SWEDISH
CORPORATE
GOVERNANCE BOARD

Annual report 2012

Contents

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Foreword

The work of the Swedish Corporate Governance Board in 2010 was dominated by our efforts to influence the development of regulation at European Union level. In the aftermath of the financial crisis, the European Commission has been the driving force behind a number of corporate governance initiatives, both for listed companies and financial institutions. As well as a Green Paper on corporate governance in stock exchange listed companies, the Commission presented proposals on corporate governance rules for different types of financial company and revised rules for audits and auditors. Recently, the Commission also announced that it intends to conduct a review of company legislation in the European Union.

The Board is firmly of the view that the benefits of any new regulation should exceed the costs, with the burden of proof lying with those who wish to introduce the regulation. The Commission's initiatives in the field of corporate governance have not always done this.

The Board has submitted comments and responses concerning the EU initiatives to the Ministry of Justice and the Ministry of Finance. Both independently and in collaboration with corporate governance code issuers in countries such as the United Kingdom, Germany and the Netherlands, the Board has defended the role of self regulation in corporate governance and the continuation of the principle of comply-or-explain in Brussels. Additionally, the Board has encouraged the EU to respect the different corporate governance traditions that exist in Europe.

Another major task for the Board in 2011 was the review of the rules concerning public takeover bids. The Board assumed the responsibilities of the now-defunct Swedish Industry and Commerce Stock Exchange Committee, (NBK), in May 2010. In 2011, the Board set up a working group to examine the takeover regulations issued by the NBK, and the group recently presented a set of proposals for new rules.

This annual report also presents the results of the surveys which make up the Board's follow-up of its activities. The survey of how listed companies applied the revised Code shows that the Code in its revised form has improved the quality of corporate governance reports still further. One worrying trend, however, is that the number of explanations of non-compliance with Code rules has fallen. Also, information issued by companies on fulfilment of the details of the Code leaves a great deal to be desired.

As in previous years, the third section of the report consists of articles on issues relevant to Swedish corporate governance written by external contributors. The authors of these contributions are entirely responsible for the views presented in these articles, and the opinions and values expressed are not necessarily shared by the Board.

Since its first publication in 2006, the Board's annual report has been a forum for information and discussion on the development of Swedish corporate governance. Its publication in English also allows actors in the international markets to remain informed about what is happening in this field in Sweden. It is the hope of the Board that this annual report, as those of previous years, will contribute to increased knowledge and understanding of Swedish corporate governance.

Stockholm, June 2012

Hans Dalborg
Chair of the Board

I. ACTIVITY REPORT

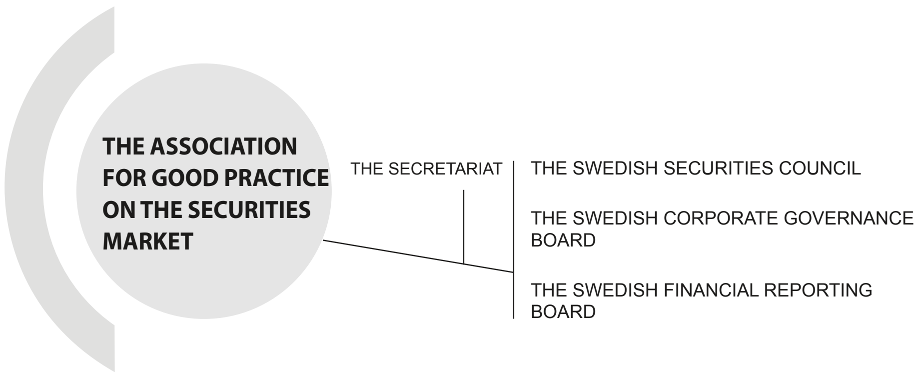
This part of the annual report describes the work of the Board during 2011–2012 and discusses current issues regarding the Code and Swedish corporate governance in general.

The Mission of the Swedish Corporate Governance Board

In May 2010, the role of the Swedish Corporate Governance Board was widened to include responsibility for issues previously handled by Näringslivets Börskommitté, the Swedish Industry and Commerce Stock Exchange Committee, NBK. Since that date, the mission of the 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; to promote generally accepted principles in the Swedish securities market by issuing rules regarding good practice, such as rules concerning takeovers; and to promote knowledge and understanding of Swedish corporate governance on the international capital market while safeguarding Swedish interests within these areas.

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

The role of the Board in promoting Swedish corporate governance is to determine norms for good governance of listed companies in Sweden. It does this by



ensuring that the Swedish Corporate Governance Code remains appropriate and relevant, not only in the Swedish context, but also internationally. The Board monitors and analyses how companies apply the Code through recurrent dialogue with its users in seminars, at working meetings and through structured surveys. It also monitors and analyses the general debate on the subject, changes in legislation and regulations concerning corporate governance, developments in other countries and academic research in the field. Based on this work and other relevant background information, the Board continuously considers the need for limited modifications to the Code or more general reviews of the entire Code.

The Board is also an active contributor to international forums, including the European Union, promoting Swedish interests in the field of corporate governance. Another area of growing importance for the Board in recent years has been as a referral body on corporate governance issues.

The Board has no supervisory or adjudicative role regarding individual companies' application of the Code. Ensuring that companies apply the Code in accordance with stock exchange regulations is the responsibility of the respective exchanges. The role of evaluating and judging companies concerning their compliance or non-compliance with individual rules in the Code, 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. Interpretation of the Code is not a matter for the Board either. This is the responsibility of are the Swedish Securities Council, which issues interpretations on request. This is discussed in detail later in this report.

In its role of promoting generally accepted principles in the Swedish securities market, the Board monitors application of rules, including those concerning takeovers. It also monitors legislation and other regulation, as well as academic research into stock market issues in Sweden and internationally, in order to devise any rules or changes to existing rules that are deemed appropriate and ensure that these have the support and acceptance of the actors concerned.

The Work of the Board during the Year

During the first part of 2010, the Board consisted of the Chair, Hans Dalborg, the Deputy Chair, Lars Otterbeck, Lars-Erik Forsgårdh, Eva Halvarsson, Carola Lemne, Marianne Nilsson, Michael Treschow, Lars Träff, Caroline af Ugglas and Anders Ullberg, as well as Executive Director Per Lekvall. Lars Otterbeck and Michael Treschow left the Board at the parent organisation's annual general meeting in May 2011 and were replaced by Carl Bennet and Lars Pettersson. Per Lekvall was appointed as a member of the Board when he was succeeded as Executive Director by the Board's adviser on corporate law, Björn Kristiansson. Magnus Billing continued as a co-opted member of the Board. Lars Thalén continued to act as a consultant and adviser on information issues.

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

Follow up of the Code and Swedish corporate governance

In order to monitor that the Code is working as intended and to ascertain whether any modifications to the Code should be considered, the Board regularly conducts a variety of surveys of how the rules of the Code are applied in practice. The most important of these is its examination of Code companies' corporate governance reports, which it has carried out every year since the original version of the Code was introduced in 2005. Seven surveys have now been carried out in this series, using a method that has been largely unchanged from year to year. This provides excellent opportunities for comparison during the whole period since the original Code came into force.

The 2011 survey was particularly interesting, as there have been no changes made to the Code since 2010, so any changes in company behaviour it are particularly apparent. In short, the results show that companies maintain a high level of ambition in their application of the Code. One pleasing finding was that the number of explanations of non-compliance with satisfactory information content was considerably higher than in previous years. A new development in 2010 was that the content of the corporate governance reports and companies' websites was examined against the background of legal and Code requirements. Last year's survey revealed that companies still had some work to do in order to fulfil all requirements concerning detailed information, and even though there has been some improvement, this year's survey shows that there is still much to be done.

A detailed account of the 2010 survey can be found later in this annual report.

Revised takeover rules

In 2010, the Board took over the role of the now-defunct Swedish Industry and Commerce Stock Exchange Committee, (NBK), in issuing rules governing generally accepted principles in the Swedish securities market, including the NBK's rules regarding takeovers.

