SWEDISH
CORPORATE
GOVERNANCE BOARD

Annual Report 2009

Contents

Foreword to the International Edition

Every June, the Swedish Corporate Governance Board issues its Annual Report, covering the period since previous year's report In this report, the Board describes its mission and how this has been carried out during the year, but it also presents analyses and views about the application of the Swedish Code of Corporate Governance and the development of Swedish corporate governance in general. In particular, the Board's presents a fairly comprehensive assessment of the application of the Code by the companies concerned during the year. Further details about this can be obtained from the Board's web site www.corporategovernanceboard.se

The work of the Board this year has focused primarily on the introduction and follow up of the revised Code. In autumn 2007, the Board decided to review the Code with a view to widening its application to include all companies listed on a regulated market, thus increasing the number of companies obliged to apply the Code from just over a hundred to about three hundred. Since many of the additional "Code Companies" would be quite small, not least in an international context, the Board considered it necessary to review the Code to adapt it to the circumstances of the many new Code Companies. Hence a thorough review of the Code was carried out, also taking into account the knowledge and experience acquired from three years of applying the original Code.

The revised Code was presented in May 2008, and as of 1 July the same year all companies listed at any of the two regulated markets in Sweden, Nasdaq OMX Stockholm and NGM Equity, are obliged to apply it. During the following autumn, the Board was involved in a variety of activities designed to support companies that were to begin applying the Code. This included an information meeting for new Code companies in collaboration with the Confederation of Swedish Enterprise. Then, in spring 2009, as part of the Board's regular assessment of how companies apply the Code, the corporate governance reports of about 250 companies were analysed, the outcome of which is presented in this report.

The report also presents the result of the third Code Barometer, a regular survey designed to chart the development of the general public's and the capital markets' confidence in Swedish corporate governance. In its final section, the report contains two articles on current issues relevant to Swedish corporate governance written by external contributors. These authors are individually responsible for the content of their articles.

For obvious reasons, the work of the Board during the last year has been greatly influenced by the ongoing economic crisis and its ramifications, not least the intensive international debate on remuneration in the financial sector and listed companies. It is the Board's opinion that the recession in Sweden has not been caused by any obvious flaws in Swedish corporate governance but is primarily an effect of the global crisis. Nevertheless, there are lessons to be learnt from the experiences of other countries, and the Board will investigate to what extent the crisis may have exposed weaknesses in Swedish corporate governance that should be addressed, e.g. regarding remuneration of directors in listed companies. However, in doing so, the Board will maintain its firm defence of the Swedish tradition of principle-based rather than detailed regulation and of our well-functioning model of self-regulation.

It is the hope of the Board that this report will provide a useful insight into its work to develop Swedish corporate governance and contribute to an increased understanding of Swedish corporate governance on the international capital market.

Stockholm, August 2009

Hans Dalborg
Chair of the Board

ACTIVITY REPORT

This part of the annual report describes the work of the Board during 2008–2009 and discusses current issues regarding the Code, how it is applied and Swedish corporate governance in general.

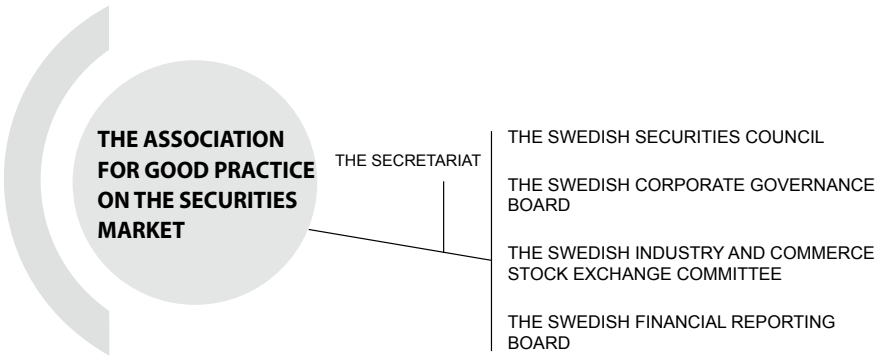
The Mission of the Swedish Corporate Governance Board

The mission of the Swedish Corporate Governance Board is to promote the positive development of corporate governance in Swedish stock exchange listed companies, primarily by ensuring that Sweden continuously has a relevant, modern, effective and efficient corporate governance code, but also through activities designed to build confidence in the corporate governance of listed companies in the capital markets and among the general public. The Board is also to promote knowledge and understanding of Swedish corporate governance on the international capital market.

The Board is one of the four bodies that constitute the Association for Generally Accepted Principles in the Securities Market, an association set up in 2005 to oversee self-regulation within the securities market. The other three bodies in the association are the Swedish Securities Council, the Swedish Industry and Commerce Stock Exchange Committee and the Swedish Financial Reporting Board. This association reports in turn to a number of organisations in the private sector that are affected by these issues. See illustration below.

The role of the Board is to determine norms for good corporate governance of listed companies. It does this by ensuring that the Swedish Code of Corporate Governance remains appropriate and relevant, not only in the Swedish context, but also internationally. The Board monitors and analyses how companies apply the Code through continuous dialogue with its users in seminars, at working meetings and with the aid of 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 and research, the Board continuously considers the need for limited modifications to the Code or a more general review of the entire Code.

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 is the responsibility of the respective exchanges. The role of evaluating and assessing companies concerning which rules they comply with and which they do not, however, belongs to the actors on the capital market. 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.



The Work of the Board during the Year

The composition of the Board remained largely unchanged since the previous year. The Chair was Hans Dalborg, Deputy Chair was Lars Otterbeck and other continuing members were Lars-Erik Forsgårdh, Kerstin Hessius, Leif Lindberg, Marianne Nilsson, Marianne Nivert, Michael Treschow and Anders Ullberg. Anders Malmeby left the Board at the parent organisation's annual general meeting in May 2008 and was replaced by Lars Träff.

Executive Director and responsible for the Board's office functions was Per Lekvall. Lars Thalén acted as a consultant and adviser on information issues.

The Board held four minuted meetings during the year. Additionally, discussion and consultation between all or parts of the Board have taken place by e-mail and telephone when required. The Board's work during the year is summarised below.

The Revised Code

A revised version of the Swedish Code of Corporate Governance came into force on 1 July 2008. At the same time, mandatory application of the Code was extended to cover all Swedish companies whose shares are traded on a regulated market in Sweden. At present, these markets are Nasdaq OMX Stockholm and NGM Equity.

The Board's main reasons for doing this were as follows:

1) After three years of mostly positive application and feedback, the Board concluded that the time had come to take the next step, as outlined in the original plan. It was no longer felt justified to place lower demands on the corporate governance of smaller companies than on that of larger companies.

2) Sweden would be brought into line with the majority of other EU member states, where national codes are usually applied by all stock exchange listed companies. In the long run, deviation from such a practice would risk creating an inaccurate international view of Swedish corporate governance.

3) In the view of the Board, self-regulation of corporate governance is in many cases preferable to legislation. In order for the Code to be a realistic alternative to legislation, it must therefore have a broader application than that of the original Code.

The revised version of the Code is considerably shorter and simpler than the original, without compromising the level of ambition for corporate governance. In certain areas, the revised Code even imposes stricter demands than previously. The main substantive changes can be summarised as follows:

- There is a clearer requirement that nomination committees are not to consider other issues than those specified by the annual general meeting, and that each member of the committee is to act in the interests of all shareholders, no matter whom he or she has been nominated by.

- Certain requirements concerning the independence of nomination committee members have been introduced:
  - The majority is to be independent of the company and its executive management.
  - At least one member is to be independent of the company's largest shareholder or a group of collaborating shareholders.
  - If more than one member of the board is also a member of the committee, only one of these may have a dependent relationship with the company's larger shareholders.

- There is a new requirement that the nomination committee's explanation of its proposals is not only to be presented orally at the annual general meeting, but also in writing on the company's website when the call to meeting is issued. The presentation must take into consideration the Code's rules regarding the composition of the board of directors.

- The Code's rules on director independence have been harmonised with the equivalent rules of the relevant stock exchanges.

- Audit and remuneration committees are no longer mandatory, in as much as their tasks can be performed by the whole board, regardless of the size of the board, providing that no member of the company's executive management participates in this work.[1)]

- There is now a requirement that corporate governance reports are to include information on any infringement of the stock exchange rules applicable to the company, or any breach of good practice on the securities market reported by the relevant exchange's disciplinary committee or the Swedish Securities Council during the most recent financial year.

- The information requirement concerning explanations of non-compliance has been extended. Companies are now to explain not only their non-compliance with rules, but also to describe the solutions they have chosen instead.

The formal basis for a company's obligation to apply the Code has also been changed. This obligation was previously contained in the listing requirements of the Stockholm Stock Exchange, but from 1 July it is deemed Good Practice in the Securities Market to apply the Code. Since listed companies are obliged to apply Good Practice in the Securities Market according to the rules of their stock exchange, this includes the application of the Code. This also means that the exchanges' disciplinary committees are responsible for monitoring that companies apply the Code correctly, (though not whether and how they comply the individual rules of the Code) and that the Swedish Securities Council can provide interpretation of Code rules on request.

Follow-up of Code application

During autumn 2008, the Board was actively involved in efforts to facilitate application of the revised Code, especially among new Code companies, The secretariat of the Board has been available to answer questions and offer advice by telephone and e-mail, and the Board Secretary and members have participated in numerous seminars and other meetings to present and explain the Code and to answer questions about how it is to be applied.

On 24 October, the Board held an information day on the Code in collaboration with the Confederation of Swedish Enterprise. The main focus of this meeting was the transfer of practical experience and ways of working from companies that had already been applying the Code to new Code companies. All Code companies on the Nasdaq OMX Stockholm and the NGM Equity exchanges were invited to attend. A number of representatives of experienced Code companies discussed how their companies have dealt practically with various issues regarding application of the Code.

In autumn 2008, the Board also carried out the third survey in its Code Barometer series. The aim of these surveys is to monitor the development of how the Board is fulfilling its general goal of contributing to greater confidence in how stock exchange listed companies are run among the general public, shareholders, corporate executives and actors in the capital market. The first survey, to provide a zero level for comparison of later survey results, was conducted in autumn 2005, just after the introduction of the original version of the Code. The first follow-up report was conducted in autumn 2006 and reported in the Board's 2007 Annual Report. Briefly, the survey results showed a small but clear and general improvement in confidence in a number of areas among the majority of target groups, the chief exception being public opinion regarding executive pay, which was overwhelmingly negative in both surveys.

The Board decided to conduct these surveys every two years, which meant that the next survey took place in autumn 2008. The results of this survey, along with a comparison with the 2005 and 2006 surveys, can be found on pages 11–19 of this Annual Report.

The Board's main instrument for monitoring how companies apply the Code and evaluating how it works is its analysis of all Code companies' corporate governance reports. The Board has performed this analysis every year since the Code was introduced. Previously, this analysis

[1)] The tasks of audit committees will be regulated by legislation from 1 July 2009, following implementation of the EU's 8th directive on companies. The content will be similar to the rules contained in the revised Code. For more information, see page 7.

was confined to around one hundred companies, but from 2008, there are now three times as many reports to analyse. Despite the increased costs involved, the Board intends to continue to prioritise these surveys, albeit using a slightly simpler method. The results of this year's analysis can be found on pages 20–27 of this Annual Report.

International dialogue

An important aspect of the Board's work is to promote increased knowledge and understanding of Swedish corporate governance internationally. The Board uses various methods to inform international capital markets about Swedish corporate governance and has regular contact with leading foreign actors in the Swedish market.

During the year, the Board has published two articles on different aspects of Swedish corporate governance for leading international publications, both written by the Board's Executive Director:

- *Nomination Committees in Swedish Listed Companies* published in the International Corporate Governance Network 2008 Yearbook. London 2008.
- *The Swedish Corporate Governance Model*. Chapter 6.14 of The Handbook of International Corporate Governance, 2nd edition. Institute of Directors Publications, London 2009.

