rejected this proposal and advocated instead that any expanded reporting be voluntary and developed on the basis of companies' existing financial accounting and sustainability reporting and, if necessary, be regulated within these frameworks.

All of the statements and formal comments can be found on the Board's website, www.corporategovernanceboard.se.

Action plan on corporate governance in listed companies and company law

As early as January 2011, the Board wrote a position paper in an effort to influence the proposed regulations on corporate governance that Michel Barnier, Commissioner for Internal Market and Services, had announced in late 2010 would be contained in the Commission's green paper on corporate governance in listed companies. On 5 April 2011, the European Commission presented its green paper on a framework for corporate governance in the EU.

The Swedish Ministry of Justice then requested comments on the green paper, and the Board submitted a response to the Ministry on 20 April 2011. In short, the Board's position was that no further need for regulation of corporate governance for listed companies had been shown by the Commission and that the level of detail in the proposed rules, particularly those concerning boards of directors, where existing Swedish rules in principle already regulate the issues the green paper addresses, was far too great. The Board advocated a more principles based form of regulation instead of the detailed compromise proposals presented by the Commission, which are poorly suited to the circumstances of Sweden and many other European countries. It is the view of the Corporate Governance Board that there is no evidence in the green paper that further regulation is required, not least against the background of the financial costs of new rules for the companies concerned, as well as the reduced competitiveness in relation to companies from non-European countries and companies with other ownership models, such as private equity, that would result from further regulation. The Board therefore opposed the majority of the proposals in the green paper.

The Board then produced a separate formal response to the green paper, based on these opinions, to the European Commission in July 2011. This was followed by intensive lobbying in Brussels.

In light of the extensive criticism of the proposals in the green paper from many member states, the Commission decided not to present any concrete proposed regulation during the autumn of 2011 as it had planned. Instead, it launched an open web-based consultation on company law in the EU at the start of 2012, which the Board duly answered. When the responses to the consultation had been compiled, along with the formal comments received on the green paper, the Commission issued a coordinated report on how it intended to proceed with respect to both corporate governance and company law in general. This took the form of an action plan on corporate governance in listed companies and company law, which was presented by the European Commission in December 2012.

The action plan consists of three main areas:
1. enhancing transparency;
2. engaging shareholders; and
3. improving the framework for cross-border operations of EU companies.

The section on enhancing transparency includes a number of different proposals. The first of these is the introduction of a requirement to report on diversity within the board of directors and on how the company manages non-financial risks. The proposal is to be implemented through amendment of the EU Accounting Directive. The Board submitted a formal response to the proposal to the Swedish government in 2013, expressing support for the requirements concerning CSR reports. However, the Board did not believe that the proposal concerning disclosure of diversity policy should be implemented. The amendments to the Directive were implemented by the European Commission in 2014, and in spring 2015, the Swedish government announced a memorandum on companies' reporting on sustainability and diversity policy (Ds 2014:45) with regard to the directive's implementation in Sweden. In its response in March 2015, as outlined briefly above, the Board expressed criticism that the implementation proposal covers a far greater number of companies than the directive requires and was also critical of some of the details in the information requirements. On the matter of the requirement to have a written diversity policy, the Board suggested that companies could use the Code's stipulations regarding the composition of the company's board, Code rule 4.1,

as their diversity policy. The proposal was referred to the Council on Legislation on 20 May 2016. It is proposed that the changes to the law come into force on 1 December 2016 and be applicable from the financial year starting immediately after the end of the year.

In early 2014, two further proposals from the Commission's action plan were leaked. The first was a draft recommendation on corporate governance, aimed at improving companies' corporate governance reporting, especially with regard to the quality of explanations provided by companies that depart from corporate governance codes. The Board duly submitted its views on the proposals to the Swedish Ministry of Justice.

The second initiative took the form of a number of proposed rules, including amendments to the Shareholders' Rights Directive and changes to different securities law directives. The aim was to improve the visibility of shareholdings in Europe, primarily to help listed companies to identify who their shareholders are. Another initiative concerning company shareholders is a requirement for institutional investors to disclose their voting and engagement policies and to disclose how they have voted on various issues at different shareholders' meetings. There is also a proposal to regulate proxy advisors, as many companies have expressed concern about a lack of transparency in the preparation of their voting advice. Another concern is that proxy advisors are subject to conflicts of interest, as they may also be acting simultaneously as consultants to investee companies and their owners. Additionally, there are proposals on shareholder influence on companies' remuneration of executives, "say on pay". The proposals would give shareholders the right to set guidelines for remuneration to the board of directors and the executive management, as well as the right to vote on whether to approve a mandatory remuneration report. Shareholders would also have a greater say on related party transactions, i.e. dealings where the company contracts with its directors or controlling shareholders, by requiring that any such transactions above certain threshold values be approved by the shareholders' meeting. The Board submitted its views on the proposal, primarily on the subject of remunerations, to the Swedish Ministry of Justice.

On 9 April 2014, the Commission presented its recommendation on the quality of corporate governance reporting, ("comply or explain"), and a draft of the amendments to the Shareholders' Rights Directive. The latter is still being negotiated within the European Union, and no final version of the proposed legislation has yet been presented. The Executive Director of the Corporate Governance Board has participated in the Swedish government's consultation meetings regarding the government's position in these negotiations.

A further proposal contained in the main area Increased Transparency was adopted by the Commission in April 2016. This proposal amends the Accounting Directive 2013/34/EU and obliges multinational companies to publish annual reports country-by-country on issues such as the company's profits and the taxes that the company pays. Country-by-country reporting has been a major issue in the negotiations on the Shareholders' Rights Directive and the proposal now presented by the Commission may mean that a final proposal regarding the Shareholders' Rights Directive can soon be presented. In accordance with the Action Plan, on 3 December 2015 the Commission adopted a proposal to codify and combine a number of directives in the field of company law. The objective of this proposal is to make company law within the EU more reader-friendly and to reduce the risk of future inconsistency. The proposal does not involve any material changes to the directives.

New rules for auditors and audits

In April 2016, a Bill to implement the EU Directive on Auditors and Audits was presented and necessary adjustments as a result of the EU Regulation on this same matter were made. The amendments to the legislation were due to come into force 17 June 2016. The Executive Director of the Corporate Governance Board participated as an expert in the process surrounding the implementation of the EU Regulation and the EU Directive on Auditors and Audits and, as indicated above, the Board participated actively in the consultation process, submitting its comments to the Government in 2015. The new provisions on audit committees and elections of auditors will require some minor adjustments to the Corporate Governance Code, mostly with regard to the rules on audit committees and the work of the nomination committee.

International and Nordic work

As in previous years, the Board was an active participant in the international debate on corporate governance issues in 2015, with the aim of promoting Swedish interests and increasing knowledge and understanding of Swedish corporate governance internationally. The Board took part in several consultation meetings with representatives of the European Commission through its membership of the European Corporate Governance Code Network, ECGCN, a network of national corporate governance committees of EU member states. The ECGCN, (www.ecgcn.org), is not a formal cooperation, but the European Commission has granted it the status of a special group to consult on corporate governance issues within the community.

The Board also contributes financially to the EU monitoring work of both StyrelseAkademien, The Swedish Academy of Board Directors, and ecoDa, the European Confederation of Directors Associations. In this way, the Board has access to information about developments in the EU.

The Board is also an active member of a Nordic collaboration between the code issuing bodies in Denmark, Norway, Sweden, Finland and Iceland. The intention is that the code issuing bodies will meet annually, with the venue rotating among the Nordic countries.

Key issues for 2016

Continued monitoring of the European Commission action plan on corporate governance and other regulatory issues

As the action plan on corporate governance generates concrete proposals from the Commission, these will need to be scrutinised and commented upon by the Board. The Board intends to be active in influencing the content of the rules as much as possible. As can be seen from the above summary of the action plan, there will be a large number of initiatives in many different areas. The proposed changes to the Shareholders' Rights Directive contain many legislative proposals of interest to the Board, which will seek to influence the Swedish government's implementation of the directive.

The pace of change to the regulations governing the securities market will continue unabated in 2016, including implementation of the new Directive on Market Abuse, companies' reporting on sustainability and diversity policy and MiFID II. The Board will maintain its high level of engagement.

Review of the Code

The work to review and revise the Code is described above. The work does not end there, however. Swedish implementation of the expected EU directives will mean continued revision in 2016 and 2017.

At its meeting on 4 December 2015, the Board appointed a new internal working group consisting of Board members Eva Hägg, Björn Kristiansson, Per Lekvall and Annika Lundius, whose task is to manage the continued process of revising the Code by developing proposed changes to Code rules in order to implement future EU regulations.

As outlined above, the work to revise the Code in 2016 began with changes to the Code prompted by the new rules on auditors and audits. The next developments likely to justify a revision of the Code are the coming changes in the law concerning non-financial reporting and diversity policy, potential legislation caused by changes in the Shareholders' Rights Directive and the new market abuse regulations. As part of its review of the Code, the Board will also consider the comments received in its latest round of consultations which were not conclusively addressed in the latest revised Code text.

Continued Nordic cooperation and exchange of ideas and knowledge with other European corporate governance code issuers

The Board will continue to cooperate with other European rule issuers through ECGCN, the network of European national corporate governance code issuers, not least as this provides direct access to the EU officials responsible for designing the Commission's proposals on corporate governance matters.

The Board also looks forward to continued cooperation and discussion within the Nordic region through regular meetings. A common Nordic platform when submitting comments on the European Commission's proposals can carry more weight and have a greater impact than the views of the individual countries. The next meeting of Nordic code issuers is planned for Helsinki in autumn 2016.

II. APPLICATION OF THE CODE IN 2015

The Swedish Corporate Governance Board conducts regular surveys and analysis in order to monitor how the Code is applied and to evaluate its functionality and effects on Swedish corporate governance. As in previous years, the Board commissioned a study of each Code company's application of the Code based on information published in annual reports, in corporate governance reports and on company websites. Last year, the Board changed supplier, and the surveys are now conducted by SIS Ägarservice. Even though the survey continues to use the same questions as in previous years, this change means that comparison with previous years' results, especially regarding assessment of the quality of explanations of non-compliance and other statements, is not quite as easy. However, much of the survey concerns whether companies have provided the required factual information, and here the change of supplier has little, if any, impact. The results are summarised below. Also in this section, there is a presentation of the Swedish Securities Council's and the stock exchange disciplinary committees' approaches to Code issues.

Companies' application of the Code

Executive summary

With the proviso regarding comparability because of last year's change of survey supplier, this year's survey shows that companies' reporting on corporate governance issues has improved further. This means a continuation of the curve of steadily improving corporate governance reporting, with the exception of the 2012 survey, which showed worse results than in previous years.

Companies have again shown a high level of ambition when it comes to applying the Code. The shortcomings in the details of how companies report on their corporate governance in their corporate governance reports and on their websites continue to fall in number, but far too many companies still fail to provide all the information that is required by the Annual Accounts Act and the Code. There is therefore still room for improvement.

The number of deviations from the Code fell each year until last year, when the figure increased. This year's survey shows another increase in the number of reported deviations at a higher number of companies. Such a development can be interpreted both positively and negatively. The development is positive against the background of the Code's aim to make companies reflect and bring transparency to their corporate governance. The comply or explain principle on which the Code is based assumes that corporate governance is something fundamentally individual to each company, and even if the behaviour of companies means that they apply the majority of the rules in the Code, there should exist a large number of individual solutions that are more suitable for those particular companies than the standard methods prescribed in the Code. If companies feel that they must adapt their behaviour in order to comply with the Code, innovation and initiative may be stunted, to the detriment of the individual company and its shareholders. However, the development is negative in the sense that if the rules of the Code are respected, the standard of corporate governance within listed companies should be improved.