The Swedish takeover rules were modelled on the British Takeover Code, which itself was reviewed in 2011. The British review came in response to a climate in which British offeree companies had increasingly come to accept a range of restrictions concerning their behaviour towards bidders. One result of this overview is that British offeree companies can no longer enter into certain types of transaction agreement with bidders without the approval of the British Takeover Panel, e.g. agreements forbidding offeree companies to seek other bids or clauses obliging companies to pay break fees in the event of failed bids.

Against this background, the Board felt that the time was right to conduct a review of the Swedish takeover rules. Furthermore, the Swedish Securities Council had issued a number of statements on takeovers since the previous review of the rules, and these needed to be incorporated into the regulatory framework.

The Board began its review in July 2011 by inviting comments and opinions on the existing regulatory framework, which was introduced for the main markets of NASDAQ OMX Stockholm and NGM on 1 October 2009. Equivalent rules for First North, Nordic MTF and AktieTorget came into force on 1 January 2010.

The review was led by Rolf Skog, Executive Director of the Swedish Securities Council, assisted by Erik Sjöman, a lawyer, and Björn Kristiansson, Executive Director of the Swedish Corporate Governance Board. As with previous reviews, the work was conducted in close consultation with a diverse reference group, which had five formal meetings in the autumn of 2011 and the spring of 2012. The Board submitted its proposals to NASDAQ OMX

Stockholm and NGM on 20 February 2012, and the proposals are expected to be adopted and to come into force on 1 July 2012. When these new takeover regulations come into force, the Board will simultaneously issue a revised version of the rules for takeovers on the First North, Nordic MTF and AktieTorget trading platforms. As with the previous version of the regulations, these takeover rules will be to all intents and purposes identical to those of the NASDAQ OMX Stockholm and NGM Equity exchanges.

The most important changes are as follows:

- The scope of the takeover regulations, including in the case of offers for non-Swedish companies, has been linked directly to the scope of the Public Takeover Offers Act, (LUA).
- The nature and extent of the problems that led to the British prohibition of deal protection arrangements between offerors and offeree companies have not yet been seen in Sweden. The Board has therefore confined itself for the time being to reemphasising that restrictiveness is to be shown in the case of such arrangements.
- The Board also considered the issue of in which circumstances different actors in a takeover process may deviate from public statements connected with the offer, e.g. statements from offerors that they will not increase bids. The Board's proposal contains a reminder that the role of the Swedish Securities Council includes adjudication on such issues. The existing rule obliging offerors to accept that deadlines will not be extended when they announce their bids remains.
- An offeror with financial instruments that give the offeror purely financial exposure corresponding to possession of shares in the offeree company, e.g. in the form of cash-settled equity swaps, is to declare this when announcing its bid, in the documentation and in the press release concerning the result of the bid.
- If an offeror wishes to offer employees in the offeree company a bonus arrangement or similar before completion of the deal, the board of the offeree company must first approve the arrangement. Examples of such arrangements may be that employees are promised participation in a bonus programme when the deal has been completed or that they will receive a cash settlement if they remain in the company for a certain amount of time following completion of the deal. The offeror is to provide clear information regarding any such arrangements.
- Rules concerning financing terms and conditions have been clarified. As previously, bids may be made conditional upon the payment of an acquisition credit. The offeror may not, however, invoke a credit condition that may have been imposed as a condition for the bid. This means that the offeror is only permitted to invoke the payment condition in cases where the creditor breaches the terms of the credit agreement by refusing to issue the credit, e.g. where the creditor is insolvent.
- A regulation stating that an offeror is not obliged to extend its deadline in order to allow the terms of the offer to be fulfilled has been added. Other conditions may apply in cases where deals must be approved by the authorities.
- Offerors are allowed to exempt holders of share-related transferable securities issued within the framework of an incentive programme in the offeree company from the deal, on condition that the holders are otherwise reasonably treated. This has previously required special dispensation for each individual case.
- The rules for pre-, side- and post-dealings have been revised to make it clear that they do not apply to group-internal transactions or to subscriptions of shares in new rights issues to existing shareholders. Whether individual cases of subscription of shares through private placement are covered by the regulations is an issue for the Swedish Securities Council to decide on a case by case basis.
- The information requirements for stock exchange listed offeree companies continue to apply during a takeover process. If information exists that can affect assessment of the deal but which the offeree company is not obliged to disclose immediately, a new regulation states that the offeree company should strive to make this information public no later than two weeks before the acceptance deadline. (Cf. the company board's obligation to disclose its opinion on the deal no later than two weeks before the acceptance deadline.)

Additionally, as in previous reviews, the Swedish Securities Council's accepted practices have been codified in a number of matters and a certain amount of fine tuning of technical details has been carried out. The revised rules for new takeover rules for regulated markets and certain trading platforms can be found on the Board's website, www.bolagsstyrning.se.

Referrals etc.

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

In recent years, this role has become more intensive, not least with regard to regulations from the EU. This is because the EU Commission has been intensifying its work to expand and harmonise regulation of corporate governance within the European Union in the wake of the economic crisis. This has led to a series of recommendations, green papers and proposed directives on aspects of corporate governance in different sectors in the past two years.

In 2011, the Board provided written comments on the European Commission's green paper on corporate governance in listed companies, partly in the form of opinions submitted to the Swedish Ministry of Justice and partly in direct response to the Commission. The Board has also submitted comments to the Swedish Ministry of Finance regarding the European Commission's proposed CRD IV and MiFID II directives, both of which concern financial institutions. Additionally, the Board submitted comments on proposed changes to the Leo Act and opinions concerning empty voting to ESMA, the European Securities and Markets Authority.

So far in 2012, the Board has submitted comments on proposed changes to rules concerning prospectuses and the auditing of financial institutions submitted its opinions on the European Commission's proposals on auditor regulation and changes to the directive on statutory audits and consolidated accounts to the Ministry of Justice. The Board has also commented on the Commission's web-based survey on European company law, both to the Ministry of Justice and to the Commission itself.

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

Green paper on corporate governance in listed companies

In early 2011, the Board wrote a position paper in order to attempt in advance to influence the proposed regulations concerning corporate governance that Internal Market and Services Commissioner Michel Barnier had announced would be contained in a green paper on corporate governance in stock exchange listed companies. The European Commission presented its green paper on a framework for corporate governance in the EU on 5 April 2011, and interested parties were invited to submit comments no later than 22 July 2011. The proposals contained in the green paper were not as far-reaching as the preceding debate had given cause to believe, and on certain issues it seemed that the commission had taken account of arguments raised in the debate.

The green paper's proposals can be divided into three main areas. After an introductory question on whether the Commission should also regulate the governance of unlisted companies and should differentiate between large and small listed companies, there is a battery of questions concerning company boards – the tasks of boards, their composition, evaluation, remuneration, risk management etc. There then follows a number of suggestions, mainly concerning the internal governance of institutional investors, and finally, there is a section on the system of codes based on the comply or explain principle, the content of corporate governance reports and who should monitor the application of corporate governance codes.

The Swedish Ministry of Justice immediately requested comments on the green paper from interested parties, including the Corporate Governance Board, in order for the Ministry to be able to formulate an official response from the Swedish Government. The Board submitted a statement on the green paper to the Ministry on 20 April 2011. In short, the Board's position was that the Commission had failed to show the need for further regulation of corporate governance of stock exchange listed companies, and that the degree of detail in the proposed rules was far too great, particularly with regard to company boards, where existing Swedish rules in principle already regulate the issues covered in the green paper. The Board advocated a more principle-based regulatory framework in preference to the detailed proposals presented by the Commission, which were poorly suited to the circumstances of Sweden and many other European countries. The opinion of the Board is that the green paper provides no evidence to support the need for further regulation, not least in view of the costs that the new rules would entail for companies. Furthermore, further regulation would impact on companies' competitiveness compared with listed companies outside the European Union, as well as in comparison with companies with other ownership structures, such as private equity. The Board was therefore opposed to the majority of the proposals contained in the green paper.

These views provided the basis for the Board's own official and more detailed response to the Commission regarding the content of the green paper, which was submitted on 17 July 2011.