These articles are available for download from the Board's website.

The Board is an active member of the European Code Monitoring Network, an informal network for exchanging experiences and information among the code monitoring bodies of a number of EU member states. The network normally meets twice a year, often to coincide with the corporate governance conferences that are usually arranged as part of each country's EU presidency period. Between meetings, the members of the network keep in touch by e-mail and internet. During the last corporate governance year, the network has taken the opportunity to discuss and exchange views on the presentation of the ongoing EU Commission study of the forms and implementation efficiency of codes for corporate governance in the member states.

The Board Secretary has also had several informal meetings with representatives of foreign institutional investors that are active on the Swedish market and their advisers. The purpose of these meetings is partly to learn more about their views on Swedish corporate governance and partly to inform them of current developments in Sweden in this area.

Nordic corporate governance

The Board has participated in a working group together with its counterparts in the other countries in the Nordic region with the aim of investigating the possibilities of some degree of harmonisation of the self-regulation of corporate governance among the countries. Such coordination would bring considerable advantages, including simplification for companies with operations in more than one Nordic country, greater integration of the Nordic capital markets and more coordinated action within the EU and other international contexts.

As a first step, the working group has produced a document outlining what can be characterised as a particular Nordic model of corporate governance. This model differs in important ways from both the Anglo-American single-tier model and the German/Central European two-tier model. Key differences include the view of the role of shareholders in the governance of the company, the balance within the board of executive and non-executive directors, and the role of the auditors. The document is designed to provide support for descriptions of the Nordic model in an international context, but also to act as a foundation for continued discussion on the possibilities of harmonising rules and norms among the Nordic countries.

The document is written in English and available as a PDF file on all the Nordic countries' code monitoring bodies. The content is also reproduced on pages 29–33 of this Annual Report.

Active participation in the development of corporate governance regulation

As part of its mission to promote positive development of Swedish corporate governance, the Board contributes where possible to the development of legislation and other forms of regulation within the field. In this role, the Board is asked to provide formal comments and opinions on proposals for legislation and to government inquiries and investigations within the field of corporate governance. It also takes part in private and open seminars and hearings of different kinds and is in regular contact with the legislative bodies, both in Sweden and at EU level. During the year, the Board was involved primarily in the following issues:

Promoting self-regulation

A common theme in the Board's involvement in issues concerning the development of regulation is the defence and reinforcement of the role of self-regulation within Swedish corporate governance. That does not mean that the Board is opposed to any further legislation within the field. Some issues are not suitable for self-regulation, as there are areas, for example, in which there should not be any flexibility according to the principle of "comply or explain". The Board does feel, however, that much of the in some cases rather far-reaching and detailed regulation that has been introduced in recent years, not least as a result of harmonisation efforts on the part of the EU, would have been better handled through self-regulation. As outlined above, one of the key reasons for broadening the scope of the Code was to ensure that it is a realistic alternative to legislation.

One problem when pursuing such a line within the EU is that the concept of self-regulation is regarded quite differently in different member states. While self-regulation is a long-established, well-functioning form of regulation in the United Kingdom and the Nordic countries, it is an almost unknown concept and regarded with considerable scepticism in some other parts of the Union.

In its contacts with the EU Commission, the Board has strongly emphasised the high regard for self-regulation in the Swedish corporate sector and proposed it as an alternative to legislation when implementing some of the directives issued by the Commission in recent years. So far, the results have been quite disappointing, and most of the EU directives have required national implementation through mandatory regulation. There have, however, been signs of a little more willingness to compromise on this issue more recently. One example is the recommendation concerning remuneration of executives of listed companies issued by the EU Commission in April 2009, in which self-regulation is explicitly mentioned as a legitimate form for implementation.

Implementation of amendments to the EU accounting directive (the fourth and seventh directives on companies)

The issues in this directive that most concern the Board's areas of responsibility are the legal requirement for companies listed on a regulated market to issue an annual corporate governance report and to report how it has applied the relevant corporate governance code according to the comply or explain model. The Board's views on these issues were included in last year's Annual Report, and the Board's official reply to the Ministry of Justice's memorandum on the subject (Ds 2008:5) is available on the Board's website. The Board has continued its involvement in the continued handling of the issue, e.g. through meetings and regular contacts with the Ministry.

The Act which resulted from this process came into force on 1 March 2009. The Act does not allow room for implementation through self-regulation, although the Board succeeded in influencing the legislators to take some of its views on board, primarily that

- the annual corporate governance report may be submitted separately from the formal annual report, which in turn means a less far-reaching requirement of auditor review of the report,

- it is sufficient that a company publishes the corporate governance report on its website if the report is not included in the annual report,

- a group of companies may include its description of internal controls for the whole group and the parent company in the same corporate governance report.

The new rules came into force on 1 March 2009 and are to be applied for the first time in the financial year commencing after 28 February 2009. For companies which have the calendar year as their financial year, this means that the rules will be applicable from financial year 2010, i.e. for inclusion in the corporate governance report to be published in spring 2011. The rules of the Swedish Corporate Governance Code will be adapted to meet these new conditions during 2009.

Implementation of the EU directive on auditors and auditing (the eighth directive on companies)
The Board has also been actively involved in the preparation of this legislation. Above all, the Board has been critical to the inclusion of detailed regulation of how company boards are to carry out their tasks within specific areas and how this work is to be organised, as required by the directive, in the Swedish Companies Act. The Board recommended that the regulations stipulated in the directive be implemented through self-regulation.

The Board also recommended that if implementation through self-regulation cannot be allowed, the legislators should take the opportunity provided by the directive to allow individual company boards, regardless of size, to decide themselves whether to appoint a separate committee to perform the relevant tasks or to carry out the tasks in the full board providing certain conditions are met. This recommendation was communicated directly o the EU Commission and also formed the main content of the Board's formal response to the government's official report on the matter from September 2007.

The Board has also submitted an official response to the proposed legislation on this matter, submitted by the Ministry of Justice for review by the Council on Legislation in autumn 2008. This proposal stated that, according to the Ministry's interpretation, the EU directive does not contain any scope for implementation through self-regulation. The Ministry did, however, agree with the Board's interpretation of the directive that it may be left to the individual company to decide whether an audit committee's tasks are to be carried out by a separate committee or, subject to certain conditions, by the entire board of directors.

Certain points which the Board had criticised still remained in the proposal, however. The most important of these was the requirement that one member of the committee or board must have particular accounting or auditing competence, and that this member must be the same person as the one that fulfils the requirement of independence in relation to major shareholders in the company. The Board's view is that the latter requirement in particular may lead to difficulties in recruiting directors to boards, especially in smaller companies, where boards often only fulfil the minimum requirement of two board members independent of major shareholders. The Board also stated that the British implementation of the directive specifically allows these criteria to be fulfilled by two different people, which permits greater flexibility in recruitment.

Despite the criticism of major parts of this proposed legislation from the Board and other important reference bodies, the Bill was passed by parliament in spring 2009 and the Act will come into force on 1 July 2009. This will require adjustments to the Code, which will be carried out in autumn 2009.

Key Issues for 2009

Adaptation of the Code to meet the requirements of new legislation

As mentioned above, the Swedish Code of Corporate Governance needs to be adapted to meet the requirements of new legislation concerning the implementation of amendments to the EU's fourth and seventh directives on companies and of the new eighth directive on auditors and auditing. In both cases, the changes mean that important parts of the Code are now covered by legislation. As the Code aims to avoid repeating what is already stipulated by law, the equivalent Code rules will be removed. At the same time, there may be justification for the Code to go further in some respects than the minimum requirements in the legislation, which may be the case, for example, in the case of the content of corporate governance reports. Adjustments to the Code will be published during autumn 2009 and be applicable no later than 1 January 2010.

Additionally, there is a proposal from the Commission on Simplification of the Companies Act to return certain matters concerning disclosure and decision-making on executive remuneration that were regulated by law in 2006 to self-regulation. According to the proposal, this would be dependent on the Code imposing reasonable requirements regarding transparency and shareholder influence on decisions concerning such remunerations in stock exchange listed companies. The Board views this positively and will present proposed amendments to the Code to make such a change possible.

Implementation of a new EU recommendation on remunerations

The debate on remuneration of directors in listed companies in many member states in spring 2009 prompted the EU Commission to issue a recommendation on this matter as a complement to its equivalent recommendation from 2004.[1)] Before the recommendation was prepared, the Board was invited to comment on a statement by the European Corporate Governance Forum, which formed an important part of the background to the Commission's work on this matter. The Board's formal response is available on the Board's website.

In its comments, the Board emphasised that executive pay is a crucial instrument in a company's competitiveness when seeking the best competence, and removing or restricting this competition by limiting companies' possibilities to design systems that are most suitable for themselves may lead to economic and societal suboptimisation. The Board also pointed out the large differences between the types and scale of these problems in the member states of the EU, and attempts to rectify the worst excesses seen in some countries may result in other countries being forced to introduce more extensive and more restrictive regulations than is justified by their own experience.

Against this background, the Board questioned the appropriateness of introducing such regulation through directives for implementation through legislation and recommended regulation that allows implementation through self-regulation in member states where such systems are already accepted and work well. The Board also pointed out that the return of some regulations on executive remuneration that today are governed by legislation to the domain of self-regulation, as proposed by the Commission on Simplification of the Companies Act, would be rendered impossible if such matters were subject to mandatory regulation within the EU.

On 30 April 2009, the EU Commission issued two recommendations, one concerning certain remunerations within the finance sector [2)] and one concerning remuneration of listed company executives.[3)] It is primarily the latter recommendation that has relevance for the work of the Board. This states clearly that the recommendation may be implemented through self-regulation in the member states. The Board has now initiated a dialogue on this issue with the Ministry of Justice.

[1)] See European Commission recommendation (2004/913/EG) on fostering an appropriate regime for the remuneration of directors of listed companies.
[2)] See European Commission recommendation on remuneration policies in the financial services sector {C(2009) 3159}.
[3)] See European Commission recommendation on complementing recommendations 2004/913/EC and 2005/162/EC on policies for remuneration of directors of listed companies {C(2009) 3177}.

International corporate governance conference in connection with the Swedish presidency of the EU

In recent years, a number of EU presidencies have arranged high level corporate governance conferences during their presidency period. The Board, along with the Association for Generally Accepted Principles in the Securities Market, has taken the initiative to organise such a conference in collaboration with the EU Commission and the European Corporate Governance Institute during the Swedish presidency in the second half of 2009.

The overall theme of the conference will be Beyond the Crisis – New Challenges for Corporate Governance, and within this framework, three main topics will be addressed:

1) *Future models of corporate governance regulation in the EU*. The basis for this discussion will be provided by the EU Commission's presentation of its major survey on different forms of regulation of corporate governance in the member states and how well they have worked. The survey will be conducted in 2009.

2) *Regulating remuneration – the way ahead?* The EU's new recommendations and other material likely to be produced on this subject in the coming months will provide the basis for discussion on this issue.

3) *Government in Corporate Governance. How should government ownership be organised and conducted?* What exit strategies exist? Have member states become guilty of privatising profits and nationalising losses?

The conference will take place in Stockholm on 3 December 2009. Attendance is by personal invitation.

CORPORATE GOVERNANCE IN SWEDEN 2008–2009

The Board conducts regular surveys to follow up and analyse how companies apply the Code and to analyse the Code's functionality and its impact on corporate governance in Sweden. The following studies were carried out during the year, and their results are summarised in this part of the Annual Report.