Like last year, this year's survey focused particularly on nomination committees' statements on proposed candidates to positions on the board of directors, not least with regard to the Code's requirement that listed companies strive to achieve gender balance on their boards. Regarding the latter, last year's improvement has continued, and the number of nomination committees that have explained their proposals clearly in relation to the Code requirement on gender balance has continued to increase.

Aims and methods

The aim of analysing how companies apply the Code each year is to provide information in order to assess how well the Code works in practice, and to see whether there are aspects of the Code that companies find irrelevant, difficult to apply or in some other way unsatisfactory. The results of the annual surveys provide a basis for the continued improvement of the Code.

Since 2011, the survey has also examined companies' application of the rules concerning the reporting of corporate governance and internal controls, as well as auditor review of these reports, which were introduced into the Companies Act and the Annual Accounts Act in 2010. The aim of this part of the survey is to build up a picture of how companies report their corporate governance.

The basis for the study is companies' own descriptions of how they have applied the Code in the corporate governance reports that are required by the Annual Accounts Act, in other parts of their annual reports and in the information on their websites. For the past five years, the survey has also examined whether the corporate governance information on companies' websites fulfils the requirements of the Code and whether corporate governance reports contain all the required formal details. No attempt is made to ensure that the information provided by the companies is complete and accurate.

As in previous years, the target group for the study was the companies whose shares or Swedish Depository Receipts, (SDRs), were available for trade on a regulated market and who were obliged to issue a corporate governance report as of 31 December 2015. Stock Exchange rules state that companies whose shares are traded on a regulated market run by the exchange are to adhere to generally accepted principles in the securities market, which includes applying the Swedish Corporate Governance Code.[1] Up to and including 2010, foreign companies were not obliged to apply the Code. Following an instruction issued by the Swedish Corporate Governance Board, which after some minor adjustment was included in the revised Code text of 2015, from 1 January 2011, foreign companies whose shares or SDRs are traded on a regulated market in Sweden are required to apply the Swedish Corporate Governance Code, the corporate governance code of the company's domicile country or the code of the country in which the company has its primary stock exchange listing.[2] If the company does not apply the Swedish Code, it is obliged to state which corporate governance code or corporate governance rules it applies and the reasons for so doing, as

Table 1. Number of surveyed companies

	2015		2014		2013		2012		2011		2010		2009	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
NASDAQ Stockholm	278	97%	265	96%	253	96%	253	95%	249	94%	232	92%	236	90%
NGM Equity	10	3%	10	4%	10	4%	12	5%	15	6%	20	8%	25	10%
Total target group	288	100%	275	100%	263	100%	265	100%	264	100%	252	100%	261	100%
Excluded *)	16	6%	23	8%	16	6%	18	7%	16	6%	13	5%	8	3%
Total companies surveyed	272	94%	252	92%	247	94%	247	98%	248	94%	239	95%	253	97%

*) Companies excluded due to information not being available, delisting or primary listing being elsewhere.

1) See Point 5 of Nasdaq Stockholm's Regulations for Issuers and Point 5 of NGM's Stock Exchange Regulations.
2) See the introduction to Section III of the Swedish Corporate Governance Code, Rules for Corporate Governance.

well as an explanation of in which significant ways the company's actions do not comply with the Swedish Code. The statement is to be included in or issued together with the company's governance report or, if no such report is issued, on the company's website.

On 31 December 2015, there were 288 companies whose shares or SDRs were available for trade on a regulated market in Sweden. Of these, 278 were listed on Nasdaq Stockholm and 10 on NGM Equity. Of those listed on Nasdaq Stockholm, 23 were foreign companies, whereas none of the companies listed on NGM Equity were. Of the 23 foreign companies, seven have declared that they apply the Swedish Code, and these seven were therefore included in the survey. The remaining 16 foreign companies were excluded from the survey. This meant that the number of companies actually included in the survey was 272, of which 262 were listed on Nasdaq Stockholm and 10 on NGM Equity. See Table 1, page 16.

Companies' reports on corporate governance

The Annual Accounts Act states that all stock exchange listed companies are to produce a corporate governance report.[3] The content of the corporate governance report is governed by both the Annual Accounts Act and the Code.[4] According to the Code, any company that has chosen to deviate from any rules in the Code must report each deviation, along with a presentation of the solution the company has chosen instead and an explanation of the reasons for non-compliance.

As in previous years, all of the companies surveyed had submitted a formal corporate governance report, which is mandatory by law. Nine companies chose to publish their corporate governance report on their websites only, compared with six companies the previous year.[5] Like last year, of the vast majority of companies which include their corporate governance report in the printed annual report, just under half now include it in the directors' report, while the other half published their corporate governance report as a separate part of the annual report. See Table 2. The trend of increasing numbers of companies choosing not to include their corporate governance reports in their directors' reports, which began two years ago, has thus continued.

According the Annual Accounts Act, a corporate governance report is also to contain a description of the key elements of the company's internal controls and risk management concerning financial reporting.[6] Two com-

Table 2. How is the corporate governance report presented?

	2015		2014		2013		2012	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
In the directors' report in the annual report	121	44%	113	45%	120	49%	141	57%
A separate report within the annual report	142	52%	133	53%	117	47%	96	39%
Only on the website	9	3%	6	2%	7	3%	10	4%
Unclear *)	0	0%	0	0%	3	1%	0	0%
Total	272	100%	252	100%	247	100%	247	100%

*) Foreign companies with a secondary listing in Stockholm applying the Swedish Code.

3) See chapter 6, section 6 and chapter 7, section 31 of the Annual Accounts Act, (1995:1554).
4) See chapter 6, section 6 and chapter 7, section 31 of the Annual Accounts Act, (1995:1554) and rule 10. 1-2 of the Code.
5) This does not contravene the Annual Accounts Act or the rules of the Code. The Annual Accounts Act states that companies whose shares are traded on a regulated market are to produce a corporate governance report, either as part of the directors' report or in a document that is not part of the annual report. In the case of the latter, a company may choose to release its report either by submitting it to the Swedish Companies Registration Office together with the annual report or by only publishing it on its website. (The report must in fact always be made available on the company's website.) If the corporate governance report is not contained in the directors' report, the company may choose whether to include it in the printed annual report – this is not regulated by law or by the Code.
6) See chapter 6, section 6, paragraph 2, point 2 the Annual Accounts Act, (1995:1554) and the third paragraph of rule 7.3 and rule 7.4 of the Code.

panies failed to provide an internal controls report this year, compared with one company last year, while it must be regarded as unclear whether another company fulfilled the requirement, compared with three last year. See Table 3. The Annual Accounts Act makes it a legal requirement for companies to report on their internal controls. The internal controls reports vary in their scope, from short summaries within the corporate governance report to separate reports. This year, the Board's survey did not assess the information value of internal controls reports. This is something we will return to in future surveys.

The third paragraph of Code rule 7.3 states that a company which has not set up an internal audit is to explain the company board's position on this issue and its reasons why in the report on internal controls. Just under 25 per cent of the surveyed companies conducted an internal audit, showing a small increase on the 2014 figure. Of the just over 75 per cent of companies that chose not to conduct internal audits, the boards of ten companies have not provided an explanation for this. See Table 4. Since 2010, auditor review of corporate governance reports is now mandatory according to the Companies Act and the Annual Accounts Act.[7] See Table 5. Six companies have not reported that their corporate governance reports were reviewed by their auditors, and

Table 3. Is there a separate section on internal controls and risk management?

	2015		2014		2013	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes	269	99%	248	98%	239	97%
No	2	1%	1	0%	3	1%
Partly	1	0%	3	1%	5	2%
Total	272	100%	252	100%	247	100%

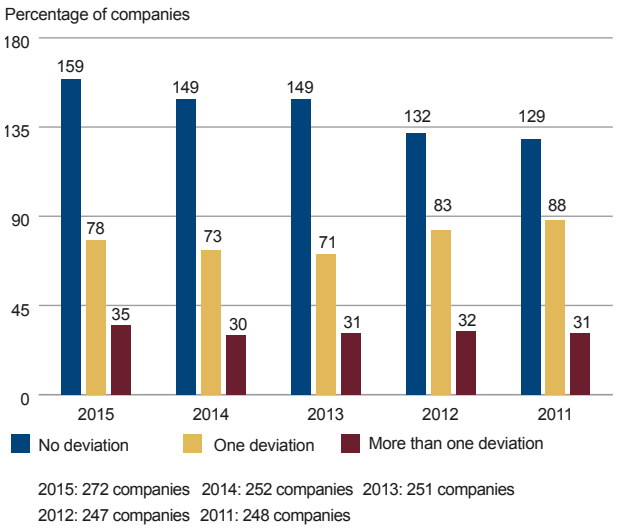
Table 4. If it is clear from the report on internal controls and risk management that no specific auditing function exists, are the board's reasons for this explained in the report?

	2015		2014		2013	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes, reasons presented	197	72%	181	72%	181	73%
No, no reasons presented	10	4%	11	4%	14	6%
Partial explanation	0	0%	1	0%	1	0%
Unclear	0	0%	2	1%	0	0%
Not applicable/ own internal auditor	65	24%	57	23%	51	21%
Total	272	100%	252	100 %	247	100 %

Table 5. Was the corporate governance report reviewed by the company auditor?

	2015		2014		2013	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes	265	97%	243	96%	238	96%
No	6	2%	7	3%	3	1%
No information /unclear	1	0%	2	1%	6	2%
Total companies	272	100%	252	100%	247	100%

Diagram 1. Companies per number of instances of non-compliance



2015: 272 companies 2014: 252 companies 2013: 251 companies
2012: 247 companies 2011: 248 companies

7) The requirement for auditor review of a corporate governance report if it is included in the director's report or of the information otherwise published in the company's or group of companies' director's report can be found in chapter 9, section 31 of the Companies Act (2005:551). The requirement for the auditor review of the corporate governance report to be published separately from the annual report can be found in chapter 6, section 9 of the Annual Accounts Act.

for one company it is not clear whether such a review took place. Three of these seven companies, i.e. almost half, are not Swedish, which may explain some of the non-compliance. For the four Swedish companies that have not reported clearly that auditor review took place, the question is whether this means they have broken the regulations by failing to review or simply failed to report the review, which in itself is a breach of the Code.[8]

Reported non-compliance

Companies that apply the Code are not obliged to comply with every rule. They are free to choose alternative solutions provided each case of non-compliance is clearly described and justified. It is not the aim of the Corporate Governance Board that as many companies as possible comply with every rule in the Code. On the contrary, the Board regards it as a key principle that the Code be applied with the flexibility afforded by the principle of comply or explain. Otherwise, the Code runs the risk of becoming mandatory regulation, thereby losing its role as a set of norms for good corporate governance at a higher level of ambition than the minimums stipulated by legislation. It is the Board's belief that better corporate governance can in certain cases be achieved through other solutions than those specified by the Code.

In light of this, the development shown in Diagram 1 is no longer worrying. Diagram 1 shows the proportion of surveyed companies that have reported instances of non-compliance since 2011. The proportion of companies that reported more than one instance of non-compliance in 2015 was 13 per cent, which is one percentage point higher than in the previous year. This means that the remaining 87 per cent of companies reported no more than one deviation from the Code rules. The proportion of companies that reported one deviation from the Code was unchanged at approximately 29 per cent. Approximately 58 per cent, or 159 companies, reported no deviations at all in 2015, which is a slight decrease compared with the previous year's figure of just over 59 per cent.