During the autumn of 2011, representatives of the Board, both individually and together with people responsible for corporate governance codes on the United Kingdom, Germany and the Netherlands, have had meetings with a number of key decision-makers within the EU, including representatives of the EU Commission, in an attempt to influence them in the direction outlined above. The extensive criticism levelled at the proposals in the green paper by many member states was a key factor in the Commission's decision not to issue concrete proposals during autumn 2011, which had been its original plan. Instead, an open web-based consultation on EU company law was launched in early 2012. At the end of this consultation period, the Commission plans to issue a coordinated report on how it intends to proceed on the issues of corporate governance and company law in general. This will take the form of an action plan, and it is expected to be presented in September 2012.

Proposed new corporate governance rules for financial institutions
In 2011, the European Commission presented a proposal for a directive with revised concerning capital requirements rules for banks and other financial institutions, CRD IV. The proposed rules also included proposed new corporate governance rules for these institutions, e.g. the composition of the company board and the number of assignments each member of the board is allowed. Even though financial institutions are not part of the Board's target group, the Board felt that it should comment on the corporate governance issues contained in the proposal, as there was a major risk that regulation in this area would lead to equivalent rules for listed companies. The Board therefore submitted its views on these rules to the Ministry of Finance, and the views were then reiterated by the Board when the European Commission presented its proposals regarding MiFID II, which included corporate governance rules for securities firms.

Proposed directive and regulation on auditors and auditing
In autumn 2011, the European Commission presented its proposal for an updated directive on statutory audits and consolidated accounts and a new regulation on auditors and auditing. The proposed regulation is aimed at listed companies and financial institutions. The majority of the issues covered are outside the Board's areas of responsibility, but the Board decided to submit formal comments on certain general matters of principle. The comments were submitted to the Ministry of Justice in January 2012.

The first issue concerned the role of the auditor in the corporate governance system. According to the proposal, auditors "are entrusted by law...with a view to enhancing the degree of confidence of the public" in the audited company, which means that auditors and audit firms "fulfil a particularly important societal role". By this definition, auditors and audit firms are no longer representatives of the owners, but of society, which is an extremely far-reaching change. Further, recital (7) states that auditors are "a statutory safeguard for investors, lenders and business counterparties who have a stake or a business interest" in the audited company.

In the Swedish corporate governance model, the auditor is appointed by the shareholders' meeting to examine on behalf of the shareholders and to report back to them how the directors, i.e. the board and the Chief Executive Officer, have run the company and to analyse the company's accounts. The Board was therefore highly critical of the proposed change

The Board also demanded that a thorough cost/benefit analysis underpin any proposal for comprehensive new regulation.

Other referral statements
During 2011 and the first half of 2012, the Board submitted formal comments on a number of other issues sent for referral.

In response to the Ministry of Justice's proposal regarding the implementation of the prospectus directive into Swedish law, the Board stated that exceptions to the obligation to issue prospectuses in Swedish should not be broadened. The Board also expressed hesitation about reducing the time period for shareholders to withdraw their enrolments in connection with supplementary offer documents.

The Board was positive towards the Ministry of Justice's proposal to exempt the transfer of shares in small subsidiary companies from the "Leo rules" in Chapter 16 of the Companies Act, (2005:551), but expressed doubt about reducing the majority requirement in the same chapter of the Act from a nine tenths to a two thirds majority.

Against the background of the European Commission's proposed regulation, see above, the Board rejected the proposed regulation of auditors etc presented by the Ministry of Finance, which to a great extent covered the same issues.

Finally, in its responses provided on the European Union's web-based survey on company law, the Board was critical of any further company regulation from the Union in the manner it occurs today.

International work

As in previous years, the Board was an active participant in international debate on corporate governance issues in 2011, with the aim of promoting Swedish interests and increasing knowledge and understanding of Swedish corporate governance internationally. The Board took part in several consultation meetings with representatives of the European Commission, both formal meetings organised by the Commission and informal meetings within the network of national corporate governance committees of EU member states, to which the Board belongs. Through its close contacts with the European Corporate Governance Institute, (ECGI), a highly respected research organisation, the Board also has access to the latest research findings, as well as high quality seminars and conferences on corporate governance issues.

Key issues for 2012

Continued monitoring of European Commission initiatives in the field of corporate governance

The European Commission has declared that it intends to announce its new regulatory initiatives on corporate governance through an action plan that it expects to present in autumn 2012. The Board will be involved in this process, both by submitting comments on the proposals and influencing the formulation of the rules and by then having to implement some of the rules into the Swedish Corporate Governance Code.

The extent to which the Board sees reason to actively attempt to influence the work of the Commission will be determined by the proposals presented, but it is highly likely. The Board has well developed contacts with other code issuing bodies within the European Union, and joint activities with these cannot be ruled out.

A more pressing task is to submit comments on the European Commission's questions on the subject of gender equality and the allocation of board positions in listed companies by quotas. There is lively ongoing debate on this issue, both in Sweden and in Europe. The Board does not advocate quotas, but it will monitor developments in listed companies and their application of the Swedish Corporate Governance Code's rules on board diversity and breadth.

Review and evaluation of the Code

The most recent review of the Swedish Corporate Governance Code was carried out in spring 2010, and there may be reason to conduct a new review of the rules of the Code, even those which are not affected by the work of the European Commission, in order to examine whether there is justification for any changes. In this process, there may be reason to consult the users, i.e. the companies and their shareholders, to solicit their views.

Generally accepted principles in the Swedish securities market

As outlined above, the Board assumed the responsibilities of the Swedish Industry and Commerce Stock Exchange Committee in May 2010. These responsibilities comprise the promotion of generally accepted principles in the Swedish securities market by issuing rules regarding good practice, including rules concerning takeovers bids. This has led the Board to expand its intelligence capabilities to cover the whole range of securities market issues, not just matters of relevance to corporate governance.

Swedish takeover rules are largely based on the European Union's directive on takeovers, which is due for review in 2012. The European Commission has therefore instigated a study of how the directive is applied in the member states, and proposed changes can be expected during the year.

The Swedish Industry and Commerce Stock Exchange Committee previously also issued recommendations on other issues. Examples of issues previously subject to self-regulation included red flag rules, buy back of own shares and prospectuses. However, these recommendations have been superseded by legislation or stock exchange regulations. Even though the scope for new rules is becoming more and more limited as a result of harmonisation at EU level, issues may arise that need to be dealt with through Swedish self-regulation, and thus require input from the Board. On the other hand, the amount of work involved should not be exaggerated, as the majority of issues that come up today involve corporate governance, and in these cases, amendments to the Code would be more relevant. For issues of a more temporary nature or matters specific to a certain case, the Swedish Securities Council can issue statements to remove uncertainty.

II. APPLICATION OF THE CODE IN 2011

The Board conducts regular surveys and analysis in order to monitor how the Code is applied and to evaluate its functionality and effects on Swedish corporate governance. As in previous years, the Board commissioned a study of each Code company's application of the Code based on information published in annual reports and corporate governance reports. For the second consecutive year, the content of corporate governance reports has also been analysed in relation to the requirements of the Code and legislation. Another new aspect last year was an analysis of the corporate governance information on companies' websites, and this analysis was carried out again this year. The survey was carried out on behalf of the Board by Nordic Investor Services. The results are summarised below. Also in this section, there is a presentation of the Swedish Securities Council's and the stock exchange disciplinary committees' approaches to Code issues.

Companies' application of the Code

Executive summary

The most recent review of the Swedish Corporate Governance Code took place in 2010, which means that the results of this year's survey can be directly compared with those of last year's. As in previous years, companies have shown a high level of ambition when it comes to applying the Code. There are, however, many shortcomings in the details of how companies report on their corporate governance in their corporate governance reports and on their websites. Far too many companies fail to provide all the information that is required by the Annual Accounts Act and the Code. Although there have been improvements in many areas since last year, when detailed reporting was evaluated for the first time, there is a great deal of room for improvement.