- **The Code Barometer** is a regular survey of attitudes to the Swedish Code of Corporate Governance and to corporate governance in Sweden. The aim of the survey is to measure how the Code and the work of the Board are fulfilling the general goal of contributing to improved corporate governance in Sweden and thereby greater confidence in stock exchange listed companies. The survey is carried out by Hallvarsson & Halvarsson, a leading consultancy in corporate communications in Sweden, on behalf of the Board and uses identical methods each time to facilitate comparison from year to year and show development trends. Previous surveys were conducted in 2005 and 2006.

  The results of the 2008 survey and comparison with previous years are summarised on pages 11–19 of this Annual Report. A more detailed report on the survey is available on the Board's website.

- **Application of the Code, 2008–2009.** This survey was carried out on the Board's behalf by Nordic Investor Services, and is a follow up to a similar survey carried out last year. It is based on an analysis of the corporate governance reports and AGM documents of every Code company and aims to provide a concrete and reliable picture of how the Code has been applied, in order to provide a basis for the Board's views on the further development of the Code. Following the extension of the scope of the Code to cover all listed companies from 1 July 2008, the survey now comprises around 250 companies, compared with around 100 in previous years.

  The results of this study are presented on pages 20–27, along with a comparison with the results of the surveys carried out in previous years. A more detailed report can be found on the Board's website.

The Code Barometer

– Attitudes to the Code and to Swedish corporate governance

The Code Barometer is a regular survey of attitudes to the Swedish Code of Corporate Governance and to corporate governance in Sweden. Its aim is to measure how the Code is fulfilling its general goal of contributing to improved corporate governance in Sweden and thereby to greater confidence in stock exchange listed companies.

The Barometer consists of two parts. The first survey is directed toward the Swedish general public, while the second measures attitudes among the companies using the Code and leading actors in the capital market, and is geared toward chairs and CEOs of code companies, private and institutional owners of listed companies, and advisors and intermediaries, such as fund managers and chief analysts. The survey uses identical methods each time to facilitate comparison from year to year and show development trends.

Two previous surveys have been carried out, in autumn 2005 and autumn 2006. The results of these were published in the Boards' 2007 Annual Report. The third survey was conducted in autumn 2008, and the results are summarised below. A more detailed report can be found on the Board's website.

Executive Summary

When the Code Barometer survey of 2008 was conducted, the full effects of the financial crisis were being felt and the situation was beginning to resemble a true economic crisis. Growth forecasts were becoming increasingly negative and many companies were reporting drastically reduced order intake. Share prices on the Stockholm Stock Exchange had fallen by more than half since the peak levels seen in the middle of 2007, and both private and institutional investors had seen their investments plummet in value. There was good reason to expect that this would be reflected in reduced confidence in listed companies, regardless of people's opinion of the Code or Swedish corporate governance in general.

Against this background, the results of the 2008 Code Barometer can be regarded as surprisingly positive. While the general public part of the survey did show consistently negative development, and in a number of areas, confidence levels have fallen by statistically significant degrees since 2006, these changes were relatively limited, being no more than a half point on seven-point scales. [1)] The survey of the capital market showed only marginal changes for the group as a whole, though results for subgroups show significant changes in both directions.

Additional findings in the **public** survey include the following:

- The Shareholders group shows the most marked reduction of confidence, but remains considerably less critical than the smaller share-owning subgroups.
- For the sampled target group as a whole, confidence is negative for all issues with the exception of how companies handle financial information.
- Confidence in how companies handle executive remuneration has fallen from already very low levels.

Key findings in the **capital market** survey include:

- Continued high confidence among the sampled target group as a whole in how Swedish companies are run, both in absolute terms and in comparison with other countries. In the case of the latter, confidence has increased somewhat.
- Marginally less agreement that the Code is important for Swedish corporate governance and the individual companies, but opinion is still clearly positive.
- Positive attitudes to the changes in the Code that were introduced on 1 July 2008.

[1)] NB: Statistical and material significance are two different concepts. A materially insignificant change may well be statistically significant in the sense that it is unlikely to be a result of random errors in sampling, and vice versa.

Survey of the General Public

Aims

The aim of the general public survey is to measure confidence in how stock exchange listed companies are run, especially among the shareholding public.

A large majority of Swedish adults has an interest in stock exchange listed companies through direct or indirect ownership, including ownership through pension investments in Premium Pension funds, and these investments comprise a significant proportion of the ownership of Swedish listed companies. Swedish public opinion of how these companies are run is therefore a key factor in influencing their long-term ability to attract risk capital.

Survey method

As in previous years, the survey was carried out through telephone interviews as part of Synovate Temo's telephone omnibus surveys. Also as previously, the interviews were carried out in late November.

Target group and sampling

The target group for the survey is Swedish adults over the age of 16, divided into three categories reflecting share ownership:

- Direct owners of shares in Swedish listed companies. (These may also own shares through funds etc.)
- Owners of shares in funds but not direct owners of any company shares.
- Non-shareholders.

Sampling was made by telephone. The number of people interviewed each year was:

2005 1,535 respondents
2006 1,038 respondents
2008 1,028 respondents

The breakdown according to share ownership category in 2008 was:

Direct Owners of Shares	266	26%
Owners Through Funds Only	412	40%
Non-shareholders	268	26%
Don't Know	82	8%
Total	**1,028**	**100%**

This is a sample survey and therefore prone to statistical uncertainty due to sampling errors and the samples size. The sampling method used and the sample size of around 1000 respondents in each survey gives a statistical margin of error at a confidence level of 90 per cent for differences between estimates for the entire sample of approximately 0.1 scale units on the seven-point scales used. For estimates concerning subgroups of, for example, a quarter of the total sample, the level of statistical uncertainty is about twice as great. Smaller changes than these should therefore not be regarded as statistically significant.

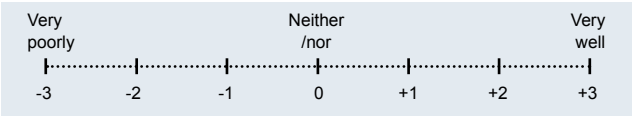
Questions and response scales

The following questions were asked:

Question 1. *How confident are you that Swedish stock exchange listed companies are run well and in the interests of all their owners by their boards and executive management teams?*

Question 2. *In general, how well do you believe listed companies' boards and executive management teams run companies in terms of:*
a) Running the companies on business terms in line with the interests of the general share-owning public?
b) The transparency, honesty and reliability of the financial information issued by companies?
c) The standards of ethics expected of stock exchange listed companies?
d) The remuneration levels of company executives in relation to the demands placed upon them?

The following scale was used for all questions, with slightly different wording of the extreme alternatives depending on the wording of the question.



Response rate

Non-response is not recorded in this type of survey, as interviewees are recruited until the desired size of random selection has been achieved. There is however a degree of "internal non-response" in the survey as certain questions in the survey were not answered by certain respondents. Such non-response has not been on a scale that can be assumed to significantly affect the results. More information on internal non-response can be found in the full report, which is available on the Board's website.

Results

The diagrams below show changes in attitudes between the different surveys in the form of average values for responses to each question, both for the whole group and for the three categories of respondent.

All categories

Diagram 1 shows the average values of all respondents for each question. The survey shows that attitudes have grown more negative in all areas. The positive trend from 2005 to 2006 has been broken and reversed. The majority of changes are statistically significant, even though they are relatively small in absolute terms, amounting to no more than around half a point on the seven-point scale. The values are negative for all aspects apart from how companies handle their external reporting. It is of particular significance that the already considerably negative attitude to executive remuneration has deteriorated further.

Direct share ownership

Diagram 2 shows the results in the Direct Owners category for all questions. This category of respondents shows a greater decline of average values than for the group as a whole. Particularly significant are the considerable falls in values for questions 1 and 2a. At the same time, this category still has a significantly more positive attitude in these areas than that shown by the other categories.

Diagram 1. Average values 2005–2008, all categories

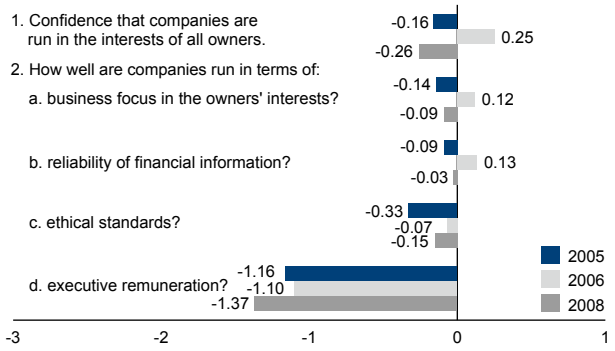
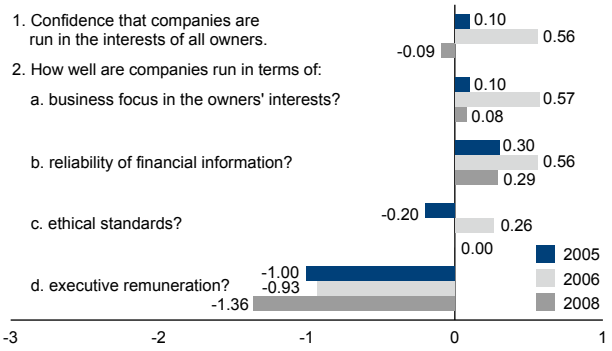


Diagram 2. Average values 2005–2008, Direct Owners of Shares



On the question of executive remuneration, however, opinion has grown even more negative. This category was previously the least negative in this area, but is now at the same highly critical level as the other categories in the survey. This is especially noteworthy, as this category of interviewees can be regarded as the most knowledgeable on the issues in question and most likely to be interested in developments within Swedish corporate governance.

Owners Through Funds Only and Non-shareholders
These groups also show generally lower average values than previously, though the change is not as great as for the Direct Share Owners category – see diagrams 3 and 4. The slightly positive attitudes expressed in some areas by the Owners Through Funds category are now negative, even though the changes are marginal in terms of scale points in some cases. The changes in the Non-shareholders category are less consistent, and in some cases attitudes are less negative than previously. However, this is more likely to be due to the lower level of interest and knowledge regarding listed companies and share markets assumed to exist in this subgroup than an indicator of a fundamentally different attitude to these issues than those of the other subgroups.

Survey of the Capital Market

Aims

The survey of the capital market is partly aimed toward companies that apply the Code and partly toward private and institutional owners, fund managers, analysts and other recipients of companies' corporate governance reports. The purpose of the survey is to measure these actors' confidence that listed companies are being run in the best interests of the owners. This has a great impact on the market's willingness to invest in listed and therefore for companies' supply of risk capital.

Survey method

This survey took the form of a written questionnaire, which was distributed by e-mail in mid-November 2008. Reminders were sent by letter and e-mail with further follow-up by telephone.

Target group and selection of respondents

The target group for this survey was people in leading positions in companies and organisations that are affected by the Swedish Code of Corporate Governance. Respondents were divided into four categories:

Diagram 3. Average values 2005–2008, Owners Through Funds Only

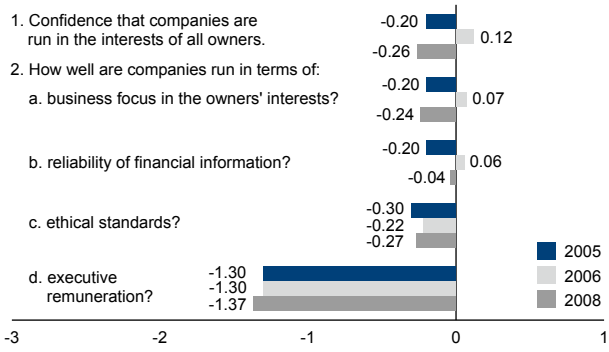
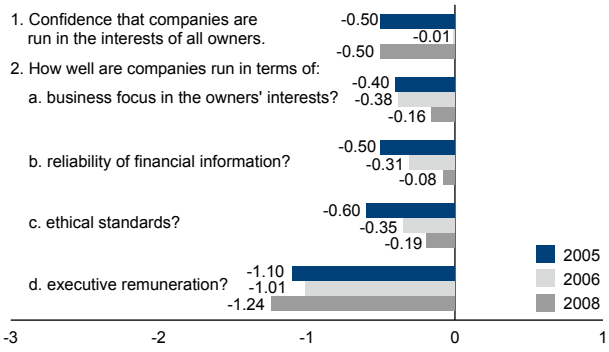


Diagram 4. Average values 2005–2008, Non-shareholders



- **Category 1** consists of major private and institutional shareholders. The respondents were selected based on information published in the publication Ägarna och Makten 2008 (Owners and Power 2008) and comprised 31 people, of which 21 represent major institutional investors.