The trend of a decreasing number of deviations from the Code had previously continued for a number of years, and to avoid that happening again, the Corporate Governance Board has given a great deal of thought to how the EU recommendation on corporate governance outlined elsewhere in this report should be implemented into the Code. The detailed requirements in the EU

Table 6. Reported non-compliance

	2015	2014	2013	2012	2011	2010	2009
Company reports no deviations	159	149	149	132	129	118	125
Company reports one deviation	78	73	71	83	88	94	89
Company reports more than one deviation	35	30	31	32	31	26	38
Total	272	252	251	247	248	238	252
Number of companies reporting deviations	113	103	102	115	119	120	127
Percentage of companies reporting deviations	42%	41%	41%	47%	48%	50%	50%
Number of reported deviations	163	142	143	160	153	162	182
Number of rules for which deviations reported	21	21	23	26	23	26	25
Average number of deviations per rule	7.76	6.76	6.22	6.15	6.65	6.23	7.28
Average number of deviations per company	1.44	1.38	1.40	1.39	0.72	0.72	0.72

[8] Rule 10.3, paragraph 1 of the Code states that companies are to make the auditor's report on their corporate governance report available in the corporate governance sections of their websites.

recommendation, as well as its wording, signal that compliance with each rule is desirable, which is not a view shared by the Swedish Corporate Governance Board.

A total of 163 deviations from 21 different rules were reported in 2015, which gives an average of 1.44 deviations per company reporting at least one deviation. This is a slight increase on last year's figure of 1.38 deviations per company.

A detailed breakdown of reported non-compliance is shown in Table 6, page 19.

Which rules do companies not comply with?

The Code was revised during the year, and the current version came into force on 1 November 2015. The rule numbers in this year's survey refer to the numbering in the new Code text. Table 7 shows the number of deviations per rule from which deviation has been reported since 2013. The five rules for which the most companies report non-compliance, see Diagram 2, are commented on in brief below.

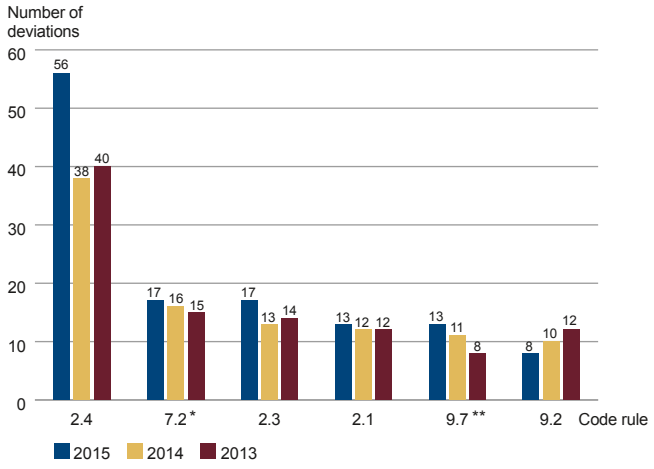
As in previous years, the rule with by far the most instances of non-compliance was Code rule 2.4. Almost 21 per cent of all Code companies report some kind of deviation. The rule states that members of the company board may not constitute a majority on the nomination committee and that the chair of the board may not be chair of the nomination committee. If more than one member of the board is a member of the nomination committee, only one member may have a dependent relationship to major shareholders in the company.

The most common form of non-compliance with this rule was that the chair of the board, or in some cases another member of the board, was appointed chair of the nomination committee. The most common explanation for this was that the person concerned was a major shareholder and/or deemed to be the most competent and therefore considered best suited to lead the work of the committee. In some cases, more than one of several members of the board who were on the committee were not independent of major shareholders, and in a small number of companies, members of the board formed a

Table 7. Number of deviations from individual Code rules

Rule	2015	Rule	2014	Rule	2013
2.4	56	**2.4**	38	**2.4**	40
2.3	17	**7.3**	16	**7.3**	15
7.2	17	**2.3**	13	**2.3**	14
2.1	13	**2.1**	12	**9.2**	12
9.7	13	**9.8**	11	**2.1**	12
9.2	8	**9.2**	10	**9.8**	8
7.6	8	**7.6**	8	**7.6**	7
2.5	8	**2.5**	5	**2.5**	6
4.2	5	**4.2**	5	**4.2**	5
4.4	4	**4.4**	5	**4.3**	4
2.6	3	**1.5**	4	**1.5**	4
9.1	2	**4.1**	2	**7.5**	2
8.2	2	**4.3**	2	**2.6**	2
1.1	2	**7.5**	2	**4.4**	2
4.3	2	**1.3**	1	**4.5**	2
1.4	2	**1.4**	1	**1.1**	1
4.1	1	**1.7**	1	**1.3**	1
		10.3	1	**1.7**	1
		4.5	1	**6.1**	1
		6.1	1	**9.5**	1
		9.1	1	**9.6**	1
		9.4	1	**8.2**	1
		9.9	1	**10.3**	1
Total	163	**Total**	142	**Total**	143

Diagram 2. Instances of non-compliance per Code rule



* Corresponds to previous rule 7.3
** Corresponds to previous rule 9.3

majority on the nomination committee. Non-compliance with this rule is most common in companies with a strong concentration of ownership, often with the general explanation that it would otherwise be difficult or impossible for a private individual to combine the roles of major shareholder and active owner through participation on the board and on the nomination committee.

The rules with the next-highest frequency of non-compliance were rules 7.2 and 2.3. Of the companies surveyed, 17 chose not to comply with these Code rules. Of the companies which deviate from rule 7.2, the majority have chosen to appoint an audit committee with just two members rather than the three members required by the Code, all stating that they did so because the board is small and/or because they considered this to be the most efficient way to carry out the work of the audit committee. One company reported that all the members of its audit committee had a dependent relationship with the company's largest shareholder. Some companies reported that they did not have an audit committee. It should be noted that companies are not obliged to appoint an audit committee. According to the Companies Act, the board of directors may perform the duties of the committee. It should be noted, however, that the rules on audit committees were removed from the Code through Swedish Corporate Governance Board Instruction 1-2016, which came into force on 17 June 2016, as the composition of audit committees is now covered by legislation, following the implementation of a directive [9] amending the 2006 Auditors Directive.

Rule 2.3 concerns the size and composition of nomination committees, primarily with regard to committee members' independence. In the majority of cases, the non-compliance involves the CEO and/or other members of the company's executive management being members of the nomination committee. The explanation given for this is that they are also major shareholders in the company. In a small number of cases, the nomination committee consisted entirely of representatives of the largest shareholder in terms of voting rights, meaning that the company did not comply with the rule that states that at least one member of the committee is to be independent in relation to the largest shareholder. Some nomination committees did not fulfil the Code requirement that they must comprise at least three members.

Thirteen companies chose not to comply with rule 2.1, which obliges companies to have a nomination committee. The most common explanation for this is that these are companies whose major shareholder or shareholders did not deem it necessary to have a nomination committee because of the size of their own holdings in the company, e.g. as the result of a takeover bid where, for one reason or another, delisting of the company has not taken place. In one case, the nomination committee did not submit any proposals for a new board. There has been lively debate recently about whether it is compatible with generally accepted principles in the securities market to deviate from such a fundamental Code requirement, but in a purely formal sense the Code does not present any obstacles to companies who wish to deviate from any Code rule they wish, as long as their non-compliance is reported and explained.

Thirteen companies reported non-compliance with rule 9.7, concerning incentive programmes. The majority of these deviated from the requirement that the vesting period is to be at least three years.

There were almost no "new" explanations in 2015, i.e. explanations of non-compliance with rules that have previously had no deviation reported.

Explanations of non-compliance

The standard of explanations of non-compliance is crucial to the success of a corporate governance code based on the principle of comply or explain. The definition of what

[9] European Parliament and Council Directive 2014/56/EU amending Directive 2006/43/EC on statutory audits of annual reports, annual accounts and consolidated accounts.

constitutes good quality in such explanations is for the reports' target groups to assess, primarily the companies' owners and other capital market actors. However, in order to be useful as a basis for such evaluation, the explanations must be sufficiently substantive, informative and founded as much as possible in the specific circumstances of the company concerned. Vague arguments and general statements without any real connection to the company's situation have little information value for the market.

Up until last year, the information value of the explanations was patchy, with a high proportion of explanations with poor information. This seems to be an international problem for this kind of corporate governance code. The primary aim of the European Commission's recommendation on corporate governance is to improve these explanations, not least by introducing the solution that has been in existence in the Swedish Code in 2008, namely that each instance of non-compliance should not only be explained, but a description of the chosen solution should also be provided.

Swedish companies' reporting of non-compliance in 2015 has improved compared with previous years. Nine companies, compared with seven last year, failed to explain their reasons for deviating from a rule. All but one of the surveyed companies, (compared with nine companies in 2014), explained their reasons for non-compliance. Two companies failed to describe their alternative solutions, compared with one company last year. This means that a total of three companies failed to fulfil the Code's requirements regarding the reporting of non-compliance in 2015, compared with the nine companies which failed to do so in 2014. This means that around 1.1 per cent of the companies surveyed, compared with 3.5 per cent in 2014, do not appear to apply the Code correctly and therefore do not entirely fulfil the stock exchange requirement to observe good practice on the securities market. This is a significant improvement on 2014.

Diagram 3. The information value of explanations, number

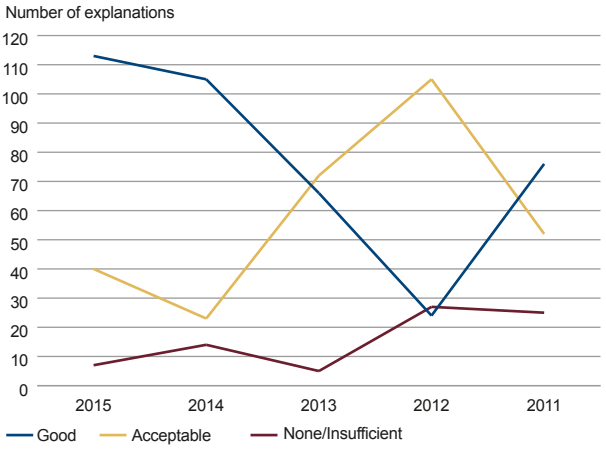


Diagram 4. The information value of explanations, trend

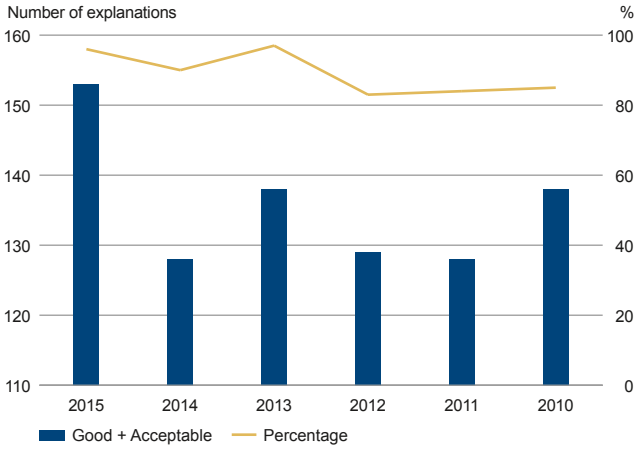


Table 8. The information value of explanations of non-compliance

	2015		2014		2013		2012		2011	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Good	113	71%	105	74%	66	46%	24	16%	76	50%
Acceptable	40	25%	23	16%	72	50%	105	67%	52	34%
None/Insufficient	7	4%	14	10%	5	4%	27	17%	25	16%
	160	100%	142	100%	143	100%	156	100%	153	100%

As in previous years, an attempt has also been made to assess the quality of explanations offered. This necessarily involves a large element of subjectivity. Even though the evaluation has followed the same format and criteria each year, last year's change of survey institute means that comparisons with previous years are of limited value. Going forward, however, the hope is that any trends observed can be regarded as reasonably reliable. It should be noted, however, that the bar for what is considered a good explanation tends to be raised each year, partly as the general quality of corporate governance reporting improves, and partly because those evaluating the reports have been faced with so many explanations over the years that they tend to be better at seeing through flimsy or standardised explanations and appreciating short but substantive ones.