The number of deviations from the Code, like the number of companies reporting deviations, continues to fall. Such a development can be interpreted both positively and negatively. The development is positive in as much as the rules of the Code are being respected and the standard of corporate governance reporting by listed companies should therefore has risen. However, the development is negative against the background of the Code's aim to make companies reflect and bring transparency to their corporate governance. The comply or explain principle on which the Code is based assumes that corporate governance is something fundamentally individual to each company, and even if the behaviour of companies means that they apply the majority of the rules in the Code, there should be a large number of individual solutions that are more suitable for individual companies than the standard methods prescribed in the Code. If companies feel that they must adapt their behaviour in order to comply with the Code, innovation and initiative may be stunted, to the detriment of the individual company and its shareholders.

A major change for the better when comparing the results of this year's survey with previous years' is the improved information value of explanations of non-compliance, where the percentage of informative explanations has increased significantly.

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, difficult to apply or in some other way unsatisfactory. The results of the annual surveys provide a basis for the continued improvement of the Code.

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

The basis for the study is companies' own descriptions of how they have applied the Code in the corporate governance reports that are required by the Annual Accounts Act, in other parts of their annual reports and in the information on their websites. Last year was the first time that the survey examined whether the corporate governance information on companies' websites fulfils the requirements of the Code and whether corporate governance reports contain all the necessary formal details. No attempt is made to ensure that the information provided by the companies is truthful and accurate.

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

On 31 December 2011, there were 264 companies whose shares or SDRs were available for trade on a regulated market in Sweden. Of these, 249 were listed on NASDAQ OMX Stockholm and 15 on NGM Equity. Nineteen of those listed on NASDAQ OMX Stockholm were foreign companies. Of these nineteen foreign companies, eight have declared that they apply the Swedish Code, and these eight were therefore included in the survey. The remaining eleven companies, who have declared that they apply another code, were not included in the survey. Three of these apply Canadian corporate governance rules, two apply American rules, two apply the Finnish code, two apply the British code, one applies the Norwegian code and one applies the corporate governance code of Luxemburg.

Table 1. Number of surveyed companies

	2011		2010		2009		2008		2007		2006	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
NASDAQ OMX Stockholm	249	94%	232	92%	236	90%	246	88%	115	100%	101	100%
NGM Equity	15	6%	20	8%	25	10%	32	12%	0	0%	0	0%
Total target group	264	100%	252	100%	261	100%	278	100%	115	100%	101	100%
Excluded *)	16	6%	13	5%	8	3%	32	12%	9	8%	10	10%
Total companies surveyed	248	94%	239	95%	253	97%	246	88%	106	92%	91	90%

*) Companies excluded due to non-application of the Swedish Code, different financial year, annual report / corporate governance report not available or company no longer listed.

1) See Point 5 of NASDAQ OMX Stockholm's Regulations for Issuers and Point 5 of NGM's Stock Exchange Regulations 2010.

2) See Board Instruction 2-2010, which can be found on the Board's website.

As well as these eleven foreign countries, three companies listed on NASDAQ OMX and two on NGM Equity were omitted from the survey, because their fiscal year does not follow the calendar year, because they had not published their annual report for 2011 by the survey deadline of 30 April 2012 or because they were no longer listed on the stock exchange. This meant that the number of companies actually included in the survey was 248, of which 235 were listed on NASDAQ OMX Stockholm and 13 on NGM Equity. See Table 1.

Companies' reports on corporate governance

The Annual Accounts Act states that all stock exchange listed companies are to produce a corporate governance report[3]. This rule came into force in 2010. Previously, the requirement to produce a corporate governance report was contained in the Code. The content of the corporate governance report is governed by both the Annual Accounts Act and the Code.[4] According to the Code, any company that has chosen to deviate from certain rules in the Code must report each deviation, along with a presentation of the solution the company has chosen instead and an explanation of the reasons for non-compliance.

As in previous years, all of the companies surveyed submitted a formal corporate governance report, which is mandatory by law. As shown in Table 3 below, eight companies chose to publish their corporate governance report on their websites only, compared with seven companies in the previous year.[5] Of the vast majority of companies which include their corporate governance report in the printed annual report, more than half now include it in the directors' report, while the remaining companies published their corporate governance report as a separate part of the annual report. This is a difference compared with 2010, when a majority of companies published their corporate governance report as a separate part of the annual report.

According the Annual Accounts Act, a corporate governance report is also to contain a description of the key elements of the company's internal controls and risk management concerning financial reporting.[6] An internal controls report was submitted by 99% of the surveyed companies. See Table 3 below. This percentage is in line with previous years. The internal controls reports vary in

Table 2. How is the corporate governance report presented?

	Number			Percentage		
	2011	2010	2009	2011	2010	2009
In the directors' report in the annual report	127	107	5	51%	45%	2%
A separate report within the annual report	113	125	235	46%	52%	93%
Only on the website	8	7	12	3%	3%	5%
Total	248	239	252	100%	100%	100%

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

	Number					Percentage				
	2011	2010	2009	2008	2007	2011	2010	2009	2008	2007
Yes	245	235	244	215	101	99%	98%	97%	87%	95%
No	3	4	8	31	5	1%	2%	3%	13%	5%
Total	248	239	252	246	106	100%	100%	100%	100%	100%

[3] See chapter 6, section 6 and chapter 7, section 31 of the Annual Accounts Act, (1995:1554).
[4] See chapter 6, section 6 and chapter 7, section 31 of the Annual Accounts Act, (1995:1554) and rule 10. 1-2 of the Code.
[5] This does not contravene the Annual Accounts Act or the rules of the Code. The Annual Accounts Act states that companies whose shares are traded on a regulated market are to produce a corporate governance report, either as part of the directors' report or in a document that is not part of the annual report. In the case of the latter, a company may choose to release its report either by submitting it to the Swedish Companies Registration Office together with the annual report or by only publishing it on its website. (The report must in fact always be made available on the company's website.) If the corporate governance report is not contained in the directors' report, the company may choose whether to include it in the printed annual report – this is not regulated by law or by the code.
[6] See chapter 6, section 6, paragraph 2, point 2 the Annual Accounts Act, (1995:1554) and rule 7.5 of the Code.

their scope, from short summaries within the corporate governance report to more extensive separate reports. As the Annual Accounts Act makes it a legal requirement for companies to report on their internal controls, it is remarkable that three companies have failed to do so.

Since 2010, auditor review of corporate governance reports is now mandatory according to the Companies Act and the Annual Accounts Act[7], which explains the increase shown in Table 5 below. Five companies have not reported that their corporate governance reports were reviewed by their auditors, and for a further five companies, it is not clear whether such a review took place. Five of these ten companies were not Swedish, which may explain some of the non-compliance. For the five Swedish companies that have not reported clearly that auditor review took place, it must be asked whether this means they have broken the regulations by failing to review or simply failed to report the review, which in itself is remarkable.[8] The proportion of corporate governance reports that were reviewed in detail by the company auditors remained at around 40per cent, while the rest were subjected to a general review. See Table 4 below.

Reported non-compliance

Companies that apply the Code are not obliged to comply with every, but are free to choose alternative solutions provided each case of non-compliance is clearly described and justified. It is not the 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 afforded by the principle of comply or explain. Otherwise, the Code runs the risk of becoming mandatory regulation, thereby losing its role as a set of norms for good corporate governance at a higher level of ambition than the minimums stipulated by legislation. It is the Board's

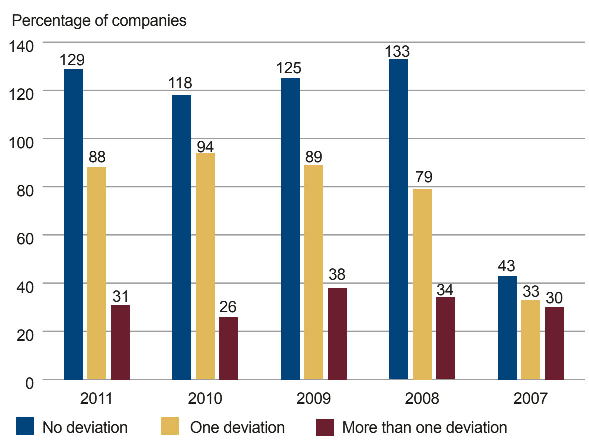
Table 4. Was the corporate governance report reviewed by the company auditor?