- **Category 2** comprises other major actors in the capital market. This includes owners and fund managers outside the institutional sphere, chief analysts at banks and brokerage firms and managers of corporate finance departments. Representatives of the largest actors in each category were selected – a total of 41 people.

- **Category 3** is the chairs and CEOs of the over 100 companies that were obliged to apply the original Code according to the rules that applied prior to 1 July 2008. From this group, around half of the companies' CEOs were chosen at random, while the remaining companies were represented by the chair of the board. After taking account of the fact that the same person may have both of these roles within the company, the final numbers were 43 chairs and 58 CEOs representing a total of 101 companies.

- **Category 4** is made up of company chairs and CEOs of companies listed on Nasdaq OMX Stockholm and NGM Equity that were obliged to start applying the revised Code from 1 July 2008, a total of 180 companies. Around half of these companies were selected to take part in the survey, and of these, around half of the companies were represented by the CEO and half by the chair of the board. After taking account of the fact that the same person may have both of these roles within the company, the final numbers were 40 chairs and 49 CEOs representing a total of 89 companies.

It should be noted that the fourth category is significantly broader than the equivalent category in the 2006 Barometer. In that survey, this category was defined as companies listed on the Stockholm Stock Exchange with a market capitalisation of between SEK one and three billion, a total of 59 companies. It is important to bear this in mind when comparing the results of the 2006 and 2008 surveys in this category.

Statistical uncertainty

The survey for categories 1 and 2 is a "cut-off survey", meaning a total survey of each target group down to a certain size of group members. This means that there is no statistical uncertainty due to sampling errors among the units included in the survey, and that the question of statistical significance is hence rendered irrelevant. It does not mean, however, that there can have been no other survey errors of the kind and magnitude that can occur in other surveys, e.g. bias due to non-response, measurement errors etc.

The survey of categories 3 and 4 is however liable to the same statistical risk as for any sample surveys, even though the size of the samples and the number of interviews conducted are so large in relation to the whole target groups that the statistical uncertainty is limited compared with other potential sources of error in surveys of this type. For a more detailed description of these potential sources of error, see the full report on the Board's website.

Against this background, the issue of statistical significance will not be commented upon further in connection with the presentation of the results of this part of the survey.

Questions and response scales

The questions listed below were posed to all interviewees in each category. With the exception of Question 6, all of the questions are exactly the same as those used in the 2005 and 2006 Barometers. The aim of the first two questions is to measure the respondents' attitudes to Swedish corporate governance in general, both in absolute and relative terms. Questions 3 to 5 focus on the impact of the Code on companies and their governance.

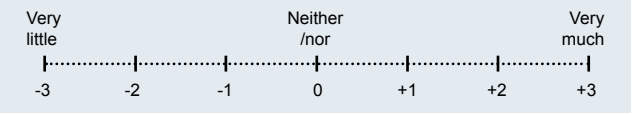
Question 1. *How confident are you that Swedish stock exchange listed companies are run in the interests of the shareholders?*

Question 2. *How do you feel that corporate governance works in Swedish listed companies compared with those in other developed countries?*

Question 3. *How do you think the Swedish Code of Corporate Governance will affect the governance of Swedish listed companies in the next few years?*

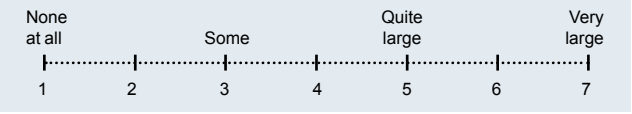
Question 4. *Do you believe that the Code has a generally positive or negative impact on the companies that are obliged to apply it?*

The following scale was used for all of these questions, with slightly different wording of the extreme alternatives depending on the wording of the question.



Question 5. *What impact do you believe the Code will have in facilitating Swedish listed companies' supply of risk capital in the future?*

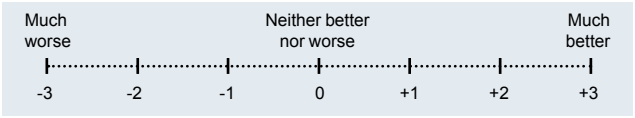
As this question is formulated in such a way that all answers must denote some degree of positiveness, a scale using only positive responses was used.



As a revised version of the Swedish Code of Corporate Governance was introduced from 1 July 2008, the following question was added to the 2008 survey:

Question 6. *The Swedish Code of Corporate Governance has been shortened and simplified from 1 July 2008. What is your opinion of the Revised Code compared with the original version?*

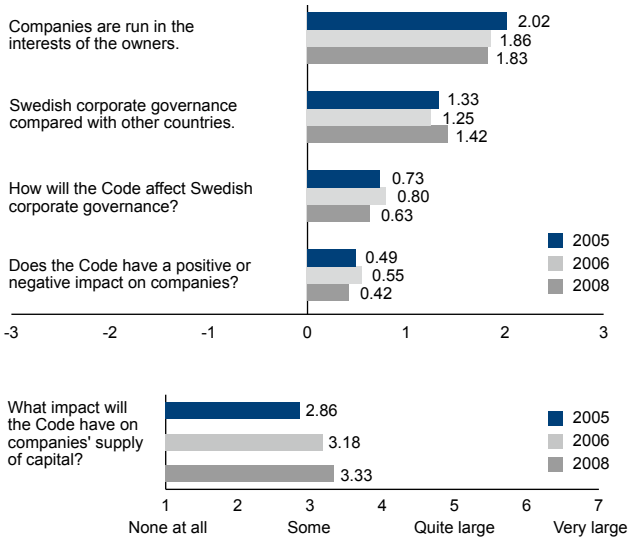
The following scale was used for this question:



In connection with each of the above questions, the respondent was invited to add comments. Finally, the following open question was asked.

Question 7. *Do you have any other comments on the Swedish Code of Corporate Governance and its application? Please use this space to add any general or more specific points. We would also welcome any comments on the activities of the Swedish Corporate Governance Board.*

Diagram 5. Average values 2005–2008, all categories (excl. non-Code companies)



Response rate

Of the gross sample of 262 people in the 2006 survey, 51 people could not be contacted during the given time period. There were different reasons for this, for example the person had left the position and was no longer a member of the target group. The net sample therefore consisted of 211 people. Of these, 120 interviews were actually carried out, giving a response rate of 57 per cent. A full breakdown of non-response can be found in the complete report, which is available on the Board's website.

Results

The diagrams below show the average values for the responses received in 2005, 2006 and 2008, both for the group as a whole and for the individual categories. Additional comments for each question and the comments included under Question 7 have not been included. For details of these responses, see the full report on the Board's website. The full report also includes a more detailed breakdown of the results of the answers per category for each question.

Overall results

Diagram 5 gives an overview of the answers to questions 1-4 in all categories each year the survey was conducted. It shows the results for 2008 to be consistent with those of previous years. Respondents generally believe that companies are run well, and are even more positive than before about Swedish corporate governance compared with that in other countries. The results concerning the usefulness of the Code for companies and for Swedish corporate governance are less positive than before however, even though the difference compared to previous years is small.

Question 1

Diagram 6 shows the results per category for Question 1. As the diagram shows, the previously high levels among company chairs and CEOs of "old" Code companies have fallen slightly and are now closer to the levels for owners, whose results are slightly higher than in 2006. The category Other Capital Market Actors remains at a slightly lower level, while the attitudes of chairs and CEOs of "new" Code companies are significantly less positive than in the previous survey. The most likely explanation for this is that a large number of smaller listed companies now fall into this category, and that confidence in how companies are run is considerably lower among CEOs and chairs of these companies than in larger listed companies.

Question 2

Diagram 7 shows attitudes to Swedish corporate governance compared with that in other countries. The differences in 2008 compared with previous years are considerable in some categories, but point in different direc-

Diagram 6. Companies are run in the interests of the shareholders, per category and overall.

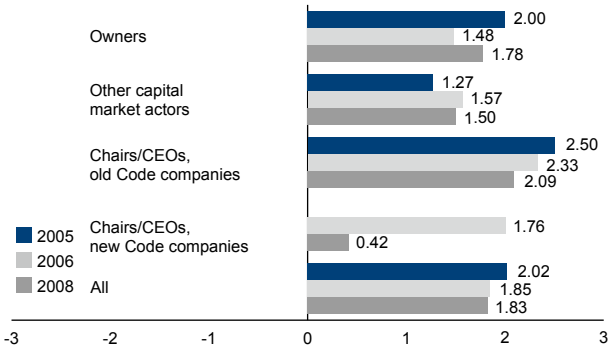
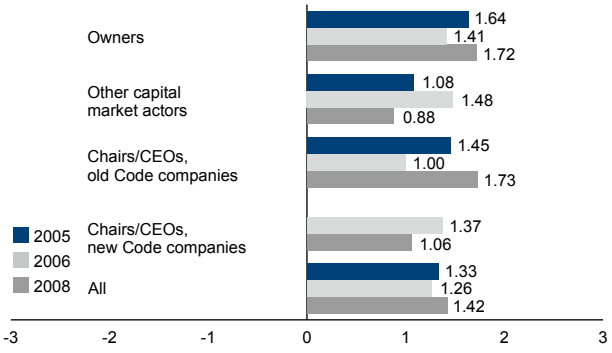


Diagram 7. Attitudes to Swedish corporate governance compared with other countries, per category and overall.



tions. Above all, the category Other Capital Market Actors is much less positive than in 2006, while CEOs and chairs of old Code companies have moved even further in the opposite direction. Among new Code companies, the decrease is significantly smaller than in Question 1. In general, the results for 2008 show a stable or marginally stronger level compared with previous years.

Question 3

Diagram 8 shows the importance respondents believe the Code has for Swedish corporate governance. In this area, the values are generally slightly lower than for opinions on the quality of Swedish corporate governance, though still comfortably positive. The differences compared with previous years show movement in both directions, but on the whole the trend is slightly towards the negative. It is particularly worth noting that, although belief in the positive effects of the Code has fallen significantly among chairs and CEOs of old Code companies, the trend is equally strong in the opposite direction among new Code companies. This indicates generally positive expectations among new, smaller Code companies that have been included in this category since the introduction of the revised Code.

Question 4

A similar pattern can be detected in the answers to Question 4, on whether the Code has a generally positive or negative impact on the companies that are obliged to apply it. Also here, opinion has grown slightly less positive among companies that have been obliged to apply the Code since its original launch, whereas newer Code companies have become significantly more positive. In the other categories, the changes in attitudes between 2006 and 2008 are small, which results in a slightly lower average value overall for this question.

Question 5

As in previous Barometer surveys, respondents were asked about the importance they believe the Code to have in attracting risk capital to Swedish listed companies. The results can be seen in Diagram 10. Please note that the scale here differs from that of the other questions in that the whole scale is positive. The results here are entirely consistent with those of previous years. The Code is felt to have some, but not great impact in this regard. Perhaps the most interesting result is the significantly improved attitude among new Code companies compared with 2006, meaning that this category is now in line with the

Diagram 8: What effect will the Code have on Swedish corporate governance, per category and overall.