The 2010 and 2011 surveys showed a significant improvement in information quality. That positive trend was broken in 2012, but the situation improved significantly in 2013. Just four per cent of companies provided explanations with poor information content in 2013, compared with 17 per cent in 2012. Furthermore, the proportion of explanations found to provide good information rose from 16 per cent in 2012 to 46 per cent in 2013. This can be regarded as a rebound after the poor result in 2012, when the proportion of explanations considered good fell from 50 per cent to 16 per cent between 2011 and 2012.

Last year's survey showed further significant improvement, at least on paper. Although the number of poor explanations rose from four per cent to ten per cent, the proportion of good explanations rose from 46 per cent in 2013 to 74 per cent in 2014.

The latest survey shows that the proportion of good explanations has fallen slightly to 71 per cent, but remains at a high level. The proportion of poor explanations has fallen to just over four per cent – see Table 8 and Diagrams 3 and 4, page 22. This year's figures are therefore similar to those of last year. It is not the opinion of the Corporate Governance Board that such a sub-

Table 9. The detailed content of corporate governance reports

	Yes	No	Partly
Does the report contain information on the nomination committee?			
Composition	252	20	0
Representation	232	33	7
Does the report contain information on board members?			
Age	268	3	1
Educational background	232	11	29
Professional experience	215	34	23
Work performed for the company	269	1	2
Other professional commitments	245	2	25
Shareholding in the company	267	1	4
Independence	265	4	3
Year of election	267	4	1

	Yes	No	Partly
Does the report contain information on the board?			
Allocation of tasks	271	1	0
Number of meetings	271	1	0
Attendance	270	2	0

	Yes	No	Partly	Not applicable
Does the report contain information on board committees?				
Tasks and decision-making authority	223	11	5	33
Number of meetings	187	15	5	65
Attendance	173	28	5	66

	Yes	No
Does the report contain information on the CEO?		
Age	266	6
Educational background	247	25
Professional experience	224	48
Professional commitments outside the company	165	107
Shareholding in the company	271	1
Shareholding in adjacent companies	13	259

stantial improvement in the quality of corporate governance reporting as shown in the two most recent surveys actually took place. The primary explanation is probably the change of survey institute.

The content of corporate governance reports

For the fifth consecutive year, the content of companies' corporate governance reports has been examined against the background of the requirements stipulated in the Annual Accounts Act and the Code. The Annual Accounts Act requires, for example, that companies report which corporate governance code they apply. Every company but one of those surveyed this year stated that it applied the Swedish Corporate Governance Code, which is the same figure as last year. A general review of the reports also showed that companies seemed to fulfil all the requirements set out in the Act.

Compliance with the detailed requirements of the Code concerning information[10] was not quite as good – see Table 9, page 23, for details. Some results stand out more than others, e.g. over 30 companies did not provide information on the professional experience of their board members, a similar number of companies did not state who had appointed members of their nomination committees, and almost 50 companies did not list the previous professional experience of their chief executive officers. Breaches regarding these requirements were pointed out in previous years, and small improvements have occurred. The percentage of companies not reporting the previous experience of the members of the board has fallen from 18 per cent in 2014 to 13 per cent in 2015, while the number of companies failing to report the previous experience of the chief executive officer has fallen from 20 per cent to 18 per cent. The proportion of companies who report whom members of the nomination committee represent has risen by two percentage points compared with last year.

Another Code requirement is that companies who have been found by the Stock Exchange Disciplinary Committee or the Swedish Securities Council to have committed breaches against the rules of the stock exchange or generally accepted principles in the securities

Diagram 5. Content of the nomination committee's proposal regarding individual candidates to the board

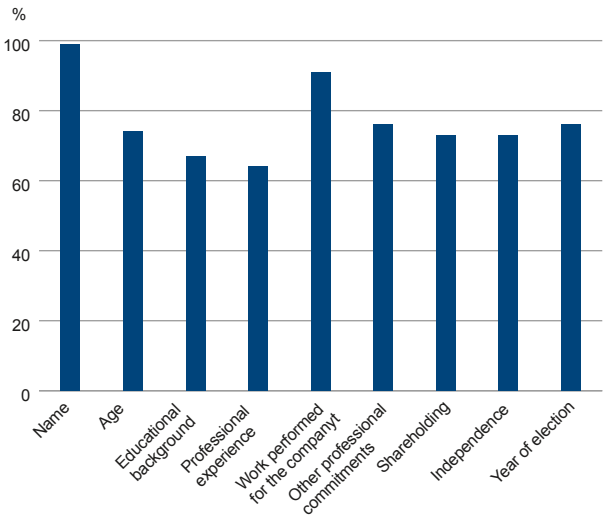


Table 10. Is corporate governance information easy to find on the company's website?

	2016		2015	
	Number	Percentage	Number	Percentage
Yes	264	97%	227	90 %
Acceptable	8	3%	25	10 %
No	0	0%	0	0 %
Total	272	100%	252	100 %

[10] Code rule 10.2.

market during the financial year are to report this in their corporate governance reports. All four companies to which this rule applied provided information about the breach, which is the same figure as in 2014.

Corporate governance information on company websites

For the sixth year, an analysis of corporate governance information on company websites was carried out. Whereas corporate governance reports describe the past financial and corporate governance year, (the corporate governance year is not a legal term, but refers to the time between two annual general meetings), the information on company websites is to be up to date, i.e. it is to be updated within seven days of any change.[11] As people increasingly search for information on the internet, the importance of providing immediate and easily accessible information to shareholders and other stakeholders through company websites has grown. This also applies to corporate governance information, and this year's survey is therefore particularly quality assured on the subject of information on websites.

Rule 10.3 of the Code requires companies to devote a separate section of their websites to corporate governance information. This requirement was fulfilled by almost all of the companies surveyed. One company had no such section on its website at the time of the survey.

One of the questions in the survey concerns how easy it is to find corporate governance information on company websites. This assessment is subjective, but the hope is that an annual follow-up of this issue based on the same criteria will at least allow an examination of trends. The results of this year's survey of this area can be found in Table 10, see page 24, which shows that 97 per cent of the companies surveyed have easily accessible corporate governance information, which is an improvement on last year's figure of 90 per cent. None of the companies failed to fulfil the accessibility criteria entirely, while the standard for the remaining three per cent was acceptable, which is a clear improvement compared with last year's figure of ten per cent.

Code rule 10.3 also contains a list of information required on the corporate governance sections of websites. As well as the company's three most recent

Table 11. Detailed information on company websites

2016	Yes	No	Partly	Total	Percentage Yes
Current board members	272	0	0	272	100%
Current CEO	271	1	0	272	100%
Current auditor	261	11	0	272	96%

2015	Yes	No	Partly	Total	Percentage Yes
Current board members	252	0	0	252	100%
Current CEO	250	2	0	252	99%
Current auditor	239	12	1	252	95%

11) See Code rule 10.3, paragraph 2.

corporate governance reports and the auditor's written statements on the corporate governance reports, the company's articles of association are also to be posted. At the time of the survey, two companies did not fulfil the latter requirement, while the articles of association of the remaining 270 companies were accessible on the company website, which is an improvement on the previous year. Additionally, the Code requires companies to post information regarding the current board of directors, the CEO and the auditor. This requirement was not fulfilled by all companies. See Table 11, page 25, for more detailed information.

Nomination committees are also required to fulfil certain information requirements. The Code requires the nomination committee to present information on its candidates to the board on the company website when notice of a shareholders' meeting is issued.[12] Even if companies fulfil this requirement, their information on candidates is not complete – see Diagram 5, page 24. At the same time as it issues the notice of meeting, the nomination committee is also to issue a statement, which is also to be available on the website, with regard to the requirement in rule 4.1, that the proposed composition of the board is appropriate according to the criteria set out in the Code and that the company is to strive for gender balance. This year, ten per cent of the companies surveyed failed completely or partly to issue such a statement. Even though this is a slight improvement on last year's figure of 13 per cent, it is remarkable that one company in ten did not fulfil the requirements of a Code rule that has been in force since 2008. In 2013, as many as 80 per cent of companies' nomination committees failed to make any comment on gender balance, while in 2014 almost 60 per cent of the nomination committees did not comment on gender balance. The corresponding figure for 2015 was 24 per cent. The positive development continued this year, when the proportion of nomination committees that did not comment on gender balance was 18 per cent. Against the background of the debate on the composition of boards, especially the issue of gender balance and the question of whether quotas should be introduced, it is not particularly surprising that the number of nomination committees that neglected to comment on gender has fallen in recent years – see Table 12, page 27. One of the aims of the introduction of the relevant Code rule was to avoid the introduction of quotas and instead allow nomination committees to explain how they had handled the issue of increasing the ratio of women on boards and bring the issue into focus. The Corporate Governance Board will continue to monitor gender balance on the boards of listed companies committees.

Rule 10.3, paragraph 2 of the Code requires companies to declare all share and share price related incentive programmes for employees, (not just the management), and board members. Still just over half of those surveyed publish no information regarding such programmes on their websites. Many companies do not have such programmes, but that as many as half of the companies surveyed would have no current share and share price related incentive programmes seems a very high proportion.

Since 2010, the same rule 10.3 also requires companies to issue a description on their website of any ongoing variable remuneration programmes for the board of directors and the executive management, (though there is no requirement to issue information on variable remuneration programmes for other employees). This year, 72 per cent of the companies surveyed published such information on their websites, which is an increase on last year's figure of 69 per cent.

12) See Code rule 2.6, paragraph 2.

Table 12. Nomination committee statements: Does the statement provide any explanation regarding gender balance on the board

	2016		2015	
	Number	Percentage	Number	Percentage
Partly	3	1%	2	1%
Yes	220	81%	190	75%
No	49	18%	60	24%
Total	272	100%	252	100%

Finally, company websites are to provide information on the board's evaluation of remuneration within the company no later than three weeks before the annual general meeting [13]. This evaluation is to cover ongoing variable remuneration programmes for executives and directors and those that have ended during the year; how the company's executive remuneration guidelines have been applied; and the current remuneration structures and remuneration levels within the company. This requirement was introduced in 2010 and the information was included in the survey for the first time in 2011. Table 13 shows that there has been some improvement in all three areas since last year and that over 70 per cent of the companies surveyed fulfilled this requirement.

It must, however, be regarded as unacceptable that as many as 30 per cent of the companies surveyed do not publish any evaluation or neglect to leave the evaluation in place on their website after the annual general meeting.

Table 13. Information on company websites regarding the board's evaluation of remuneration matters

2016	Yes	No	Partly	Total
Variable remuneration programmes	198	74	0	272
Remuneration policy	203	67	2	272
Remuneration structures and levels	200	71	1	272

2015	Yes	No	Partly	Total
Variable remuneration programmes	161	88	3	252
Remuneration policy	184	68	0	252
Remuneration structures and levels	163	81	8	252

[13] See Code rule 10.3, paragraph 3. Code rule 9.1 states that the remuneration committee, (or the board in its entirety if no such committee has been appointed), is to perform this evaluation.

Interpreting the Code

The Swedish Corporate Governance Board is the body that sets norms for self-regulation in the corporate governance of Swedish listed companies, but it does not have a supervisory or adjudicative role when it comes to individual companies' application of the Code. The Board occasionally receives questions on how the Code is to be interpreted. Although it tries as much as possible to help companies understand what the rules mean, it is not the Board's responsibility to interpret how the Code is to be applied in practice. This is the responsibility of the market, after which the Board assesses how the Code has actually been applied and considers any revisions that may be required as a result.