	Number		Percentage	
	2011	2010	2011	2010
Yes	238	235	96%	93%
No	5	3	2%	1%
No information / unclear	5	14	2%	6%
Total companies	248	252	100%	100%

Table 5. How was the corporate governance report reviewed?

	2011	Percentage	2010	Percentage
Detailed review	93	39%	97	41%
General review	143	60%	134	57%
Unclear	2	1%	4	2%
Total	237	100%	235	100%

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



2011: 248 companies 2010: 238 companies 2009: 252 companies 2008: 246 companies 2007: 106 companies

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

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

belief that better corporate governance can in certain cases be achieved through other solutions than those specified by the Code.

Diagram 1 shows the proportion of surveyed companies that reported instances of non-compliance in the seven years that the Code has been in place . The proportion of companies that reported more than one instance of non-compliance rose slightly from 11 per cent to 13 per cent in 2011, meaning that the remaining 87 per cent of companies reported no more than one deviation from the Code rules. It is notable that of the 31 companies reporting more than one deviation, only three companies reported three instances, with the remaining 28 reporting two. Instead, the proportion of companies reporting a single deviation from the Code fell from 39 to 35 per cent, which is the same percentage as in 2009. This means that fewer than half of the surveyed companies, 48 per cent or 119 companies, reported no deviations in 2011, which is fewer than in 2010.

A total of 153 deviations from 23 different rules were reported in 2011, which gives an average of just under 1.3 deviations per company reporting at least one deviation. This is a slightly lower figure than that of 2009.

Reported non-compliance is examined in more detail in Table 6 below.

Which rules do companies not comply with?

Table 7 shows the number of deviations per rule from which deviation has been reported since 2008. The numbers correspond to the rule numbers in the current Code, with rule numbers from previous versions of the Code also shown for reference purposes. The five rules for which the most companies report non-compliance, see Diagram 2, are commented on in brief below.

Table 6. Reported non-compliance

	2011	2010	2009	2008	2007
Company reports no deviations	129	118	125	133	43
Company reports one deviation	88	94	89	79	33
Company reports more than one deviation	31	26	38	34	30
Total	248	238	252	246	106
Number of companies reporting deviations	119	120	127	113	63
Number of companies reporting no deviations	129	118	125	133	43
Number of companies surveyed	248	238	252	246	106
Percentage of companies reporting deviations	48%	50%	50%	46%	59%
Number of reported deviations	153	162	182	171	100
Number of rules for which deviations reported	23	26	25	28	17
Average number of deviations per rule	6.65	6.23	7.28	6.11	5.88
Average number of deviations per company	0.72	0.72	0.72	1.51	1.59

As in previous years, the rule with the most instances of non-compliance was Code rule 2.4, concerning company chairs and members of the board on nomination committees. Almost 20 per cent of all Code companies report some kind of deviation. The rule states that members of the company board may not constitute a majority on the nomination committee and that the chair of the board may not be chair of the nomination committee. If more than one member of the board is a member of the nomination committee, only of member may have a dependent relationship to major shareholders in the company.

The most common form of non-compliance with this rule was that the chair of the board, or in some cases another member of the board, was the chair of the nomination committee. The most common explanation for this was that the person concerned was deemed to be the most competent and/or that a major shareholder was considered best suited to lead the work of the committee. In some cases, more than one of several members of the board who were on the committee were not independent of major shareholders, and in a small number of companies, members of the board formed a majority on the nomination committee. Non-compliance with this rule is most common in companies with a strong concentration of ownership, often with the general explanation that it would otherwise be difficult or impossible for a private individual to combine the roles of major shareholder and active owner through participation on the board and on the nomination committee.

The rule with the second-highest frequency of non-compliance was rule 7.3, concerning audit committees. This rule was also in second place in 2009, (when it was listed as Code rule 10.1), whereas it was in third place in 2010. Of the companies surveyed, 21 chose to appoint an audit committee with just two members rather than the three members required by the Code, usually because the board is small and/or because it is considered that this is the most efficient way to carry out the tasks of the audit committee. One company reported non-compliance with

Diagram 2. Instances of non-compliance per Code rule

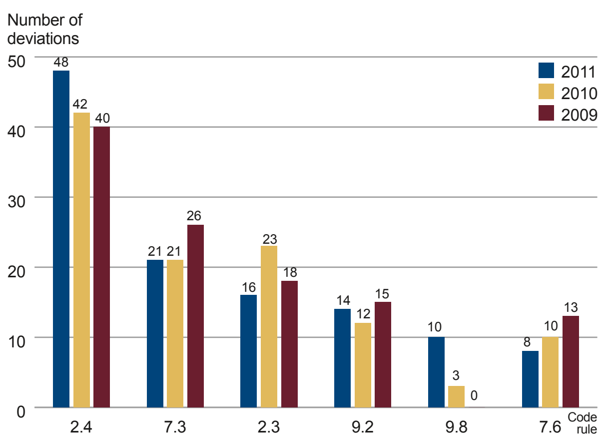


Table 7. Number of deviations from individual Code rules

Rule	2011	Rule	2010	Rule	2009
2.4	48	**2.4**	42	**2.4**	40
7.3	21	**2.3**	23	**10.1**	26
2.3	16	**7.3/10.1**	20	**2.3**	18
9.2	14	**9.2/9.1**	11	**9.1**	15
9.8	10	**7.6/10.4**	10	**10.4**	13
7.6	8	**2.5**	8	**2.5**	11
2.1	7	**9.1**	7	**2.1**	9
2.5	7	**2,1**	7	**4.2**	9
4.2	5	**4.2**	6	**1.1**	7
7.5	4	**1.1**	4	**10.3**	4
4.4	2	**9.8 (new)**	3	**2.6**	3
4.3	2	**7.5/10.3**	3	**3.1**	3
1.5	1	**1.5**	2	**8.2**	3
2.6	1	**2.6**	2	**1.3**	2
4.1	1	**1.7**	1	**1.5**	2
6.2	1	**10.3/11.3**	1	**10.6**	2
8.2	1	**9.9 (new)**	1	**2.2**	2
9.3	1	**9.7 (new)**	1	**4.1**	2
1.3	1	**9.6 (new)**	1	**6.1**	2
3.1	1	**7.1**	1	**8.1**	2
1.1	1	**3.1**	1	**7.2**	2
		2.2	1	**1.7**	1
		6.1	1	**10.2**	1
		4.4	1	**11.3**	1
		9.5 (new)	1	**4.3**	1
		4.3	1	**4.4**	1
Total	153	**Total**	160	**Total**	182

the rule that states that no member of the executive management of the company is to sit on the audit committee

Rule 2.3 fell back to third place in 2011. This rule concerns the size and composition of nomination committees, primarily with regard to committee members' independence. In almost every case, the non-compliance involves the CEO and/ or other members of the company's executive management being members of the nomination committee. The explanation given for this is that they are also major shareholders in the company. In a small number of cases, the nomination committee consisted entirely of representatives of the largest shareholder in terms of voting rights, so that company did not comply with the rule that states that at least one member of the committee is to be independent in relation to the largest shareholder.

Fourteen companies reported non-compliance with rule 9.2, regarding the establishment and composition of remuneration committees. In most cases, this involved the CEO or another person that could not be considered independent in relation to the company and its executive management being on the committee. Also here, the most common explanation is that these individuals' competence or holding in the company justified their membership of the committee. It is notable that few companies reported non-compliance with the current rule 9.1, concerning the tasks of the remuneration committee, which was earlier a part of the previous rule 9.1. However, these reported deviations are from companies reporting that they did not have remuneration committees, which is not considered a deviation according to the Code and therefore does not require an explanation. Rule 9.2 states that the entire board may perform the duties of the remuneration committee if the board feels that this is appropriate, providing that board directors who are also members of the executive management do not participate in the work. These reported deviations have therefore been removed from the statistics.