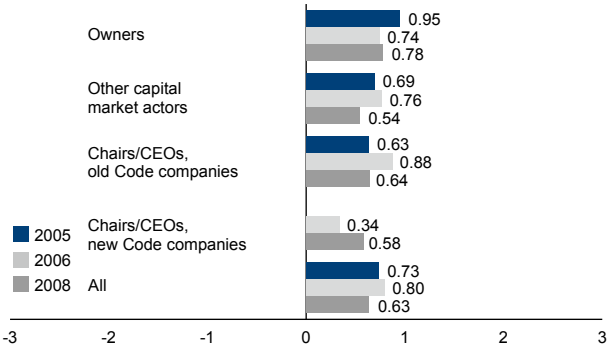
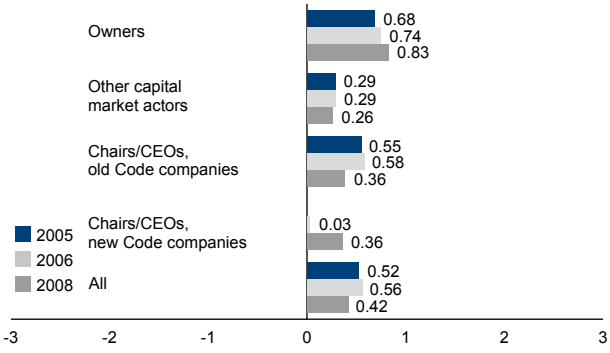


Diagram 9. Does the Code have a generally positive or negative impact on companies, per category and overall.



other categories in this regard. This may be interpreted as a sign that many new, smaller listed companies believe that the Code gives them greater legitimacy on the capital market.

Question 6

The 2008 survey included a new question on attitudes to the changes that were made to the Code when it was broadened to apply to all stock exchange listed companies. The results for this question are illustrated in Diagram 11. This shows that attitudes toward the change are generally positive and remarkably similar across all categories. Of the entire target group surveyed, 74 per cent gave positive responses and only 3 per cent responded negatively. The remaining 23 per cent answered "neither better nor worse". (These figures are taken from the full report, which is available on the Board's website.)

Diagram 10: The importance of the Code in attracting risk capital, per category and overall.

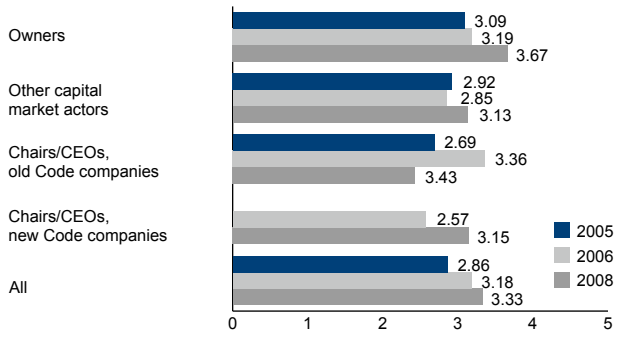
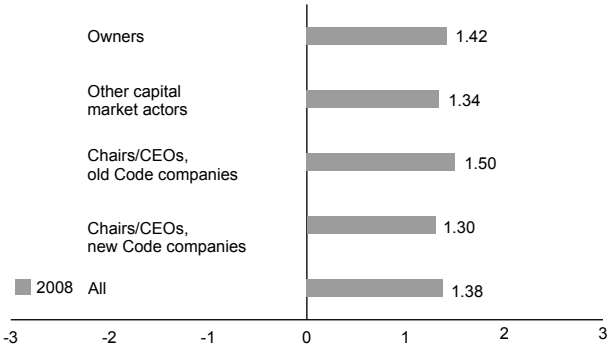


Diagram 11. Attitudes to the changes in the Code introduced on 1 July 2008, per category and overall.



Application of the Revised Code

Executive Summary

This year's follow-up survey of how companies have applied the Code is the first since the revised Code was introduced and its application extended to cover all stock exchange listed companies. This means that the number of surveyed companies is now 246 compared with around a hundred previously, while the average size of the companies surveyed is also much smaller. For the new Code companies, the obligation to apply the Code only came into force on 1 July 2008, which may have led to some uncertainty about how Code compliance should be reported. Many of these companies, for example, had not held an annual general meeting as Code companies at the time of the survey.

In view of the number of new Code companies, it was perhaps to be expected that there would be a higher level of non-compliance and explanation regarding individual Code rules than in previous years. This was not the case, however, as the percentage of companies reporting full compliance rose from 41 per cent in 2007 to 54 per cent in 2008. There was even a higher degree of total compliance among new Code companies than among those that had applied the Code previously. At the same time, new Code companies also seem to show the kind of flexibility towards the rules of the Code that the principle of comply or explain aims to achieve. Of the new Code companies reporting some non-compliance, a total of 171 deviations were reported, making an average of 1.5 deviations per company. Very few companies report non-compliance with more than two rules.

The area in which most companies have deviated from the Code rules is that of nomination committees, particularly their size and composition. This is most common among new Code companies, which have reported alternative solutions concerning the size of nomination committees, committee chairs and the independence of committee members in relation to the company and/or major shareholders. However, as the majority of these companies were not obliged to apply the Code at the time their nomination committees were appointed, there is a certain amount of uncertainty about these figures.

The second most common area of non-compliance is the rules on audit committees. The majority of companies have an audit committee, (which is not obligatory according to the Code), but a relatively large number, particularly of the new Code companies, prefer audit committees with just two members, usually because the board is small or because this is regarded as the most efficient solution for the company.

The aspects of Code application that worked least well were the actual obligation to submit a corporate governance report in conjunction with its annual accounts and the standard of explanations given for non-compliance. Both of these issues are crucial to a Code based on the principle of *comply or explain*. In all, 14 companies, all of them new Code companies, neglected to submit a corporate governance report, which means that those companies did not apply the Code in an entirely correct way. Concerning the quality of explanations of non-compliance, the positive trend of recent years was broken and there was a return to a level similar to that seen in the first year of the original Code. It is vital that there is an improvement in the information value of explanations of non-compliance over time, just as there was during the early years of application of the original Code.

A special study was also conducted to examine how companies have dealt with the appointment of nomination committees at the 2008 annual general meetings. Of the 269 companies surveyed, all but 29, (26 of which were new Code companies), have appointed nomination committees for their 2009 annual general meetings. On average, nomination committees have 4.05 members, which is a slightly lower number than previously, and are typically made up of the chair of the board and two to four representatives of major shareholders. The nomination committees of 16 per cent of companies contain no members of the board at all, while 66 per cent of committees contain one person who is also a member of the board. In all, around a quarter of nomination committee members come from the companies' boards, while around three quarters represent major shareholders. Swedish nomination committees thus continue to be dominated by shareholders, which is not normally the case in other countries. The proportion of women on nomination committees has fallen somewhat, from 15 to 12 per cent.

Aims and methods

The aim of analysing how companies apply the Code 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, cumbersome or in some other way unsatisfactory. The results provide a basis for the continued improvement of the Code.

The main basis for the study is companies' own descriptions of how they have applied the Code, primarily in the corporate governance reports that the Code requires them to submit together with their annual reports, but also in the minutes of annual general meetings, on their websites etc.

The target group for the 2008 study was the 278 companies that were obliged to apply the Code according to stock exchange regulations as of 31 December 2008.[1)] Of these, 32 companies were excluded, either because their fiscal year does not follow the calendar year or because they had not published their annual report by 29 April 2009. This meant that the number of companies actually included in the survey was 246. Of these, 98 companies had applied the Code previously, ("old Code companies"), while the others had become Code companies through the extension of the Code on 1 July 2008. Of these "new Code companies", 148 are listed on Nasdaq OMX Stockholm and 32 on NGM Equity. See Table 1.

Corporate governance reports

All companies that apply the Code are to produce a corporate governance report in conjunction with their annual accounts.[2)] The report is to describe the company's corporate governance and how it has applied the Code. Any non-compliance with individual rules is to be reported, along with a presentation of the solution the company has chosen instead and an explanation of why.

All but fourteen of the companies surveyed submitted a formal corporate governance report. Of these fourteen, eight are new OMX companies and six are new NGM companies. This amounts to 6 and 30 per cent respectively of the companies surveyed in each category. All of the old Code companies submitted corporate governance reports.

If a company does not publish a corporate governance report along with its annual report, it has not applied the Code in an entirely correct way. There is no room for comply or explain in this regard. There may have been some uncertainty about when and how the Code should be applied in 2008, even though this is explained clearly in the Code. Furthermore, some companies may have found it easier to incorporate the required information into the text of their annual reports rather than producing a separate corporate governance report, which is required by the Code, as well as by new legislation (see footnote 2). Regardless of the reasons, there is reason for the stock exchanges to pay close attention to this issue.

Table 1. Number of surveyed companies 2005–2008

	2008	2007	2006	2005
Old Code companies	98	106	91	74
New OMX companies	148	0	0	0
New NGM companies	32	0	0	0
Total	278	115	101	78
Excluded *)	32	9	10	4
Surveyed companies, total	246	106	91	74

*) Annual report not available on 29 April 2009 due to fiscal year, or company no longer listed.

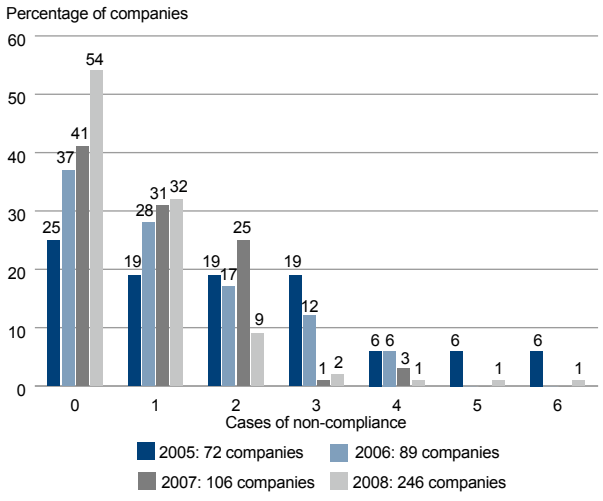
1) Companies domiciled abroad or with secondary listing on a Swedish stock exchange are not obliged to apply the Swedish Code of Corporate Governance if they apply the code applicable in their country of domicile or the country of their primary listing.

2) This is required by law as from 1 March 2009. As the legislation applies from the financial year commencing after this date, companies whose fiscal year is the same as the calendar year are obliged by law to produce a report for the first time in connection with the 2010 annual report.

The Code does not require that the corporate governance report be reviewed by the company's auditors, but the report should state whether this has been done or not. Of the 232 surveyed reports, 85 per cent state clearly whether the report has been reviewed by the auditor or not. Auditor review occurred in eight of these cases, which amounts to four per cent of the reports surveyed. This is exactly the same level as last year. It is notable that new Code companies show a slightly higher percentage than old Code companies in this regard.

The 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. An internal controls report was submitted by 215 of the 246 surveyed companies, which is 87 per cent. This is a lower figure than the previous year's 95 per cent, which was in turn lower than the percentages in both 2006 and 2005, so there is a downward trend in companies' willingness to produce these reports. The decline in the past year can be traced to the new Code companies, which account for 30 of the 31 instances of non-compliance in this regard. Old Code companies showed a reporting frequency of 99 per cent, which is the same high level as in 2005 and 2006. Of the 30 companies that failed to produce an internal controls report, 17 are new OMX companies and 13 are NGM companies. This means that one in three NGM companies did not produce this report.

Diagram 1. Number of companies per number of cases of non-compliance



How companies applied the rules of the Code

Reported non-compliance

Companies that apply the Code are not obliged to comply with every rule contained in the Code, but are free to choose alternative solutions provided each case of non-compliance is clearly described and justified. It should be emphasised that it is not an aim of the 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 allowed 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 firm belief that better corporate governance of individual companies can result from other solutions than those specified by the Code.