However, the Swedish Securities Council, whose role is to promote good practice in the Swedish stock market, is able to advise on how to interpret individual Code rules. This occurs when companies who would like advice on interpretation ask the Council to issue a statement.

The disciplinary committees of the Nasdaq OMX Stockholm AB and Nordic Growth Market NGM AB stock markets can also issue interpretations of the Code.

The Swedish Securities Council issued one statement on the Code in 2015. The Council has issued six statements in total concerning interpretation of Code rules:

- AMN 2006:31 concerned whether two shareholders were able to pool their shareholdings in order to be eligible for a seat on the nomination committee.
- AMN 2008:48 and 2010:40 dealt with the amount of leeway allowed to a board of directors when setting the conditions of an incentive programme.
- AMN 2010:43 interpreted one of the independence criteria in the Code, which covers board members' independence with regard to clients, suppliers or partners who have significant financial dealings with the listed company.
- AMN 2011:03 examined whether a proposed salary increase for executives conditional on a sustained shareholding in the company needed to be referred to the shareholders' meeting.
- AMN 2015:24 examined whether a variable cash bonus arrangement for an executive of a listed company conditional on a sustained shareholding in the company needed to be referred to the shareholders' meeting.

The disciplinary committees of the Nasdaq OMX Stockholm and Nordic Growth Market NGM stock markets did not issue any interpretations of the Code in 2015, and these two bodies have no tradition of issuing statements regarding interpretation of the Code.

The Corporate Governance Board has also issued takeover rules for the First North, Nordic MTF and AktieTorget trading platforms, and the Swedish Securities Council has issued several statements on these rules. These statements, however, correspond to the Council's established position regarding the takeover legislation and the rules issued by the regulated markets, and are therefore not discussed here.

There is not yet any established practice regarding the recommendation issued by the Swedish Corporate Governance Board on 1 January 2015 regarding private placement of shares. AMN 2015:18 and the Disciplinary Committee of Nasdaq Stockholm's decision 2015:5 referred to private placements of shares, but no interpretation of the Board's recommendation was made in either case.

III. PERSPECTIVES

The Swedish Corporate Governance Board's ambition is that its Annual Report not only describes the work of the Board and how the Code has been applied during the past year, but also provides a forum for discussion and debate on current corporate governance issues, both in Sweden and internationally. The Board therefore invites external contributors to publish articles and opinions within the field of corporate governance that are deemed of general interest. The content of these articles is the responsibility of the respective author, and any opinions or positions expressed are not necessarily shared by the Board.

This year's report contains three contributions.

- The first article is a report from a round table discussion between the outgoing Corporate Governance Board members Staffan Bohman, Tomas Nicolin, Caroline af Ugglas and Eva Halvarsson on the role of self-regulation and other topical issues in Swedish corporate governance. All four have key roles in Swedish self-regulation on the share market but left their seats on the Board in spring 2016. The Board believes it is interesting for a broader audience to benefit from their collective experience of Swedish self-regulation and developments within Swedish corporate governance, not least against the background of the increased regulatory ambitions of the European Union.
- The second article consists of the Board's position paper on the issue of individual ballots and vote counting at board elections, which was written in October 2015. This was prompted by a letter received by the Board from a number of international institutional investors while it was working on the latest revision of the Code. The letter proposed the introduction of a Code rule on board elections and the counting of votes. Similar demands had been expressed by Norges Bank Investment Management and in some of the comments received during the consultation process in conjunction with the work to revise the Code. The issues were debated during the year. Two of the Board's outgoing members, Eva Halvarsson and Staffan Bohman, have been invited to share their views on the position of the Board.
- The third article is written by Andreas Gustafsson, Senior Vice President and Chief Counsel Europe of Nasdaq, as well as a co-opted member of the Swedish Corporate Governance Board. In September 2015, the European Commission presented an action plan for a capital markets union, with the aim of creating a true internal market for capital for all 28 EU member states. To show its support for the capital markets union initiative, Nasdaq has published a white paper explaining its view of what needs to be done in Europe to create financial stability and to re-establish sustainable growth. In this article, Andreas Gustafsson describes Nasdaq's position with regard to the initiative as presented in the white paper.

Safeguard the Stock Exchange as an attractive place for companies and owners

Staffan Bohman, Eva Halvarsson, Tomas Nicolin and Caroline af Ugglas stepped down from the Swedish Corporate Governance Board in 2016. In a round table discussion led by Birgitta Gunnarsson, they reflect here on their years spent on the Board and the issues that have been most in focus. Explaining and safeguarding the Swedish model of self-regulation while being open to new impulses was a common thread throughout the discussion.


Staffan Bohman


Eva Halvarsson


Tomas Nicolin


Caroline af Ugglas

Since 2005 Sweden has had a corporate governance code for listed companies on all trading platforms. Many non-listed companies also apply this code. How well do you think it has worked?

Caroline af Ugglas: Ultimately, this is measured by the stock market. The basic premise, the job of the Swedish Corporate Governance Board, is to weigh the interests of relevant stakeholders such as owners, investors and prospective new owners, to mould a regulatory framework for listed companies that keeps the stock market an attractive place for companies and their owners. We are at the service of the listed companies and it is our job to contribute to a self-regulatory system that does not drive companies away from the stock market.

Staffan Bohman: The proof of whether a corporate governance system is good is whether there is also good value creation over the long term. According to the stakeholder model launched by Erik Rhenman in Sweden in the 1960s, companies' stakeholders often have conflicting agendas, but in the end it is value growth in the company that is the ultimate goal. If that cannot be achieved without infringing, for example, reasonable sustainability requirements and reasonable consideration of the interests of a range of external stakeholders, a company will not be able to defend its place in the capital market in the long run.

Tomas Nicolin: A company's income statement can be considered a list of the company's stakeholders. Customers give sales revenue, employees are payroll costs, bank loans mean interest payments and so on. The company has agreements with all stakeholders, agreements that are ultimately guaranteed by the owners' capital. Managing these agreements in a sensible way contributes to value growth in the company, i.e. profits on the last line of the income statement.

But there is another dimension here, and that is public trust and confidence in listed companies as an institution. It may be that certain decisions and measures would be better from the perspective of short-term profit, but they should perhaps be resisted for reasons of trust. I think most people agree today that companies cannot mismanage their stakeholder relations and still be profitable in the long term.

Eva Halvarsson: From what I have seen in other parts of the world, I also think that corporate governance works well. We have had a tradition of large Swedish main shareholders and it was therefore natural to have close contacts between shareholders and the company, which helped to create great confidence in the Swedish capital

market. The significant growth of institutional ownership in recent years – and a large proportion of the Swedish population have become indirect and/or direct shareholders – has enabled these 'new' owners to be inspired by this close working relationship when they have established their own models for corporate governance. Obviously this did not happen overnight, but gradually. And not entirely without disagreement between 'old' and 'new' owners. It is quite clear that the demands on owners, directors and nominating committees have increased as the new regulations have been put in place and the expectations of various stakeholders have grown.

Caroline: In the end, good corporate governance depends on the owner being able to do things with the company. It is the owner who weighs up the interests of the company's stakeholders and is thus able to optimise for the whole.

The Code came into being in a period marked by admittedly few but very big scandals. It was also a time when there began to emerge demands from investors for greater comparability and transparency. From that perspective, I think we have reached a good level. These days, all listed companies have developed codes of conduct which meet the shareholders' and investors' demands for transparency and clarity. During its development, the Code has become a positive and supportive regulatory framework in this process.

Tomas: Yes, something would have come along anyway, sooner or later, across all marketplaces. So it was good that we could find a solution in Sweden that is based on self-regulation, where the corporate sector itself agreed on clear principles without damaging the competitiveness of companies.

An effective regulatory framework should provide stability and predictability on the one hand, while being sensitive to the changes and requirements in the outside world on the other. Has the Board been able to balance these aspects in a good way?

Staffan: The Board must be careful not to jump on the latest trends, but regulate where needed. Trends are very often sparked by individual cases which are championed by people who are quite far from the actual issue. There is also pressure from international actors who want global rules that do not always work for everyone. We have seen many examples of odd proposals in this respect, not least from Brussels. Another example is approaches from international investors who think that the Swedish rules are a little odd. Meanwhile, few stock markets have outperformed Stockholm for many decades. So why should we change the Swedish model? We are obviously doing something right here! I think the burden of proof that there will be a change for the better lies with those who want to introduce or change a rule.

Tomas: There are two reasons to think about whether it is good or not to have the same rules everywhere. One is the different traditions that have evolved over time in different markets and the governance model chosen to maintain order in the respective market. In Sweden's case, the Companies Act provides a foundation that differs in many ways from other countries' legislation. It may also be good for the development of corporate governance to have different regulatory frameworks in different countries, as it provides a means to compare and perhaps try other methods in order to find the best solutions. With the same straitjacket for all, that would not be possible.

Eva: When you are a small country with a large and important capital market, I think you have an even greater responsibility to nurture and develop your regulatory framework, in our case the Code, so that you preserve what is unique and truly defines the model. At the same time we need to look around us in the world to find best practices that can help to make our market even more attractive in the years ahead. It is important not to sit back and think that because most things work so well here, everyone else must be wrong... There are always improvements to be made.

Overall I think that the Code has helped to raise the quality of the companies on the stock market, which is good. There need to be strong, but obviously not unreasonable, demands when companies go out into a public marketplace to seek capital.

Caroline: There you touch on something important. In the end, there must be a competitive advantage for companies to be on the stock market, which in turn also gives

benefits for investors and prospective owners. Too much top-down focus and experimentation with regulations might instead make it unattractive to be a listed company.

How do you think companies perceive the Code, as beneficial or a burden? There are, after all, quite a lot of companies that report non-compliance.

Tomas: Our task is to work for a code that facilitates good corporate governance. But it is undeniably an interesting question whether the companies as a whole think that it does. Is it good or bad that the Code exists? One approach could be that if non-listed companies voluntarily use the Code it must be good. Today, some use the Code, but many do not. That might indicate that companies do not feel they have anything to gain. A majority of those who do not need to do not apply the Code.

Caroline: It's a very good question, but it might just as well be because one condition for the Code to be of interest is broad distribution of ownership. The Code may be seen as unnecessary bureaucracy for those who do not have it and the cost of being on the stock exchange should not be greater than what you think you gain from it. The net effect should be positive. That is why we must continue to ensure that the cost of being listed does not exceed the benefit, so that the companies are not driven from the stock exchange.

Staffan: Intuitively, I think nevertheless that the positives outweigh the negatives, and that is because the Board has mainly made well-balanced decisions, even though we have had a lot of discussion over the years.

Tomas: The Code has also perhaps protected companies and the corporate sector from legislation in this area and therefore offered a more flexible application in its use. Something for future Boards to bear in mind.

Caroline: Yes, legislation is more sluggish, while the Code is a living document and can be fine-tuned along the way. Not all solutions suit all companies. They can deviate from the rules. But then they have to explain how and why! Therefore, we urge all companies who find that the Code does not work for them not to comply, but to explain why. This is a fundamental principle that I think is not well understood. Here I think we have reason to be a little self-critical as we have not communicated this well enough.

Tomas: It is crucial that this is understood! A deviation from the Code should not be regarded as a failure, as long as the reason for non-compliance is clear.

How does the Board promote owners' rights when faced with other, perhaps more politically-driven interests?

Caroline: The proprietary rights of owners, including those of listed companies, are absolute in the Swedish Constitution! Owners should actually be able to control their companies, and of course they should explain themselves if things go badly.