The Code rule with the fifth greatest number of deviations, rule 9.8, concerns incentive programmes. Of the ten companies that reported non-compliance, half report that the vesting period of an incentive programme, which was usually introduced before the Code rule came into force in 2009, is shorter than the Code's requirement of three years. The other half concern the award of share options to members of the company board.

The Code rule that was placed fifth in this list in last year's survey, rule 7.6, which concerns auditor review of the company's six- or nine-month report, was sixth on this year's list. Just eight companies reported non-compliance with this rule, compared with ten in 2010, usually with the explanation that the cost of such a review was not deemed justifiable given the size and complexity of the company and/or the quality of the company's internal controls. It should be noted that there is a proposal from the European Union to remove the requirement for quarterly reporting, although the requirement for half-year reports would remain.

Explanations of non-compliance

The standard of explanations of non-compliance is crucial to the success of a corporate governance code based on the principle of comply or explain. The quality of such explanations is for the reports' target groups to assess, primarily the companies' owners and other capital market actors. However, in order to be useful as a basis for such evaluation, the explanations must be sufficiently substantive, informative and founded as much as possible in the specific circumstances of the company concerned. Vague arguments and general statements without any real connection to the company's situation have little information value for the market.

Last year's survey report showed some flaws in the quality of this information, both with regard to actually providing explanations for reported non-compliance and the information value of the explanations given, though there was a marked improvement compared with 2009. This also seems to be an international problem for this kind of corporate governance code. The European Commission continues to focus on this area and has proposed new rules in a green paper on corporate governance within the EU – see the Board's comments on this green paper elsewhere in this annual report. The green paper highlights the solution introduced into the Swedish Code in 2008 that each instance of non-compliance should not only be explained, but a description of the alternative solution should also be provided.

Swedish companies' reporting of non-compliance has both improved and deteriorated since 2010. In total, 15 companies, including one that did so twice, failed to explain their reasons for deviating from a rule, while fourteen companies neglected to provide a description of an alternative solution. A total of 23 companies therefore failed to fulfil the Code's requirements regarding the reporting of non-compliance. This is a significantly higher number than in 2010, when 13 companies did not fulfil these requirements. This means that a not inconsiderable number of companies, nine per cent of those surveyed, do not apply the Code correctly and therefore do not fulfil the stock exchange requirement to observe good practice on the securities market.

As in previous years, an attempt has been made to assess the quality of explanations offered. This necessarily involves a large element of subjectivity, but as the evaluation has followed the same format and criteria each year, any trends observed can be regarded as reasonably reliable.

The 2010survey showed a significant improvement in information quality. Previously, over a quarter of explanations of non-compliance had shown shortcomings in their information value, but last year's survey found insufficient information value in just 15 per cent of explanations. As Table 8 shows, this positive trend continued in 2011. Around the same number of explanations were found to be good or acceptable, but what is particularly interesting is that the proportion of explanation found to provide good information value grew from a third of those surveyed to half. See Diagram 3 and Diagram 4 below.

The content of corporate governance reports

For the second consecutive year, the content of companies' corporate governance reports has been examined against the background of the requirements stipulated in the Annual Accounts Act and the Code. The Act requires, for example, that companies report which corporate governance code they apply. Every company sur-

Diagram 3. The information value of explanations, number

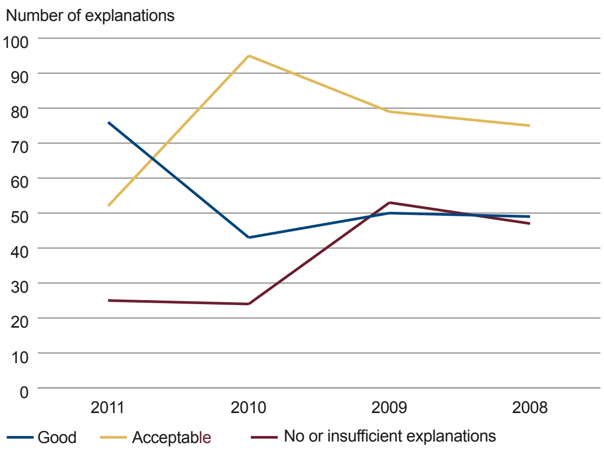


Diagram 4. The information value of explanations, trend

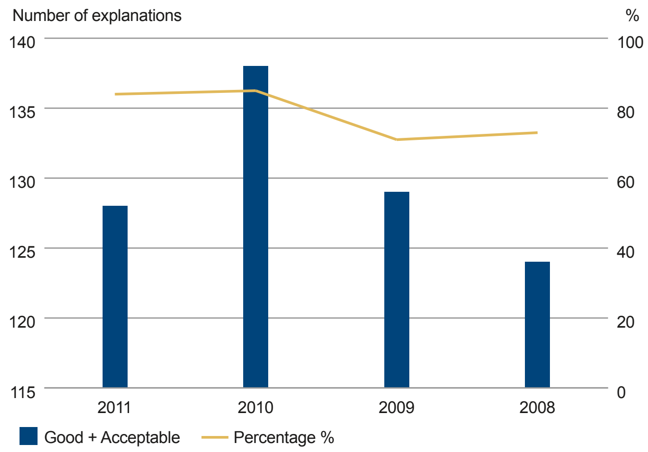


Table 8. The information value of explanations of non-compliance

	Number of explanations				Percentage			
	2011	2010	2009	2008	2011	2010	2009	2008
Good	76	43	50	49	50%	27%	27%	29%
Acceptable	52	93	79	75	34%	58%	43%	44%
None/Insufficient	25	24	53	47	16%	15%	29%	27%
	153	160	182	171	100%	100%	100%	100%

veyed stated that it applied the Swedish Corporate Governance Code. A general review of the reports also showed that companies seemed to fulfil all the requirements set out in the Act.

Compliance with the detailed requirements of the Code concerning information was not quite as good – see Table 9 for details. Each of the 248 surveyed companies must provide information on 21 specific details. On average, the companies provided 90 per cent of the required information, while 10 per cent was either missing or too vague. This result is in principle the same as that of the 2010 survey. Some results stand out more than others, e.g. over 30 companies did not state who had appointed members of their nomination committees, while over 70 companies do not report the previous professional experience of their chief executive officers.

Another Code requirement is that companies who have been found to have committed breaches against the rules of the stock exchange or generally accepted principles in the securities market by the Stock Exchange Disciplinary Committee or the Swedish Securities Council during the financial year are to report this in their corporate governance report. This did not occur in all cases.

Corporate governance information on company websites

Another new development in last year's survey was an analysis of corporate governance information on company websites. Whereas corporate governance reports describe the past financial and corporate governance year, (the corporate governance year is not a legal term, but applies to the time between two annual general meetings), the information on company websites is to be up to date, i.e. it is to be updated within seven days of any change.[10)]

Rule 10.3 of the Code requires companies to devote a separate section of their websites to corporate governance information. This requirement was fulfilled by 96 per cent of the companies surveyed. Ten companies had no such section on their websites at the time of the survey, which is a higher figure than last year, when four

Table 9. The detailed content of corporate governance reports

	Yes	No	Partly
Does the report contain information on the nomination committee?			
Composition	239	7	0
Representation	199	36	11
Does the report contain information on board members?			
Age	241	7	0
Educational background	224	17	7
Professional experience	171	71	6
Work performed for the company	243	4	1
Other professional commitments	243	5	0
Shares in the company	246	2	0
Independence	235	9	4
Year of election	244	4	0

	Yes	No	Partly
Does the report contain information on the board			
Allocation of work	238	7	3
Number of meetings	246	2	0
Attendance	238	10	0
Does the report contain information on board committees?			
Tasks and decision-making authority	185	41	22
Number of meetings	180	33	35
Attendance	162	67	19

	Yes	No	Unclear
Does the report contain information on the CEO?			
Age	245	3	0
Educational background	214	34	0
Professional experience	178	70	0
Professional commitments outside the company	143	85	20
Shares in the company	242	5	1

9) Code rule 10.2.
10) See Code rule 10.3, paragraph 2.

companies did not fulfil the requirement. A new question in this year's survey concerned how easy it is to find corporate governance information on company websites. This assessment is subjective, but the hope is that an annual follow-up of this issue based on the same criteria will at least allow an examination of trends. The results of this year's survey of this area can be found in Table 10 below, which shows that over half of the companies surveyed have easily accessible information, which indicates that there is room for improvement.