Diagram 1 shows that 54 per cent, or 133 of the 246 companies surveyed, chose to comply with all rules in the Code in 2008. This is an increase on previous years, even though the number of Code companies has more than doubled and the average company size decreased significantly, and continues the upward trend since the Code was introduced. A further 32 per cent of surveyed companies report one instance of non-compliance, which is roughly similar to 2007. That means that 86 per cent of companies report no more than one instance of non-compliance with the rules of the Code, which is a marked increase on last year, when the equivalent figure, (comprising old Code companies only), was 72 per cent, and an even greater increase compared with previous years. The remaining 14 per cent report two or more deviations from the rules of the Code, which continues the downward trend for this group. A total of seven companies, or three per cent of those surveyed, report more than two instances of non-compliance in 2008.

In general, these results suggest that the shorter, simplified Code that was introduced on 1 July 2008 has not been difficult to apply, not least among new Code companies. Furthermore, companies have not been afraid to deviate from the rules and adopt own solutions where they have felt this appropriate. This reflects well not only on the many new, smaller Code companies, but also on the revised Code, which has now been tested for the first time.

Which rules do companies not comply with?

Diagram 2 shows the distribution of non-compliance among the rules of the Code. The five rules with which ten or more companies report non-compliance are commented in brief below.

The rule with by far the most instances of non-compliance is Code rule 2.4, concerning members of company boards on nomination committees. The dominant form of non-compliance with this rule is that the chair of the board, or in some cases another member of the board, is the chair of the nomination committee. A common explanation for this is that the person concerned is deemed to be the most competent or that a major shareholder is best suited to lead the work of the committee. In some cases, members of the board form a majority in the nomination committee, while in others, no member of the board who is also on the committee is independent of major shareholders. New Code companies make up a large majority of the companies that do not comply with this Code rule.

Rule 10.1, concerning audit committees, accounted for the next largest number of deviations. The most common alternative solution is to set up an audit committee with just two members, (and in one case, just one member), usually because the board is small or because it is felt that this is the most efficient way to carry out the tasks of the audit committee. There are also a number of instances where the composition of the committee does not fulfil the requirements regarding independence in relation to the company and/or major shareholders. New Code companies also make up the majority of companies that do not comply with this Code rule.

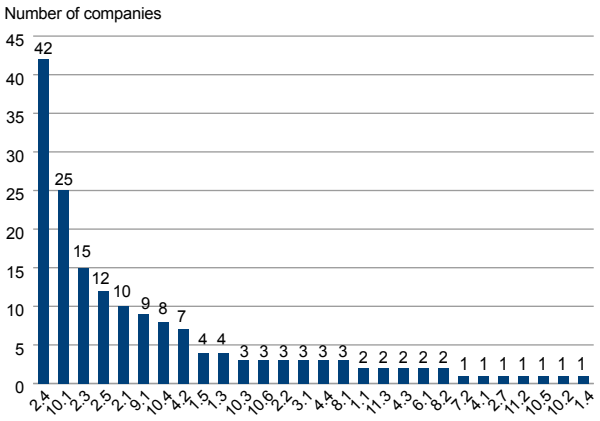
Rule 2.3 concerns the size and composition of nomination committees, primarily committee members' independence. Fifteen companies report non-compliance with this rule, usually because one or more members of the company's executive management are members of the nomination committee as they are also major shareholders in the company. In some cases, the nomination committee consists entirely of representatives of the largest shareholders, so that none of the members fulfil the Code requirement of independence in relation to the largest shareholder in terms of voting rights.

The fourth most common point of non-compliance is Code rule 2.5, regarding the latest time of disclosure of the composition of the nomination committee. Some companies, in particular those with AGMs early in the following year, find it difficult to comply fully with the Code's requirement that the names of the members of the nomination committee be announced no later than six months before the AGM.

The Code rule with the fifth greatest number of deviations, rule 2.1, also concerns nomination committees, in this case the issue of whether the company has a nomination committee at all. Ten companies report that they have not appointed a nomination committee, usually because they believe that their concentrated ownership makes this unnecessary.

As mentioned, a large proportion of the reported instances of non-compliance regarding nomination committees concern new Code companies that are obliged

Diagram 2. Cases of non-compliance per Code rule



to apply the Code from 1 July 2008. When the corporate governance reports for 2008 were written, most of these companies had not yet held their first annual general meeting under the Code. In the majority of these cases, the part of the corporate governance report that covers nomination committees concerns decisions made at the company's 2008 annual general meeting, when the Code did not yet apply to these companies. There was therefore no requirement to report on these issues in this year's corporate governance report, so there may be more cases of non-compliance that have not been reported. It is reasonable to expect, however, that a number of companies that have reported alternative solutions will choose to follow the Codes rules on nomination committees next year. It is only when reports for the first whole year of Code application have been published that a more complete picture of compliance with rules concerning nomination committees will be available.

Explanations of non-compliance

The standard of explanations of non-compliance is crucial to the success of corporate governance codes based on the principle of *comply or explain*. The factual relevance of such explanations is primarily for the companies' owners and other capital market actors to evaluate as a basis for their investment decisions and cannot be assessed in any general sense. However, in order to fulfil this aim, the explanations must be sufficiently substantive, informative and founded in the specific circumstances of the company concerned to be useful as a basis for such judgments. Vague arguments and general statements, without any real connection to the company's situation, have little information value.

Of the 113 companies that have report non-compliance in this year's corporate governance report, 88 provide a clear explanation, 20 provide no explanation, while five companies give partial explanations. Companies that provide no explanation at all are not applying the Code in the correct way. This is another area in which there may be cause for the stock exchanges to monitor that the Code is applied in the way that is intended.

In order to improve the information value of explanations, the revised Code introduced a requirement that companies not only justify non-compliance, but also describe the solutions they have chosen instead. Such descriptions can be found in 95 of the 113 companies' corporate governance reports, while the remaining 18 do not attempt to describe their alternative solutions. These are included to an extent, but not entirely, in the group that provides no clear explanation. It should be noted that a description of an alternative solution does not necessarily include a reason why this has occurred.

As in previous years, an attempt has been made to assess the quality of explanations. This necessarily involves a large element of subjectivity, but as the evaluation has followed the same format and criteria each year, it is reasonable to assume that any observed trends are fairly reliable.

In the 2007 Annual Report, the quality of explanations was regarded as having shown a marked improvement

Table 2. The information value of explanations of non-compliance

	Number of companies				Percentage			
	2008	2007	2006	2005	2008	2007	2006	2005
Good	49	54	48	30	29%	57%	53%	40%
Dubious	75	30	22	23	44%	28%	25%	32%
Little/None	47	16	21	21	27%	15%	23%	28%
Total	171	106	91	74	100%	100%	100%	100%

compared with previous years. In this aspect, the results for this year represent a backward step. See Table 2. Last year, 57 per cent of explanations were regarded as having good information value, while the equivalent figure for this year is 29 per cent. The proportion of explanations regarded as having little or no information value has risen from 15 to 27 per cent. It can be assumed that much of the reason for this is to be found among new Code companies, where there is probably still uncertainty about how explanations of non-compliance should be formulated. This assertion is supported by the fact that this year's percentage figures are similar to those of the first year of the original version of the Code. There is therefore still considerable room for improvement in the next few years.

Nomination committees

As in previous years, a special survey of the decisions at 2008 annual general meetings concerning nomination committees has been conducted. The data underlying this study comprises companies' annual reports for 2008 and documentation pertaining to the companies' 2008 annual general meetings.

The survey was designed to cover the same 278 companies as the survey of corporate governance reports. However, a slightly higher number of companies were excluded from this survey. Nine companies could not be included in the survey due to their fiscal years; six companies have not appointed a nomination committee; and 23 companies did not provide any information on nomination committees for the 2009 annual general meeting.

As a result, 240 nomination committees were analysed, of which 96 are old Code companies and 144 are new Code companies. As mentioned earlier, the majority of the latter were not obliged to apply the Code at the time their decisions regarding nomination committees were made.

Appointment of nomination committees

According to the Code, companies can choose one of two methods for appointing nomination committees. Committees can either be appointed directly at the annual general meeting or the meeting can decide upon a procedure for later appointment to the committee. In some cases, other methods have been used which are not included in the Code's recommendations, e.g. that an individual, often the chair of the board or a major shareholder, is appointed to form the nomination committee as he or she sees fit.

As Table 3 shows, the vast majority, usually four out of five companies, have chosen the procedural method each year since the Code was introduced. The AGM-appointment method had previously been adopted by fewer than 20 per cent of the companies. The 2008 results show a change in this respect, with a significant increase in the percentage of AGM-appointed nomination committees to over a quarter, while the procedural method has fallen to 70 per cent. This change can largely be explained by a higher percentage of AGM-appointed nomination committees among new Code companies, but there was also a slight increase, (to 21 per cent, not shown in the table), among old Code companies. Fewer companies are using

Table 3. Methods for appointing nomination committees.

	Number of companies				Percentage			
	2009	2008	2007	2006	2009	2008	2007	2006
Appointment at annual general meeting	65	18	18	19	28%	17%	17%	19%
Procedure for later appointment	165	81	85	77	70%	78%	78%	77%
No nomination committee appointed	5	5	6	4	2%	5%	6%	4%
Total	235*)	104	109	100	100%	100%	100%	100%

*) For five companies, information about how their nomination committees were appointed was not available.

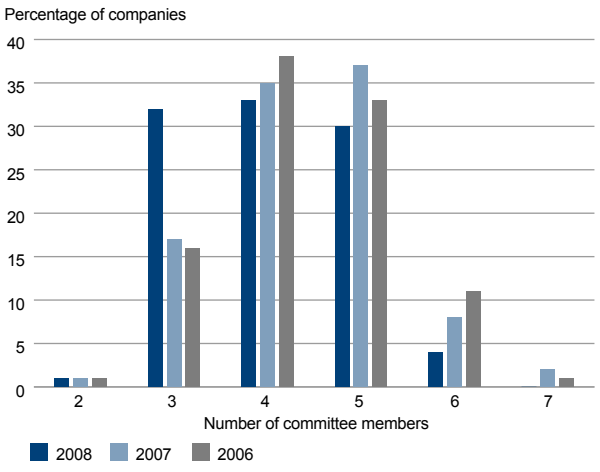
other methods than in previous years, though there is some uncertainty about this figure as five companies have not reported their methods for appointing nomination committees.

Size of nomination committees

Diagram 4 shows the size of nomination committees each year. The vast majority of nomination committees have 3–5 members, with a smaller number having 6–7 members. There are also two committees that consist of only two members. These do not fulfil the requirements of the Code, which does not necessarily mean that they cannot competently perform most of a nomination committee's duties.

The diagram also shows that the average size of nomination committees has been reduced slightly compared with previous years, primarily because new Code companies have often appointed smaller nomination committees than old Code companies. Almost a third of nomination committees now consist of the three members, which is the minimum specified in the Code. Only 3 per cent, or ten companies, have more than five members. The average size of nomination committees has decreased slightly from 4.25 last year to 4.05.

Diagram 4. Size of nomination committees



Years indicate the year of appointment of the nomination committee.

Composition of nomination committees

A total of 971 people were members of the nomination committees appointed by the surveyed companies' 2008 annual general meetings, compared with 452 members appointed by the 2007 meetings and 425 in 2006. Obviously this does not mean the same number of individual people, as many are members of more than one nomination committee, but it certainly indicates a substantial increase in the number of people serving on nomination committees of stock exchange listed companies.

Around a quarter of all nomination committees were also members of the respective company's board of directors, usually the chair of the board. This along with the information in Diagram 4 means that the typical nomination committee consists of the chair of the board and two to four other members, often representing major shareholders in the company. This shows how Swedish nomination committees differ from those inspired by the Anglo-Saxon corporate governance tradition, in which members of the board often make up most or all of the nomination committee.