Staffan: It is so important for the Board to emphasise this. Listed companies are often regarded as the property of everyone, but the safeguarding of private ownership rights a fundament of our work. At the same time, ownership is sometimes very widespread. It is therefore vital that the Board is not too 'proactive' and does not become an instrument of special interests. It is not an easy reality to manage and build a governance code that satisfies everyone if the company has large principal owners, and perhaps a large number of Swedish and foreign institutions among its shareholders. But our task is not to be a body that serves society in general.

Eva: The Board should have its ear to the ground when it comes to important issues for the future development of companies. In that way, it can proactively handle many different stakeholders' and special interests' attempts to apply pressure. Of course it should maintain a position which safeguards the rights of owners, but it is also important to realise these rights may be very different for different types of owners and what they want to get out of their investments.

Do you often face pressure from outside?

Staffan: Very much so. One example was the issue of the number of women on company boards and the threat of quota legislation. Given the property rights of owners, that was an issue that we agonised over.

Eva: I still think the Board handled the issue well, not least since that the Board had had the foresight to state in the Code from its inception that gender balance was something that should be actively pursued. Our wish was that companies would be encouraged to use an underutilised skills resource.

Tomas: What happened illustrates an interesting difference between our Board and other code issuing bodies. In Sweden, it is the market that appoints the members of the Board, whereas in many other countries it is the state. If you do not see the difference it is easy to mix legislation with self-regulation, and that was what the government tried to do. The Board was expected to handle this issue on behalf of the government, under the direct threat of legislation.

Caroline: Another example is the issue of pay and who ultimately decides on remuneration to company executives. Here the legislators shifted the responsibility to the shareholders' meeting, even though the whole market was against the proposal. I do not think things got better. Instead, responsibility has become more blurred, because the shareholders' meeting is an institution that changes more and more from year to year.

A number of questions have been raised about the role of nomination committees in Swedish corporate governance. How do you see that issue?

Caroline: Overall, I think there have been great improvements in the role of the nomination committee. Before the turn of the century, cooperation between large and small shareholders was non-existent, networks were limited and the exchange of knowledge and experience between different industries was minimal. Today we have a cadre of experienced actors with large networks and long evaluable careers. I believe that this has contributed positively to the development of Swedish listed companies in comparison with much of the world. Nowadays there is also a great mix of backgrounds and experience on company boards, not just industry-specific knowledge.

Eva: I agree entirely. They have developed in an excellent way – they now start in good time, they have detailed discussions with all the directors, produce detailed job specifications for candidates to board positions and have a significantly more professional approach to the search for new candidates.

Tomas: During the years that the Code has been in existence, nomination committees have become a well-functioning cooperation between the principal shareholders and other shareholder groups. In the beginning, the owners fought against the idea, but I also think there has been a huge change. It must also be borne in mind that it is important for companies that there is also continuity in the nomination process. A well-functioning board needs it. It would therefore sometimes be preferable if institutions were a little more careful about wanting to change nomination committee members.

Staffan: It is the right of the owners to appoint the board that they believe gives them the most for their money. The nomination committee is a very good tool, but you still can't discuss how they work and how transparent they are from the perspective of the shareholders. There are thorny issues surrounding insider information, conflicts of interest, hostile takeovers and the like which we must be able to talk about and where the minority shareholders should be more alert, even though 90 per cent of the task of the nomination committee is uncomplicated and is about seeking a balance between the right skills, innovation and continuity.

Tomas: It would therefore be good if more attention were paid to the demands from international investors that the election of company board members take place through the process of the shareholders' meeting voting on every individual candidate. We have left it up to the companies to decide how this should be done.

Staffan: I think the Board's position paper on the issue is well formulated. There are no legal obstacles to conducting individual ballots. But if there are no counterproposals, all proposed candidates are elected. If you are not satisfied with nomination committee's proposal, you submit a new proposal to the shareholders' meeting, and then there will automatically be a vote. But you have to attend, or be represented, otherwise I can't see that individual ballots would always be better. Individual voting is more logical on the question of the discharge of board members from liability. But these two things are often confused.

Tomas: I agree, but on the other hand, the Corporate Governance Board is also to ensure that this is also an attractive market to engage in for foreign investors.

How about the future? What are the most important issues for the Corporate Governance Board in the years ahead?

Caroline: The market and ownership is becoming increasingly internationalised. So the big question for the future is how the Board will face this challenge and be able to fight for the Swedish model. At the same time, self-regulation must also be perceived as adequate by international investors and not lead to a situation where companies' desire to be on the stock market is eroded.

Staffan: In that situation, it is about reaffirming and even fighting for differentiated voting rights. These provide an opportunity for those who have a commitment to and take responsibility for the company to secure an influence that is greater than their capital investment. I do not think this is negative; on the contrary, both active

and passive owners are needed. I really hope for success for all the people who are pushing this issue. It provides a greater opportunity to secure stable and long-term ownership in Swedish companies.

Tomas: Yes, differentiated voting rights create a natural distinction between different categories of investors. Portfolio investors often have no interest in the running of companies and I therefore believe that companies are better off in the hands of A shareholders than in the hands of management, which is often the case with the one-share-one-vote alternative. That often results in a company without proprietary responsibility. We also have minority protection in Sweden, which makes differentiation a pretty small problem. However, the fruits of the company's business, its financial value, should of course be shared between the A and B shares.

It is also interesting that many of the new stock exchange giants who grew up in the United States have chosen structures which differentiate voting rights, despite a contrary tradition in that country.

Caroline: After all, this is not an either or question. Freedom of contract must prevail, and that is not the domain of the shareholders, but of the legislators. But it is a complex issue, e.g. if a new owner with intentions that might not be to the benefit of the company takes full control.

The balancing of the various interests to ensure a good whole is a major challenge; minority protection is central to creating an attractive market; the integrity of company board members is also of great importance, more important than the more figures-oriented objective sorting that we have imported from the Anglo-Saxon system.

Would you like to pass on any thoughts or advice for the future to the newly elected Corporate Governance Board?

Caroline: Continue to contribute to the development of the most attractive stock market for companies and prospective owners.

Staffan: Safeguard and reaffirm the principle of owners' rights. The Board must not be the extended arm of the government and be lured out on to thin ice by external pressure.

Tomas: And maintain the boundaries between Sweden and European Union bureaucracy together with the other Nordic countries. Make sure to meet regularly. It would be so much more effective if we could unite in common positions on EU matters. Perhaps our responses in consultation processes could be coordinated, for example. We have different starting points and perspectives because the other code issuers are partly appointed by the government while the Swedish Corporate Governance Board is appointed by the business community, but we will still have a much greater impact if we work together.

Caroline: I agree. We did a lot of work going through the various codes and structures, and that showed that there are great similarities. We have mostly common denominators here and an already strong Nordic cooperation to build on and develop further. Together, the Nordic countries are the world's tenth largest economy.

Eva: Make sure you are up to date on what is happening in society, set benchmarks and stay ahead of lobbyists and legislators. Devote plenty of time to discussion and value different opinions. Have fun - it's an inspiring group of people around the table!

Staffan: I have learned an incredible amount during my time on the Board. I urge everyone who has the opportunity to accept the invitation to take part. The Board is a clever mix of incredibly knowledgeable members with a wide range of different perspectives. At the same time, it is a complex and not entirely easy job. But we help to support good performance in companies, not to follow the latest trend. We deal with all categories of companies, and embracing that is not easy. But it has been time well spent.

The Swedish Corporate Governance Board's position paper on the issue of individual ballots and automatic counting of votes at the election of company directors

The Swedish Corporate Governance Board has received a letter from a number of international institutional investors regarding the introduction of a rule in the Swedish Corporate Governance Code concerning elections to company boards ("The Institutional Investors"). Similar claims were also submitted by Norges Bank Investment Management ("NBIM"). The Second and Third Swedish National Pension Funds (AP2 and AP3) have also expressed support for the international investors' demands.

According to the investors in question, it should be mandatory for nomination committees of listed companies' to present their nominations as a set of individual proposals, one for each proposed member of the board, and that voting at the shareholders' meeting should take place individually for each proposed candidate. Furthermore, each vote count should be conducted individually and each result should be recorded in the minutes.

According to the proponents, this process is standard in most leading countries, and the Swedish model of presenting an overall proposal for the board is regarded as outdated. The proposal would provide better governance by strengthening owners' ability to hold individual members accountable. The proponents also claim that Swedish company presents obstacles to investors' opportunities to bring about such a model.

The Board appreciates the international investors' commitment to respect Swedish corporate governance and the rules of the Swedish Code and has carefully considered the views they have expressed. The Board believes, however, that Swedish company law and the Swedish Code allow individual shareholders to request a ballot for each director and to request a vote count for each decision at the shareholders' meeting. International shareholders can also utilise these opportunities through the proxies who represent them.

Furthermore, the Board would like to emphasise that process whereby the election of directors at shareholders' meetings of Swedish listed companies often takes the form of a vote on the board as a whole, not per director, is a product of the unique Swedish way of preparing these elections in shareholder-led nomination committees. If no other candidates to the company board are proposed at the shareholders' meeting and no one requests an alternative procedure, a vote on the committee's proposal is a natural procedure.

In the light of the opportunities that Swedish company law provides and the well-functioning practices that currently exist within companies and their nomination committees, the Corporate Governance Board does not find sufficiently strong grounds for introducing rules into the Code which stipulate individual ballots or automatic counting of votes at the election of directors.

The Board has therefore decided to leave it to each company and its shareholders to decide upon how to conduct board elections at each shareholders' meeting, while it notes that it is in each shareholder's power to request a count of votes if he or she desires.

This is an important issue, however, and the Corporate Governance Board will continue to monitor both international developments and the actions of Swedish companies. International and institutional investors are of great importance to the supply of capital to the Swedish corporate sector. It is the Board's hope that their confidence in Swedish corporate governance, also with regard to board elections, remains intact after the clarifications presented in this position paper.

1. 1. Swedish law

1.1. The Companies Act

According to the Companies Act (2005:551), members of the board of directors are elected by the shareholders' meeting, unless the company's articles of association stipulate otherwise. This does not apply to employee rep-

resentatives on the board. In a public limited company, however, a majority of the directors on the board, which must contain a minimum of three directors, are to be appointed by the shareholders' meeting.

Nominations to positions on the board may be submitted by the board of directors and by each individual shareholder, regardless of the size of the shareholding. The agenda item "election of the board" is mandatory at the annual general meeting according to most companies' articles of association. Nominations to positions on the board may be submitted prior to the meeting or at the meeting itself before the elections have taken place. If a shareholder has submitted a nomination in such good time prior to the notice of the meeting being issued that the proposal can be included in the notice, should the main contents of the proposal are to be included in the notice. A guideline clause in the Companies Act that says if a proposal is submitted to the board no later than seven weeks before the meeting, the proposal must be included in the notice.

Proposals regarding individual ballots are always to be included in the notice if they are submitted within the time specified above prior to the meeting. If at the meeting there are more nominees than the number of available seats on the board, individual ballots are always to be conducted. The Companies Act states that the nominee who receives the most votes is elected. This means that if one director is to be elected, and the lone candidate only receives one vote, he or she is to be deemed elected, regardless of whether the other shareholders vote against the candidate. At elections, a vote against and an abstention are the same thing from company law perspective. When the election is for more than one seat on the board, the vote can be conducted either individually or collectively, depending on the proposals presented.

The normal procedure for the election of directors is that the shareholders' meeting first decides, within the limits set by the articles of association, the number of directors. If there is a single proposal containing all nominations to the board of directors and this corresponds to the number of seats that the meeting has decided, then from the corporate law perspective there is no need to divide the election into separate ballots per person. If a request for individual ballots has been submitted as a specific proposal to the shareholders' meeting and therefore been included in the notice of meeting or if it is presented at the meeting, the chair may put the question of individual ballots to the meeting. The decision on this question of procedure is to be taken by majority vote at the meeting.