Code rule 10.3 contains a list of information required on the corporate governance sections of websites. As well as the company's three most recent corporate governance reports and the auditor's written statement on the corporate governance report, the company's articles of association are also to be posted. Four companies did not fulfil this requirement, while the articles of association of the remaining 244 companies are accessible on the company website, which is in line with the results of last year's survey. Additionally, the Code requires companies to post information regarding the current board, the CEO and the auditor. This requirement was not fulfilled by all companies. See Table 11 for more detailed information.

The Code also requires the nomination committee to issue a statement when notice of a shareholders' meeting is issued regarding whether it considers that the composition of the board is appropriate according to the criteria set out in the Code. [11] This statement is also to refer to the requirement in rule 4.1 that companies should strive for gender balance. Over 70 per cent, 175 companies, issued such a statement. The Corporate Governance Board finds it remarkable that almost a third of companies did not fulfil, completely or partially, the requirements of a Code rule that has been in force since 2008. The information value of these statements was examined for the first time in last year's survey, and a marked improvement was found this year. The information value was found to be good in almost half of all statements, compared with 19 per cent last year. It should be noted, however, that the number of statements that were not regarded as sufficiently informative rose from eight to ten per cent.

Rule 10.3, paragraph 2 of the Code requires companies to declare all share and share price related incentive programmes for employees, (not just the management), and board members. A third of those surveyed, 84 companies, published no information regarding such programmes on their websites, which is an improvement on last year's figure of almost 40 per cent. To a certain extent, this may be because some companies do not have such programmes, but that a third of the companies surveyed would have no

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

	Number in 2012	Percentage
Yes	127	51%
Acceptable	104	42%
No	15	6%
Not applicable	2	1%
Total	248	100%

Table 11. Detailed information on company websites

2012	Yes	No	Partly	Total	Yes Percentage
Current board members	246	2	0	248	99%
Current CEO	238	5	5	248	96%
Current auditor	226	21	1	248	91%

2011	Yes	No	Partly	Total	Yes Percentage
Current board members	246	3	0	249	98%
Current CEO	241	6	2	249	96%
Current auditor	234	15	0	249	93%

[11] See Code rule 2.6, paragraph 2.

current share and share price related incentive programmes still seems a rather high proportion.

A new requirement in the revised Code that came into force in summer 2010 is that companies issue a description of any variable remuneration programmes for the board and executive management, (though there is no requirement to issue information on variable remuneration programmes for other employees). There has been a clear improvement in this area since last year, when only 40 per cent of surveyed companies published such information on their websites. This year's survey shows that 173 companies, around 70 per cent, published such information. It seems unlikely, however, that 30 per cent of listed companies have no variable remuneration for executives and directors, so there ought to be room for further improvement here.

Finally, company websites are to provide information on the board's evaluation of remuneration within the company no later than two weeks before the annual general meeting.[12)] The evaluation is to cover ongoing variable remuneration programmes for executives and directors and those that have ended during the year, how the company's remuneration guidelines have been applied, and the current remuneration structures and remuneration levels within the company. This requirement was introduced in 2010 and the information was included in the survey for the first time last year. Table 12 shows that there has been a significant improvement in the reporting of these matters since last year. Just under half of the companies surveyed in 2011 applied this rule, compared with almost 60 per cent in 2012. It is remarkable that as many as 40 per cent of the companies surveyed do not publish any evaluation. If the board's evaluation is to provide any information to investors and other actors, it ought to include some form of value judgement by the board regarding the various evaluation points. The percentage of value judgements has also improved, which can also be seen in Table 12.

Table 12. Information on company websites regarding the board's evaluation of remuneration matters

2012	Yes	No	Partly	Not applicable	Total	Value judgements included	Percentage with value judgements
Variable remuneration programmes	124	99	10	15	248	105	78%
Remuneration policy	136	99	5	8	248	117	83%
Remuneration structures and levels	133	101	6	8	248	115	83%

2011	Yes	No	Partly	Not applicable	Total	Value judgements included	Percentage with value judgements
Variable remuneration programmes	99	120	5	28	252	71	68%
Remuneration policy	122	103	0	27	252	86	70%
Remuneration structures and levels	109	114	1	28	252	84	76%

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

Interpreting the Code

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

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

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

The Swedish Securities Council has so far issued five statements on interpretation of Code rules. The oldest, AMN 2006:31, was issued in 2006 and concerned whether two shareholders were able to pool their shareholdings in order to be eligible for a seat on the nomination committee.

The Council issued four statements in 2010. AMN 2008:48 and 2010:40: Statement AMN 2008:48 concerned the amount of leeway allowed to a board when setting the conditions of an incentive programme for the executive management of a company. Statement AMN 2010:43 concerns interpretation of one of the independence criteria in the Code, which covers board members' independence with regard to clients, suppliers or partners who have significant financial dealings with the listed company. Statement AMN 2011:03 examined whether a proposed salary increase for executives conditional on a sustained shareholding in the company needed to be referred to the shareholders' meeting. These four statements were reported in more detail in the Swedish Corporate Governance Board's 2011 annual report.

Since AMN 2011:03, the Swedish Securities Council has not issued any further public statements concerning interpretation of the Code. The same is true of the disciplinary committees of the NASDAQ OMX Stockholm and Nordic Growth Market NGM stock markets, which have no tradition of issuing statements regarding interpretation of the Code.

III. PERSPECTIVES

The Swedish Corporate Governance Board's ambition is that its Annual Report not only describes the work of the Board and how the Code has been applied during the past 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 three contributions.

- The first article, by the Board's adviser on communications Lars Thalén, is a report from a round table discussion by Lars-Erik Forsgårdh, Marianne Nilsson and Anders Ullberg on the role of self regulation and other current corporate governance issues. All three participants had held key roles in self regulation on the securities market before leaving their seats on the Swedish Corporate Governance Board in spring 2012. All three had been members of the Board since its foundation in 2005. The Board felt it would be interesting for a wider audience to benefit from these experts' collected experience of Swedish self regulation and the development of Swedish corporate governance, not least against the background of the EU's growing regulatory ambitions. Erica Dahlquist and Lars Thalén led a fascinating and lively discussion, which is summarised in the first article in this section.

- How can owners influence the company in the desired direction? Is the Swedish corporate governance model, as expressed in the Swedish Companies Act, the Swedish Corporate Governance Code and elsewhere, good enough in an international perspective? Christer Gardell, founder and Managing Partner of Cevian Capital, has extensive experience of the work of company boards and nomination committees. He was asked by the Board to share his views on these and other corporate governance issues. Erica Dahlquist's interview with Christer Gardell formed the basis of the second article in this section of the annual report.

- In the third article, Jesper Lau Hansen, a Danish Professor of Law, gives his view of Swedish corporate governance. He sees the Swedish independence requirement as a role model, not least when compared with the Danish code, which he feels does not sufficiently incorporate Nordic corporate governance.

Outgoing Board members call for Code rules for owners and for the CSR work of listed companies

Swedish corporate governance has improved considerably during the past ten years. The Swedish Corporate Governance Code has gone from being regarded as a formalised framework of rules to a set of practical and usable routines. A common, straightforward and transparent corporate governance agenda has led to more active ownership. We now need a code for owners.

Going forward, the Code also needs to become even more proactive on issues concerning corporate social responsibility, CSR. There is also a need for Nordic efforts to counteract detailed European regulation of Swedish corporate governance. These are some of the points raised in this discussion by outgoing Corporate Governance Board members Lars-Erik Forsgårdh, Marianne Nilsson and Anders Ullberg.

Erica Dahlquist och Lars Thalén

The three outgoing members of the Swedish Corporate Governance Board are in agreement over the success of the Swedish Corporate Governance Code. Doubts that the Code would mostly generate lasting administrative burdens and act as a drag on operations have proved unfounded. After some teething troubles, the Code has come to simplify the governance of listed companies.