It is important to bear in mind that the Code does not stipulate that no more than one member of the board is to be on the nomination committee, only that board members are not to form a majority. Table 4 illustrates the frequency of different numbers of board members on nomination committees of all surveyed companies and of old Code companies in 2008. It shows that 16 per cent of surveyed companies, (and 17 per cent of old Code companies), have no member of the board of directors on their nomination committee, and that 82 per cent, (and 88 per cent of old Code companies), have no more than one board member on the committee. Only 4 per cent of the nomination committees, (and 2 per cent of old Code company committees), contain more than two members of the company's board.

There is still a pronounced gender imbalance on nomination committees, and the percentage of women on the nomination committees of surveyed companies has actually fallen slightly from 15 per cent in 2007 to 12 per cent in 2008. It would be easy to assume that this is because so many smaller companies are obliged to apply the Code

from 2008, but that does not appear to be the case to any great extent. Among old Code companies, women make up 13 per cent of the members of nomination committees in 2008, which is a marginal difference from the group as a whole.

Shareholder representation on nomination committees

Table 5 shows shareholder representation among the members of the nomination committees surveyed. This has been particularly difficult to analyse in this year's survey, as it is often not apparent from the information provided by companies, even though the Code states that if any member of the nomination committee is appointed by a particular shareholder, this must be declared when the composition of the committee is announced. This means that the category "Other" is a relatively large group in this year's survey, as it has not been possible to ascertain to what degree the people in question have links to a particular shareholder of group of collaborating shareholders. There is, however, reason to believe that a significant proportion of the people in this category can be regarded as representatives of Swedish, probably often larger, private shareholders.

Based on this assumption, the figures show that around two thirds of nomination committee members represent Swedish ownership interests, while around a tenth represent foreign shareholders. The latter figure can be compared with the proportion of foreign shareholders in Nasdaq OMX Stockholm listed companies, which is over a third. This indicates that foreign shareholders are greatly underrepresented on Swedish nomination committees compared with their level of ownership of Swedish listed companies.

In total, around three quarters of the surveyed nomination committee members represent a shareholder interest, while the remaining quarter consists of members of the board with no known link to any of the company's major shareholders. This corresponds closely with previous findings and illustrates the strong shareholder influence that often exists on Swedish nomination committees compared with those in other countries.

Table 4. Number of board members on nomination committees

All companies

Number of board members	Number of companies	Percentage
0	39	16%
1	158	66%
2	34	14%
3	8	4%
4	1	0%
Total	240	100%

Old Code companies

Number of board members	Number of companies	Percentage
0	16	17%
1	68	71%
2	10	10%
3	2	2%
Total	96	100%

Table 5. Owner representation on nomination committees

	2009	Percentage	2008	Percentage	2007	Percentage
Representative of Swedish shareholder	379	39%	342	76%	261	61%
Representative of foreign shareholder	89	9%	42	9%	48	11%
Member of the board	254	26%	66	15%	105	25%
Other	249	26%	2	0%	11	3%
Total	971	100%	452	100%	425	100%

INTERNATIONAL PERSPECTIVE

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 corporate governance 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 two such contributions, both of which deal with various aspects of Swedish and Nordic corporate governance in an international perspective.

- In June 2007, a joint working group was set up by the self-regulatory corporate governance bodies of Denmark, Finland, Iceland, Norway and Sweden with the task of analysing similarities and differences among the countries' corporate governance models and evaluating the possibilities of increased alignment of self-regulation within the field. As a first step, the group has produced a general overview of the particular characteristics of corporate governance in the five countries. The aim is both to describe the main common features of Nordic corporate governance to an international audience and to provide a basis for continued discussion regarding the possibilities of further alignment of self-regulation within this field.

  The report was written in English and is reproduced here in its original form. It can also be downloaded in PDF format free of charge from each of the self-regulatory corporate governance bodies' websites, including that of the Swedish Corporate Governance Board, www.corporategovernanceboard.se

- The second article provides an outside perspective on certain aspects of Swedish and Nordic corporate governance. Professor Paul Strebel of IMD in Lausanne, Switzerland, has analysed the balance of power between boards and executive management teams in a number of large, mainly British and American, financial institutions. He identifies a pattern in which companies with strong concentration of power to the executive management have been affected more seriously by the financial crisis in general than those where the board is more powerful. He compares this with Nordic corporate governance, for example, where shareholders have a more powerful position and are often more active in the governance of the company, including participation on the board, which Professor Strebel feels provides checks on how much power is delegated to the executive management. He identifies in particular the Swedish system of shareholder controlled nomination committees as a way of creating better balance between owners, boards and executive management teams than that often found in Anglo-Saxon corporate governance.

Corporate Governance in the Nordic Countries

Preface

This presentation has been prepared with the co-operation of the self-regulatory corporate governance bodies of the five Nordic countries Denmark, Finland, Iceland, Norway and Sweden. Its aim is to inform international investors and other market participants of key elements of Nordic corporate governance, and thereby to increase knowledge of and confidence in the Nordic corporate governance models. It may also serve as a basis for any future discussions about the possibilities of further alignment of corporate governance regulation and practices between the Nordic countries.

The work has been carried out through a working group made up of Mr Haraldur Ingi Birgisson, the Icelandic Committee on Corporate Governance, Mr Per Lekvall, the Swedish Corporate Governance Board, Ms Anne Leppälä Nilsson, the Corporate Governance Working Group of the Finnish Securities Market Association, Ms Annette Norup Würthner, the Danish Commerce and Companies Agency, serving as secretariat for the Danish Corporate Governance Committee, and Mr Halvor E. Sigurdsen, the Norwegian Corporate Governance Board. Mr Björn Kristiansson, legal advisor to the Swedish Corporate Governance Board and Ms Piia Vuoti, secretary of the Finnish Securities Market Association, have assisted in various phases of the project. The end product was approved by representatives of the undersigned bodies.

Comments and suggestions for future editions are welcome and may be addressed to:
info@corporategovernanceboard.se

or to any of the undersigned bodies.

Danish Corporate Governance Committee
www.corporategovernance.dk

Finnish Securities Market Association
www.cgfinland.fi

Icelandic Committee on Corporate Governance
www.vi.is

Norwegian Corporate Governance Board
www.nues.no

Swedish Corporate Governance Board
www.corporategovernanceboard.se

Introduction

The corporate governance of the Nordic countries closely resembles that of most of the industrialised world and meets with the highest international standards. At the same time, owing to company legislation, corporate governance traditions and some specific preconditions regarding the ownership structure on the stock market, Nordic corporate governance differs in some respects from the Anglo-Saxon and European Continental models. The aim of this presentation is to highlight the most important and distinctive features characterizing the Nordic corporate governance model.

The Nordic countries are advanced market economies with well developed and international capital markets. Foreign ownership of stock-listed companies has increased significantly over the last few decades and is now over one third in the region as a whole. With regard to their size, the Nordic countries host a remarkable number of world-leading companies, which in many cases have attracted even larger foreign ownership. Still, the majority of stock-listed companies are relatively small in an international perspective with predominantly domestic ownership. The total market capitalisation of the Nordic regulated stock market is about half of that of the London Stock Exchange Main Market.

During the last decade, the Nordic capital markets have become increasingly integrated. A number of cross-border mergers have taken place, creating large pan-Nordic companies, in several cases with listings on more than one of the Nordic stock exchanges. In the last few years these exchanges have undergone a rapid consolidation, and they are today, except the Oslo Stock Exchange, wholly owned by Nasdaq OMX. As an outcome of this they are currently in the process of harmonizing listing rules and requirements, a development which will further enhance the competitiveness of the combined Nordic capital market.

The corporate governance of the Nordic countries is based on national legislation, primarily each country's companies act, but also the respective accounting acts and acts governing the securities market and securities trading, as well as relevant EU regulation, stock exchange rules and corporate governance codes. The Nordic companies acts share a heritage of strong harmonization efforts from the mid-20th century. This development came to an end in the beginning of the 1970's when Denmark entered the EC, followed by Finland and Sweden in 1995. Iceland and Norway are members of the EEA and thereby also implement all EC legislation, relevant to the EEA agreement. Still it resulted in far-reaching similarities between the new companies acts, introduced in all Nordic countries later in that decade. Even though the companies acts of the Nordic countries have from that point in time developed along different paths and today show significant differences in details, they still resemble each other in fundamental corporate governance aspects.

Furthermore, the Nordic companies acts are all highly up-to-date and include several aspects of modern corporate governance that, in other countries, are regulated through codes on a comply or explain basis. Other such aspects are covered by stock exchange rules, which listed companies are contractually obliged to comply with. Hence, significant parts of modern corporate governance are, in the Nordic countries, regulated through binding regulations.

Self-regulation is well established in the Nordic countries and plays an essential regulatory role in corporate governance as well as in other areas. Hence, the Nordic corporate governance codes, introduced during the last ten years, were developed within the self-regulatory framework of each respective country, and they have since then been administered by independent corporate governance committees. Although the codes, too, differ in details between the countries, they are all based on the general international development and common Nordic approach within this field and thus show a fundamental resemblance to one another.

Key Features of Nordic Corporate Governance

The following is a summary description of some key features of Nordic corporate governance based on relevant legislation, stock-market rules, self-regulation codes and, where relevant, generally accepted market practice. The description does not claim to be exhaustive, nor to reflect the exact situation in each country, but gives an overview at a relatively high level of aggregation of some common aspects of corporate governance in listed companies in the Nordic countries.

1. Strong General Meeting Powers

The Nordic companies acts provide for strong shareholder powers through the General Meeting as the highest decision-making body of the company. At the General Meeting the shareholders participate in the supervision and control of the company.

An Annual General Meeting (AGM) must be held within a certain time period after the end of the financial year. The AGM approves the company's annual accounts, including any distribution of profits. The AGM decides on election and dismissal of individual directors of the Board. The remuneration to the directors of the Board is to be approved by the AGM, which also appoints the company's statutory auditors.

A decision by the General Meeting is also required regarding, i.e., mergers and de-mergers of the company, amendments of the company's Articles of Association and alterations of the company's share capital. Some decisions may also be taken by the Board if authorised by the General Meeting, for example, issues of new shares, convertibles or warrants and buy-back of own shares. In some of the countries, incentive programs for the management must be approved by the General Meeting.

2. Shares with Multiple Voting Rights

Shares with multiple voting rights are permitted, within clearly defined limits set in the companies acts. This is the most frequently used ownership control enhancing mechanism (CEM) primarily in Sweden but to some degree also in Denmark and Finland. Other forms of CEMs are not commonly used in Nordic listed companies, except for ceilings on voting rights or ownership in Denmark.

The freedom of contract is balanced by strict disclosure requirements and minority rights. The use of shares with multiple voting rights and other CEMs has to be fully disclosed to the shareholders and the market.

3. Strong Minority Protection

To balance the power of major shareholders, the Nordic companies acts allow for substantial protection of minority shareholders. Nordic companies are under a strict obligation to treat all shareholders equally. Consequently, the minority protection rule prescribes that the General Meeting – or the Board or any other governance body – may not make a decision that might give an undue advantage to some shareholders or other persons at the expense of the company or other shareholders. All shares provide equal rights, unless the Articles of Association allows shares with different rights.

Furthermore, there are a number of rules limiting the majority decision principle on specific matters at the General Meeting. Hence, although the general rule is that the General Meeting decides with a simple majority, a number of decisions require various degrees of qualified majority of both shares and votes to be valid. Examples of such decisions are amendments of the Articles of Association, share capital alterations and mergers or demergers. There are also rules granting a certain minority, rights to force certain decisions, such as to summon a General Meeting and in some countries to distribute a minimum dividend out of the company's profit.

4. Effective Individual Shareholder Rights

Additional minority shareholder protection is obtained by the relatively far-reaching rights of the

individual shareholder. Hence, most of the provisions of the EU Shareholders' Rights Directive (2007/36/EC) have for a long time been part of the Nordic companies acts.