If there are other nominees to positions on the board, so that the number of candidates exceeds the number of vacant seats on the board, individual ballots are always to be conducted.

Voting in elections is open, unless the shareholders' meeting specifically decides, by a simple majority (in public companies), that the vote is to be closed. The Companies Act includes a requirement for individual counts if requested by shareholders. Such requests must be made at the meeting "before a vote". This means that the request can be made after an agenda item has commenced, but prior to any kind of voting on that item. If such a count is requested, the minutes are to state:

- the number of votes cast for and against,
- the number of votes that the shareholders present refrained from casting,
- the number of shares for which votes were cast, and
- the percentage of share capital represented by those votes.

This means that the company must be prepared to count all shareholders' votes. There is no requirement that the exact count of the votes must be presented at the meeting. It is sufficient that this information is only included in the minutes.

1.2. The Code

The Swedish Corporate Governance Code ("the Code") states that nomination committees are to submit candidates for the chair and other members of the board. The nomination committee's proposals are to be presented in the notice of meeting. The Code does not specify whether the nomination committee's proposals are to take the form of a single proposal or a number of individual proposals.

If a shareholder submits nominations to the nomination committee or proposes that the nomination committee submit its proposal as a number of individual nominations, it is for the nomination committee to consider the shareholder's motion as a part of its work. The nomination committee is not obliged to present the proposals it has received to the shareholders' meeting.

1.3. Do the Companies Act and the Code make it impossible for shareholders represented by proxy to request an individual ballot and vote count at the election of directors?

Institutional shareholders usually give a voting proxy to a proxy adviser. The proxy adviser compiles the individual listed company's proposals that are presented in the notice of meeting into a voting instruction form, on which the shareholder can mark how voting rights are to be exercised for the various issues. The proxy adviser then authorizes a person based in Sweden to attend the shareholders' meeting and vote in accordance with the written voting instruction.

According to the Institutional Investors, current Swedish practice means that:

- the requirement that they must attend the meeting in order to bring about individual ballots prevents them from using this option,
- shareholders who exercise their voting rights through proxy voting (absentee voting) have no chance to cast their individual votes, if the meeting decides on individual ballots, as the deadline for "proxy voting" will have passed.

NBIM argues that Swedish practice means that:

- if an alternative proposal containing nominations to the board of directors is presented at the meeting, individual ballots are to take place, but for practical reasons, shareholders who have submitted voting instructions before the meeting cannot to participate in such a vote, and
- a single proposal on the composition of the board forces the shareholders to vote for or against the whole proposal.

These conclusions are not entirely correct. There is nothing to prevent the voting instruction that proxy advisers prepare and present to institutional shareholders from containing a way for them to indicate how they would vote for each of the proposed directors, even if the nomination committee presents its nominations as a single proposal. This can be supplemented with an instruction as to whether the proxy is to demand individual ballots at the shareholders' meeting and how the proxy is to vote on this issue, as well as whether the proxy is to vote yes or no to the committee's proposal in the event that individual ballots are not conducted despite the motion. Further, the instruction can include an option for the owner to choose whether a request for individual vote counts is to be made at the meeting, which the local proxy is to execute the meeting. If individual counts are requested, these are always to be conducted.

2. Do individual ballots and vote counting at the election of directors provide better corporate governance?

The Swedish nomination process and election of board members is in many respects unique in an international context. The main difference compared with other countries is that it is the owners - not the board of directors – who are responsible for the nomination process. The instructions to the nomination committee are set by the shareholders at the shareholders' meeting and nomination committees are dominated by representatives of the largest shareholders who wish to participate.

The work of nomination committees is usually conducted in such a way that the committee, on behalf of the shareholders' meeting, is to submit a balanced proposal of a board that can work together as an effective team, as well as fulfilling various criteria regarding expertise, experience, gender etc., These criteria are stipulated in both the Code and the Companies Act. Feedback and criticism regarding individual directors can be channelled through the nomination committee – either

through membership of the committee or by submitting views to the committee - or be presented directly to the shareholders' meeting in connection with the election of directors.

According to the Institutional Investors and Norges Bank, however, better corporate governance and a more modern approach would be achieved by stipulating individual ballots and automatic vote counts at the election of directors. Sweden is one of few modern countries that still nominate all candidates to the board in a single proposal. According to this view, individual ballots and automatic counting provide the opportunity to hold individual directors accountable and to give more nuanced signals on what shareholders think of the board than voting against the entire proposal.

It is the opinion of the Corporate Governance Board that the Swedish model as it applies today – with the election of directors in a single decision where the number of candidates corresponds to the number of vacant seats on the board – functions efficiently and is actually more in tune with a modern view that the board of a company should be a carefully composed team where the individual members' skills and experiences complement each other and create a strong whole than is a board formed as a result of a number of individual ballots.

Nor does the Corporate Governance Board agree with the conclusion reached by NBIM after an excellent analysis of the issue in its position paper Individual Vote Count in Board Elections, namely that the individual vote counts should always take place at the election of directors. The Board feels that the strongest argument for this conclusion, that it increases the individual director's accountability to shareholders, does not carry much weight in the Swedish system, where this accountability is already clear as a result of the stipulations in the Companies Act. Instead, the Board feels that the arguments against this model, in particular the danger that it might result in different directors being perceived to have different degrees of legitimacy as representatives of the shareholders and that their opinions may thus be accorded different importance in the work of their boards, which would not be beneficial for the climate of cooperation in a team of equals, carry greater weight.

Against this background, the Swedish Corporate Governance Board concludes that it will not stipulate that boards be elected through individual ballots for each nominated candidate. Instead, it leaves this issue to each company's shareholders to decide. Because each shareholder can always enforce a vote count, the Board is not of the opinion that the Code should state that vote counts are always to be conducted at the election of directors.

It would be unfortunate if Swedish corporate governance were to be perceived internationally as reactionary and protectionist by not taking into account the noteworthy demands of foreign owners. If Sweden is to deviate from what is internationally considered as constituting good practice it needs strong reasons to do so. The Swedish Corporate Governance Board is of the view that the reasons presented in this paper are of that nature.

Comments on the Board's position paper on individual ballots and counting of votes

Outgoing Board members Eva Halvarsson and Staffan Bohman offer their views on the Board's position on the issues of individual ballots and vote counting at the election of company directors as expressed in the position paper.

Eva Halvarsson is the CEO of the Second Swedish National Pension Fund, one of northern Europe's largest pension funds. In the article below, she outlines her own opinions on the Board's position on the issues of individual ballots and vote counting at the election of directors.

Staffan Bohman was previously CEO of Gränges/Sapa and DeLaval. In the article below, he outlines his own opinions on the Board's position on the issues of individual ballots and vote counting at the election of directors.

Eva Halvarsson:

During the Board's work earlier this year to revise the Swedish Code of Corporate Governance, it discussed how the election of company board members should be conducted. The background to this was that a number of foreign investors had contacted the Corporate Governace Board to point out that the model common in Sweden makes it very difficult for them in practice to vote against a proposal regarding an individual member.

In the debate that followed there were warnings that individual ballots would lead to difficult and lengthy shareholders' meetings and even risk creating confusion on company boards and make smooth teamwork within boards more difficult.

It is obviously too early to draw any far-reaching conclusions. However, I can already say that many companies have already adopted the model of individual ballots on board members. At the meetings we have attended, this has worked very well. Most boards and nominating committees we have discussed the issue with see no problem with having individual ballots, particularly if the owners call for it.

Against this background, there is reason to repeat why I believe that this seemingly small issue is significant for Swedish corporate governance.

In Sweden, we have usually proposed and decided on the election of directors through a single vote. This is not strange as such, because in Sweden we are accustomed to viewing board members as having shared responsibility. The Companies Act states clearly, however, that members are elected individually and not as a collective, regardless of how the decision itself is structured. The practical consequence of this is that it is very difficult, especially for foreign shareholders, to vote against the election of an individual candidate, which in turn can lead to these owners instead choosing to vote against the entire board.

I do not think it is satisfactory that large groups of owners are prevented in practice from voting in the way they wish on such a crucial matter as the election of board members. In Sweden, we expect owners to exercise their responsibilities. All owners must therefore be given the practical possibility to do so. One of the pillars of the Code reads: "The Code is to create favourable conditions for the exercise of active and responsible ownership."

I agree that the "board team" as a whole is important. Most people probably do. The composition of the team, however, must never be an excuse for performance and individual responsibility. The nomination committee is responsible for formulating proposals from both perspectives. In order for the shareholders' meeting to understand the nomination committee's reasoning, it must therefore describe clearly to the meeting the reasons for its proposal. When a board chooses to conduct individual ballots at the shareholders' meeting, it will be especially important for the nomination committee to be able to explain why its proposal also creates the best team. I believe that this will contribute positively to the development of nomination committees and the way they work.

It is in the best interests of all of us that Swedish corporate governance continues to improve. In most areas it is already at the forefront internationally. That is to the benefit of our companies and our capital market. In order to improve confidence in the Swedish model still further, I think it should be obvious to Swedish companies with large foreign ownership that they should enable those shareholders to elect board members individually.

Staffan Bohman:

Is the question of individual ballots to the company boards a big issue? If so, has the Corporate Governance Board taken a reasonable position? With some reservations I would answer YES to both questions.

First, some clarification is in order, as I have noticed some confusion of concepts. Board directors must of course be held individually accountable for their actions. Thus, an individual vote on the issue of *discharge from liability* can be justified if there is reason for directors' work in the past fiscal year to be assessed separately. That is something quite different from prescribing individual ballots at the elections of board members, which is of course a different agenda item – or from ensuring that individual ballots in themselves would give greater powers for owners to hold individual directors accountable.

Hans Dalborg, the chair of the Corporate Governance Board for many years, introduced a wise policy for how our Board works: anyone who wishes to impose a rule or regulation has the burden of proof that the benefit it provides clearly exceeds the cost and administrative burden. Have the proponents of individual ballots in elections to company boards succeeded by that measure? Not at all, in my opinion. Why introduce a general principle, applicable to all listed companies, because a need may exist in some individual cases? In particular, as Swedish law already provides the possibility today. And it is a principle of the Corporate Governance Board not to repeat in the regulatory framework what the law already regulates.

An overriding aim of the Board and the Code is to ensure the competitiveness of capital markets and to make the stock exchanges attractive markets, not just for the large institutions, both Swedish and foreign, that represent faceless capital, but even more so for those *companies* who choose between being private or public. For me, it is unclear how the proposal of individual ballots and vote counting contribute to this crucial point.

As I understand them, the arguments of the proponents are that: 1. Global principles are better, and Sweden differs on this point; 2. It makes the work of proxies who work for investors that do not attend themselves easier; 3. There is an intrinsic value in being able to report and publish the results per board candidate, regardless of whether there are more candidates than vacancies.

The Board's position paper speaks for itself, so I will not repeat what is written there. All things can be improved, including Swedish corporate governance, but I find it hard to see that this particular proposal is a major step in that direction.

As the position paper states in paragraph 2, the Swedish nomination process and election procedure is to an extent unique in an international context. I see this as a strength, not as a weakness that needs to be rectified through uniform global principles. It is up to the proposers to show how the Swedish procedure based on the institution of the nomination committee impairs corporate governance and proprietary rights and in what ways it makes the markets work less efficiently. Is it just a coincidence that the Swedish stock exchange has outperformed all comparable exchanges in the world over a very long period of time?