Each shareholder, irrespective of the number or class of shares held, has the right to participate in the General Meeting and to vote on his or her shares.[1] Shareholders who are not able to attend in person may exercise their rights by proxy. Each shareholder has the right to table resolutions and to ask questions on topics within the scope of the agenda of the General Meeting.

Each shareholder also has the right to have issues falling within the competence of the General Meeting, included in the meeting agenda, providing a request has been submitted to the Board in adequate time for the issue to be included in the notice calling the meeting. The General Meeting may not make any resolutions on items unless they have been included in the agenda for the meeting.

Generally, companies are encouraged to facilitate shareholder attendance and voting at General Meetings, and no shares may be blocked. There are also strict limits on how early cut-off dates for the right to vote at General Meetings may be set.

5. Non-Executive Boards

The Nordic corporate governance structure lies between the Anglo-Saxon one-tier and the continental European two-tier model. The Board is responsible for the overall management of the company's affairs, including the strategy, organisation, financial structure of the company and oversight of risk management and internal controls, whereas the day-to-day management is delegated to the CEO. The extensive decision-making authority thus assigned to the Board is limited primarily by the decision-making powers of the General Meeting in certain matters.

In line with generally accepted international standards, the codes or the listing rules of all Nordic countries stipulate that at least half, or a majority, of the Board members to be elected by the shareholders have to be independent of the company.[2] Further, a separation between the Board and Executive Management is required. The same person cannot be CEO and chairman of the Board. Hence, the great majority of the Nordic listed companies have entirely or predominantly non-executive boards.

6. Use of Board Committees

With entirely or predominantly non-executive directors on Nordic companies' Boards, the establishment of Board committees becomes more a question of efficient organisation of the Board's work rather than of the integrity of the Board vis-à-vis the company management.

Therefore, in general, the Nordic corporate governance codes recommend that Boards consider the establishment of subcommittees for handling matters of this nature, but leave it to each Board to decide whether this is warranted or not in each particular case. Major Nordic listed companies have established audit committees,[3] and in most countries compensation committees as well. Nomination committees are, in Norway and Sweden, appointed by the shareholders at the AGM, whereas in the other countries these are predominantly subcommittees of the Board.

It should furthermore be noted that, as a consequence of the Nordic countries' companies acts, a Nordic Board subcommittee can only be assigned tasks within the framework of the entire Board's duties, and that the full responsibility for any decision delegated to a Board subcommittee stays with the Board as a whole.

7. Auditors Appointed by and Accountable to the Shareholders

The statutory auditors of a Nordic company are appointed by the General Meeting to audit the company's annual accounts. In Finland and Sweden,

[1] In Denmark it was possible to issue shares without voting rights until 1. January 1974. These shares are still valid.
[2] In Denmark, Norway and Sweden the employees have the right to appoint a limited number of Board members.
[3] In Finland, an audit committee has to be established in large companies, where required by the extent of the business operations.

they also have the duty to review the Board's and the CEO's management of the company. Auditors of Nordic companies are therefore given their assignment by, and are obliged to report to, the shareholders, and they must not allow their work to be governed or influenced by the Board or the executive management.

Auditors present their reports to the shareholders at the AGM in their annual audit report. Part of their assignment is to recommend whether the General Meeting should adopt the financial statements and whether the company's profit or loss should be appropriated in accordance with the Board's proposal.

In most of the countries, the auditors are furthermore obliged to report if any member of the Board or the CEO has carried out any action or committed any oversight that may result in liability for damages or has contravened the relevant companies act, the relevant legislation on annual accounts, or the company's Articles of Association.

8. Active Governance Role of Major Shareholders

Many large companies in the Nordic area have a dispersed ownership structure with a clear separation between the ownership and management roles. However, a relatively large portion of the listed companies in the Nordic area, in particular in the small and mid-cap categories, have one or a few controlling shareholders, who often play an active role in the governance of the company. This has important repercussions for the view of the ownership role, and major private shareholders in such companies are generally expected to exert their ownership rights actively and take long-term responsibility for the company.

In line with this, major private shareholders normally not only take part in General Meeting proceedings but also often involve themselves in the company affairs by serving on the Board. Still, in all countries there should be at least two Board members independent from major shareholders (in Denmark at least half). In Norway and Sweden shareholders are also expected to assume special responsibility for the Board nomination procedure by appointing, and sometimes also serving as members of, the Nomination Committee.

Hence, there is a generally positive view of ownership involvement in the company affairs in the Nordic region. At the same time, there are strong legal provisions against misuse of such powers to the detriment of the company or the other shareholders and for each Board director's strict duty to work in the best interest of the company and all shareholders.

9. Transparency

Nordic listed companies have in general been early to adopt high standards of transparency towards their shareholders, the capital market and the surrounding society as a key aspect of modern corporate governance. Hence, in a study by the European Commission, the Nordic member states ranked among the top countries in all aspects of disclosure of information analysed.[4)]

In particular regarding remuneration to the Board and management, a high degree of transparency has, for many years, been standard procedure in Nordic corporate governance. Thus, full disclosure at the individual level of the remuneration to the directors of the Board and the CEO is required. In addition, with some variations between the countries, in Denmark, Iceland, Norway and Sweden the company's remuneration policy has to be presented, and submitted for approval in full or part, at the AGM. In Finland the principles for remuneration to the executive management have to be published on the company's website.

Also, disclosure of the company's internal control and risk management principles is generally required by the Nordic corporate governance rules.

4) Report on the Proportionality Principle in the European Union. External Study Commissioned by the European Commission: http://ec.europa.eu/internal_market/company/docs/shareholders/study/final_report_en.pdf

Checks and Balance in Corporate Governance

By Paul Strebel*

Boards of directors have two fundamental roles that are in continual tension. On the one hand, they have the fiduciary responsibility of controlling the conduct of the business on behalf of the owners. On the other hand they are expected to support the CEO and executive team in the creation of economic value. Fiduciary control requires at least a monitoring, if not an adversarial role to protect the equity of the owners, whereas, supporting the creation of value requires a collaborative role.

In Anglo-Saxon systems of governance, where there are only two centres of power in the form of management and the board, it is very difficult for the boards of large listed companies to maintain a balance and fulfil these two roles. Both the CEO of the executive team and the Chair/Lead Director of the external directors need large egos to get to the top. But large egos typically are not good at self-management and have difficulty working together. They often end up competing for power to become the de facto head of the company. When the external Chair wins the power struggle, the board finds itself controlling a subservient CEO and decision-making for value creation suffers. When the CEO/internal Chair wins the power struggle, the board is forced into a collaborative role and can no longer exercise effective control on behalf of the shareholders.

The most dramatic example of what happens when the CEO wins the power struggle is provided by the banks with the biggest writedowns and credit losses during the current financial meltdown. Citi, Merrill, UBS, Washington Mutual, Freddie Mac, Lehman, Bear Stearns, ABN Amro, were dominated by an entrenched, powerful CEO, or internal executive Chairman, who had been in place for several years longer on average than those at the top of the banks with much lower write-downs and credit losses.

The CEOs/internal Chairs with longer tenure developed increasing confidence in their own decision-making and became less inclined to accept negative feedback. They surrounded themselves with prominent board members with little or no industry expertise, whom they gradually co-opted into pursuing ever greater returns without regard for the risk. Hubris and greed moved to the front of decision-making; realism and rationality took a back seat. The CEOs pushed for increasingly higher performance and downplayed the risk build-up that inevitably accompanies the push for greater returns. Governance codes requiring more independent directors and a separation of roles between the CEO and the Chairman were no match for the strong personalities and group dynamics on these boards.

The banks that escaped CEO dominance had recent changes in either the CEO, or Chairman. Firms like J.P. Morgan, Deutsche Bank, Credit Suisse, BNP Paribas, ING, Goldman Sachs had more recent rotation at the top and smaller writedowns and balance sheet problems. In most cases, the changes at the top were needed to deal with earlier problems. But waiting for problems to get changes at the top is not the best way of avoiding CEO dominance.

A better approach to preventing the board from falling under the sway of an errant CEO is to bring the owners of the company more directly into play. This already happens in family firms, or foundation owned companies, most notably in the Nordic countries, where the owners, or their direct representatives, sit on the board. In these governance regimes, the owners can check directly that their equity is protected and decisions are made to create value for the shareholders.

The danger with large private owners is that they may dominate both the board and management to the detriment of minority shareholders. In countries with weak legal systems this is what often happens in family and state-owned enterprises. However, in countries with stronger legal systems and transparency, the situation is more encouraging. There is increasing evidence that the presence of large shareholders improves the firm's stock market performance.

For example, recent studies of developed markets and legal systems published in peer-reviewed journals have found that listed family businesses outperform. A study of the S&P 500 by Ronald Anderson and David Reeb

found that "family firms perform better (both in accounting and market terms) than nonfamily firms". Other research found that family-controlled listed companies outperform their rivals on the six biggest stock markets in Europe. In other words, minority shareholders benefit from the presence of family ownership.

In Northern Europe, owner-founders often embed their business purpose and values in a not-for-profit industrial foundation, rather than passing ownership of the company directly to their heirs. Like the family councils, the foundation boards are usually directly represented on the board. A study of listed foundation-owned companies in Denmark by Steen Thomsen and Caspar Rose has found that they perform at least as well in terms of stock returns as other listed companies.

When minority shareholders are legally protected, as they are in Sweden, by strong rights vested in the shareholders' meeting, in particular the right to block certain decisions with a minority vote, the advantages of having owners directly represented on the board increases. If the governance code precludes joint mandates by keeping the roles of CEO, Board Chair, and Owners' representatives separate, large shareholders are even more likely to act as strong monitors rather than damage the interests of minority shareholders.

Indeed, to avoid another governance failure like that in the banking industry, there is no reason why the annual general meeting of large corporations with widely diffused ownership should not elect shareholders to an owner's supervisory council. Similar to the practice in family firms and foundations, the owner's council would replace the nominating committee of the corporate board. In this regard, the Swedish custom of having the shareholders appoint the nominating committee provides an example of best practice.

The role of the external directors in the presence of a third centre of power in the form of an owners' council, or nominating committee, is much clearer. In tripartite systems of governance with three organized centres of power, the external directors can provide the necessary checks and balance between management and the owners. Rather than competing for power with the CEO, the external directors can provide the balance needed to ensure that neither management, nor the owners, abuse their power. In addition, the external directors have a better chance of playing the essential integrative role, required to get both the owners and management to look at the bigger picture and take a longer term perspective to value creation.

Sandoz Family Foundation Professor
Director, High Performance Boards Program
IMD, Lausanne, Switzerland
13 April 2009

* Paul Strebel is the Sandoz Family Foundation Professor and Director of High Performance Boards Program at IMD. He has had personal experience as a member of several boards. His research focuses on the role of the board during major transitions, such as big strategic moves, recession, or the transition from one family generation to the next. Most recently, he has been looking at the role of big bank boards prior to the financial meltdown.

If you have any questions or comments for the Swedish Corporate Governance Board, please feel free to contact us.

Hans Dalborg (Chair)
Nordea
SE-105 71 Stockholm, Sweden
Telephone +46 (0)8-614 78 01
E-mail: hans.dalborg@nordea.com

Lars Otterbeck (Deputy Chair)
Hakon Invest
Box 1508
SE-171 29 Solna, Sweden
Telephone +46 (0)70-510 00 36
E-mail: otterbeck@telia.com

Per Lekvall (Executive Director)
The Swedish Corporate Governance Board
Box 7680
SE-103 95 Stockholm, Sweden
Telephone +46 (0)8-508 822 71, +46 (0)70-751 90 99
E-mail: per.lekvall@corporategovernanceboard.se

SWEDISH
CORPORATE
GOVERNANCE BOARD
Box 7680 | SE-103 95 Stockholm | Sweden
www.corporategovernanceboard.se

This annual report was produced in collaboration with
HALLVARSSON&HALVARSSON