I understand the purely selfish reasons to facilitate the work of the institutions who wish to use proxy delegates to exercise their ownership role in more companies than they have staffed themselves for, but again, that is hardly a good reason to change the very well functioning interaction between committed owners that takes place within the framework of the nomination process. In the vast majority of cases, this process leads to a well thought out proposal for a team of board directors where the wholeness is a strength and not a problem. The Swedish tradition emphasises the board as a team with different types of players, an approach that is usually reflected in the evaluations of boards that are conducted regularly and where precisely the ability to work together in a constructive and flexible manner is a key success factor. Committed and engaged owners attend shareholders' meetings of course, and exercise their ownership responsibility directly and in person.

Finally, what is the purpose of reporting individual voting figures in an election of directors where there is no competition for places? As the position paper states, there is a danger that it only undermines the position of individual directors in the future internal work of the board. But because each shareholder already has the legal right to request a count of the votes, regardless of the motives, a requirement for this to be standard procedure merely looks like opportunistic placard-waving politics without any constructive results. Dissatisfaction with individual directors is expressed to the nomination committee. Beyond possible and not widely known conflicts of interest and the number of assignments, it is difficult to see how an investor can assess from the outside individual directors' expected contributions to such a degree that it would justify a public dressing down at the shareholders' meeting.

Capital Markets Union: Keep the eyes on the ball!

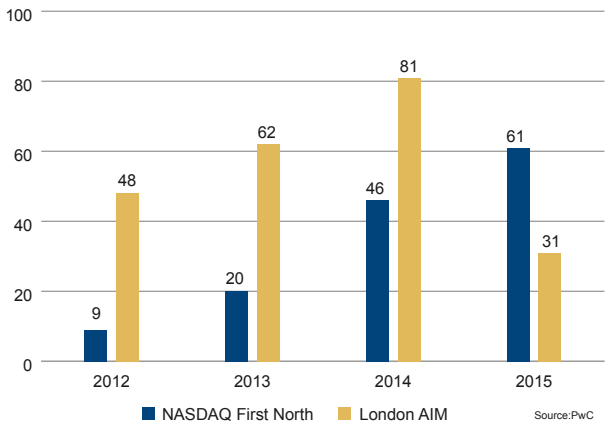
The Capital Markets Union initiative from the European Commission is highly appreciated. It is, however, important that the European Commission keeps its eyes on the ball and constantly focuses on assessing the initiative's impact on the aim of creating growth and job opportunities that is needed to build a stronger EU. To achieve this the end-investors, and the impact on the real economy, have to be at the front-and-center when reviewing the input and moving this important initiative forward. Nasdaq has with our growth market for SMEs, Nasdaq First North, showed that equity finance can facilitate very strong results on both growth and job creation for many great companies that have been built in the Nordic countries during the last years. To support the Capital Markets Union effort Nasdaq has published a whitebook[1] that highlights our views on what needs to be done in order to create financial stability and get Europe back to sustainable growth.

Andreas Gustafsson is Senior Vice President/Chief Counsel Europe Nasdaq and is managing the group that provides legal and regulatory support for Nasdaq's European regulated entities including Exchanges, CCPs, CSDs and investment firms. In this article he gives Nasdaqs views on The Capital Markets Union initiative from the EU Commission.

We fully support the vision of a Capital Markets Union in the EU. In this rapidly changing regulatory environment it is vital to pause and review the bigger picture, to consider not only the overall relevance and effectiveness of regulation but also the fundamental conditions for the capital markets and its stakeholders. The capital markets are fundamental for the funding of companies, large and small, and thereby for the creation of jobs and wealth. But the focus has to shift if we want to create a stronger and more resilient financial system that will benefit Europe as a whole. The concrete measures in the current action plan focus on making it easier for large institutions to invest more and extend their product and service offerings, rather than improving the capital markets themselves. The European Commission has to start from the ground up. The action plan should rather focus on increasing transparency, making the capital markets more accessible to smaller businesses, incentivizing long-term private investment in listed equities and encouraging the development and use of disruptive technology. All these areas have been critical for the success in Sweden to support the growth of companies.

Instead of issuing debt, some companies choose to raise equity capital from investors who take an ownership interest in the company. The proportion of European company finance that comes from banks is high, at around 80 per cent – with less than 20 per cent coming from investors. In the US the numbers are reversed. From a resilience and growth perspective this is problematic, especially because new constraints on banking activity have placed further strain on the system. The capital that companies raise through the public equity markets is theirs in perpetuity, and it can be used for a variety of purposes. Initial public offerings (IPOs) enable companies to move from private to public funding and allow venture capital firms to recycle capital and fund new job creating businesses. Furthermore, listed compa-

London Stock Exchange's growth market, AIM.



[1] Available at http://www.nasdaqomx.com/ipo-actionplan-sweden.

	Main market	First North
EU-directive	Regulated market	MTF market
Listing requriments		
Freely negotiable	Yes with exemptions	Yes with exemptions
Administration of the company	Yes	Yes, support by Certified adviser
Competence in exchange rules	Yes	Yes, support by Certified adviser
3 years of annual accounts	Yes, but exemptions	No
Minmum market value	EUR 1 million	No
Puplic holding,ownership dist	25 % and 500	10% and 300, or LP
Prospectus	Yes	Company description (prospectus
Working Capital	Documented earnings capacity or sufficient working capital for twelve months	EU-directive) 12 month financing plan
Listing process		
	Exchange auditors	Certified adviser due diligence
	Legal opinion – attorney	Certified adviser due diligence
	Listing committee	The Exchange
	FSA	(FSA if prospectus)
Company disciosure		
Financial reporting	IFRS	Local accounting standards (IFRS for Premier)
Interim report	Quartely	Semi annual
Language	Swedish (exception by FSA)	English/Swedish/Danish/Norwegian/Icelandic
Insider register	FSA	Company website
Other		
Corporate governance code	Yes	No – recommendation on FN Premier
Take over regulations	Yes	Yes
Board composition requirements	Yes, requirements in the code	No

These are areas that Nasdaq has developed as the picture is showing.

nies have an opportunity to create public awareness, which could potentially increase revenue and enable them to attract the best employees.

Like other industries, the capital markets are currently witnessing a remarkable wave of disruption and innovation, driven by new technologies. From crowdfunding to smarter smartphones and the blockchain, changes are afoot that hold the potential to revolutionize the way we think about and interact with the world of finance as businesses, investors and consumers. And yet Europe's businesses – including SME growth companies – cannot fully exploit opportunities because they are over-reliant on bank financing and lack sufficient access to venture capital and the capital markets.

Similar to our initiative in reaching out to the broader group of stakeholders, with the Nordic IPO Tasks Forces, the Commission in February 2015 launched a consultation on the measures needed to unlock investment in the EU and create a single market for capital. More than 700 responses were received reflecting a broad support for the Capital Markets Union. In September 2015, the Commission released the Action Plan on Building a Capital Markets Union built around creating more opportunities for investors, connecting financing to the real economy, fostering a stronger and more resilient financial system, deepening financial integration and increasing competition. The Action Plan contains an indicative time line that extends from now until 2018.

The latest update was a Status report released on the 25th April 2016, in which the Commission took stock of the progress made so far. No doubt things have been done, with some proposals in relation to the Prospectus Directive and to restart the Securitizations markets as well as papers written, for example on retail financial services, call for evidence on cumulative impact of financial reforms. There are further plans for key initiatives during 2016, such as crowdfunding, consultation on barriers for cross-border distribution of investment funds etc. The report also brought up preparations for actions during 2017–2018, for example SME Growth market, private placement, corporate bond market, sustainable and green investment etc. When looking at this it seems like key areas are being pushed to 2017–2018 and there is a lack of focus on assessing the results on jobs and growth.

As we have seen in the Nordic region, lack of regulatory harmonization, as well as unintended consequences of regulations, is problematic. Within the EU some regulations have been designed to make the capital markets safer, more accessible and more transparent wheras others prevent institutional investors including pension funds and insurers from investing in equities, essentially starving growth companies of financing. Meanwhile, we have yet to instill an investment culture, so that individuals who currently do not take full advantage of the equity markets to maximize long-term returns on their savings gets an opportunity to do so.

One example in which the regulation has to find the right balance is between SME markets and regulated

markets. These are areas that Nasdaq has developed as the picture to the left is showing.

The equity market, and especially the Nasdaq First North market, has been a strong facilitator of growth and job creation in Sweden by supporting SMEs. From the figure below it is clear that the equity market have attracted much risk capital and with 61 IPOs on Nasdaq First North during 2015, outperforming even the London Stock Exchange's growth market, AIM.

In Nasdaq's view, the concrete measures in the Capital Markets Union initiative focus on making it easier for large institutions to invest more and extend their product and service offerings rather than improving the capital markets themselves. Instead, the Capital Markets Union initiative should focus on increasing transparency, making the capital markets more accessible to smaller businesses, incentivizing long-term private investment in listed equities, encouraging the development and use of disruptive technology and ultimately creating jobs.

Below are the figures on the employment growth within the Swedish FN companies from 2013 to 2014 compared with average for other companies. These are clear numbers on what a growth market can achieve to support the economy.

Growth companies typically start local, so it makes sense for them to tap the local capital market when they are ready to take the next step up the funding escalator. The single market for investments should support local markets by channeling investments to the most promising companies in all corners of Europe. Immediate action should be centered on incentivizing an equity-based culture and leveraging technology to remove remaining barriers to access for individual and institutional investors.

With regards to SMEs specifically, it is crucial to create and develop a framework that has the potential to efficiently channel funding to these companies that are so important to our long term growth. In order to attract private investors education and simplified access to standardized information is important. Making the companies available to institutional investors will require reviews of investment regulation.

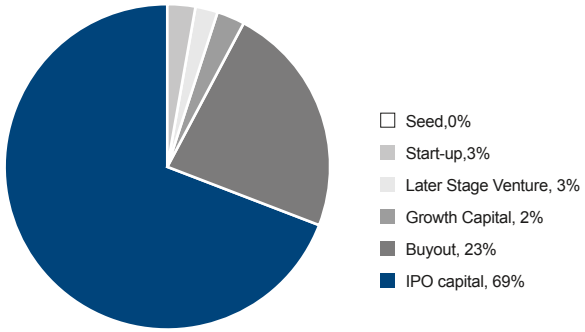
In relation to SMEs it is especially important to reduce entry cost for smaller companies and focus on:

- Educating potential investors and streamling intermediary services.
- Simplifying, standardizing and automating information.
- Improving connectivity.

In relation to broader efforts there should be a focus on:

- Amending Solvency II to eliminate investment barriers for insurers and pension funds.
- Leveling the playing field in the taxation of debt and equity financing.
- Removing barriers to cross-border investment both within the EU and externally.
- Allowing local markets the flexibility to determine optimal tick sizes; and eliminating the financial transaction tax.

Number of IPO:s during 2015 – Nasdaq First North vs. London AIM



Mean employee growth

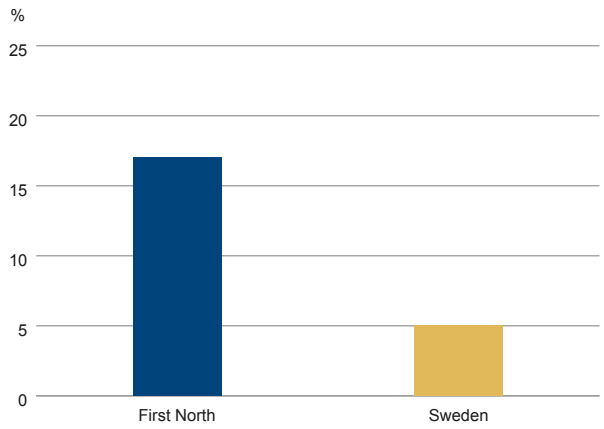


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Photo: Anders Deros, Peter Hoelstad and Zivilé Slavinskaité.

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