Lars-Erik Forsgårdh: Previously CEO of the Swedish Shareholders' Association, now Chair of the Board of Aktiefrämjandet, (the Swedish Association for Share Promotion), Ägarfrämjandet, (the Swedish Association for the Promotion of Private Ownership), StyrelseAkademien, (The Swedish Academy of Board Directors) and ATS Finans Sverige, which is the parent company of AktieTorget.

Marianne Nilsson: Head of Corporate Governance Issues at Swedbank Robur and a highly experienced member of the nomination committees of many listed companies.

Anders Ullberg: Chair of the Board of Boliden, BG Group and Studsvik and a board member of a number of other companies, including Atlas Copco and Beijer Alma. Previously had a successful career at SSAB, including a period as CEO. Chair of the Swedish Financial Reporting Board.

"The clearly most positive result is that we have a common agenda for corporate governance", says Marianne Nilsson.

"I am convinced that the Code has brought greater clarity to the question of who is responsible for what", adds Lars-Erik Forsgårdh. "Previously, the practice of corporate governance varied from company to company, and no two processes were particularly similar. The national standard that was introduced in 2005 has fulfilled my expectations."

More active institutional investors

All three also point to the increased engagement of different types of owner. They now see more active involvement from previously fairly passive owners within financial institutions.

"It's really positive that company owners are cooperating. Major shareholders and institutional investors also have a common interest that companies develop," says Marianne Nilsson.

"The composition of company boards is a result of the work of nomination committees," adds Anders Ullberg. "The good thing is that we have involved all shareholders in the nomination process in a structured manner. That makes the process more transparent."

"Much of what the Code stands for – transparency, structure, trust – provides a number of golden principles for companies operating in competitive markets," says Marianne Nilsson. "A lot of it is common sense. Good corporate governance is of course the avoidance of risk, but value creation is just as important, if not more so. A good corporate culture cannot be summarised in a list of rules."

"No, the Code provides no guarantee that decisions will be good," says Anders Ullberg, "but it does provide a sound structure that guarantees that the process will be good."

"I agree," says Lars-Erik Forsgårdh. "The Code is a tool to help owners and boards, but it is up to those that are to apply it to ensure quality and good judgement."

The three outgoing members believe that it is impossible to assess what would have happened had the Code not been introduced, but they are convinced that more boards now devote more time to strategy – and have better control of the strategic direction of their companies – and that this attitude has become more widespread in management cultures.

"I have been able to follow this through the panel that gives an award to the best corporate governance report," says Lars-Erik Forsgårdh. "It is not an absolute truth for all companies, but the reports are evidence that there have been major changes for the better in the governance of listed companies, especially in areas such as internal controls and the management of the auditing process."

"Of course it is difficult to measure the change," says Anders Ullberg, "but we can see that the work is now more structured and better controlled than previously. Working in a better way should logically lead to better governance and better results."

"Yes, just remember how things were 10 or 15 years ago," adds Marianne Nilsson. "At best, shareholders received a phone call the day before the AGM informing them about the makeup of the board. Sometimes they found out at the AGM itself. Nowadays we have a process that takes six to eight months. It takes time to evaluate a board and to find candidates. The whole process is so much more professional these days."

Continuous improvement

Marianne Nilsson doesn't think that the current situation means that things can't be improved still further. No one wants to speculate about the details of future developments, but all three agree that there will be constant change and continuous improvement, particularly in the areas of engagement and responsibility.

"It's all about team spirit, whether on boards or nomination committees. A number of people have to work together," says Marianne Nilsson. Knowledgeable nomination committee members who understand the problems and challenges facing their company also have the energy and enthusiasm to bring about change."

Lars-Erik Forsgårdh says that he has long been an advocate of electing nomination committees at shareholders' meetings, at a higher level and more independently. "That is the model which gives the nomination committee the greatest legitimacy: the AGM-elected nomination committee. At Boliden, we have developed a model that incorporates aspects of this and the Q3 model, in which the largest shareholders appoint members of the committee. The core of the nomination committee is appointed at the shareholders' meeting by name. The decision also gives the committee the right to bring in other names. I think this gives greater continuity, something that both nomination committees and boards need.

Anders Ullberg believes that the issue is determined by the structure of the company involved. In cases where there is a clear major shareholder structure, he can see the value of the Q3 model. "But if the company has no major shareholder, there is an enormous strength in forming the team at the AGM. I agree that it gives the process greater credibility."

"It's good that companies can choose that model," says Marianne Nilsson, "but it is not the choice of model that makes for good nomination committee processes. You need to be able to adapt to circumstances. Both alternatives have their pros and cons. If the whole nomination committee is elected by the shareholders' meeting, the company can be stuck with committee members who have no legitimacy for the following year's shareholders. That wouldn't work at all." She underlines that all institutional investors support the model that has been chosen. When the Code emphasises systematic nomination committee work so strongly, it becomes even more of a given that they participate in it.

All three believe there is no justification for the criticism that the nomination committee is some kind of superboard that interferes too much in the work of the board. The issue of less qualified, less competent committee members from institutional actors, on the other hand, sparks considerable debate in the group.

A governance code for investors

"It's difficult for the institutions to be active in smaller companies," says Ander s Ullberg, "so you may not get the very best committee members."

But there are also institutional investors that openly declare that they are not going to get involved," says Lars-Erik Forsgårdh.

"It's not a general truth that they say no," says Marianne Nilsson, "but they have a more selective approach. I think that's a pity and not at all in keeping with the view we have of shareholder responsibility. But if there were a general lack of competence on company boards, then they would be pretty bad. Most of them feel that we have good company boards in Sweden. That should be an indication that we have a sensible nomination committee process and that they do a decent job."

Lars-Erik Forsgårdh thinks that there is cause to look more closely at the work of the Confidence Commission and good reason to go further in this area. "I was one of those who advocated devoting a section of the original Code to ownership, but we were unsuccessful. Now it's time for a stewardship code."

"I'm positively disposed to the idea," says Anders Ullberg, "but I think it could be difficult to implement."

"The time is right for a stewardship code," says Marianne Nilsson, ""It's important to engage the owners."

Lars-Erik Forsgårdh believes that a stewardship code is "a cost of doing business". The general public's view of how companies work is central to the notion of retaining a reasonable degree of self regulation in the longer term and avoiding resorting to legislation. He says that because the institutions invest money from the general public, it would be reasonable for them to represent the public in this role and take their responsibility. "In the 60s and 70s, the stakeholder model dominated. All stakeholders would be taken into consideration. Then we saw a pure shareholder model. Now the pendulum is swinging back again."

"But perhaps more towards a model that sets the framework," says Anders Ullberg. If owners and directors are to be trusted, they need to have a broader perspective than just short-term shareholder value. Hopefully, that provides the long-term shareholder value that we seek."

"Yes, but a third perspective is that it is not terribly interesting for investors to invest in something that they have no influence over," says Marianne Nilsson. Investment and influence are proportional. We need to understand that. And all shareholders' interests are to be reflected. Large shareholders have a responsibility to defend the interests of smaller shareholders."

"It's a fact that some institutions piggyback on other investors," says Lars-Erik Forsgårdh.

The Code as a stamp of quality

None of the members think that the differences in conditions between listed and non-listed companies are too great nowadays. Neither Anders Ullberg nor Marianne Nilsson would describe the Code as a dividing line.

"But some small and medium-sized enterprises feel that way," says Lars-Erik Forsgårdh. "As Chair of the Board of ATS Finance, the parent company of Aktietorget, our list does not require companies to apply the Code, but as soon as companies think about moving to small cap, the question of introducing the Code comes up. It is a necessary step and investment. It puts some companies off."

"It's psychological to an extent," says Anders Ullberg. "In the beginning, when the Code was being introduced, it was a little difficult, but only while it was being phased in. Once you pass that stage, it's actually easier than before."

Marianne Nilsson thinks that the Code is a stamp of quality in itself. It involves some cost initially, but if a company wishes to be listed on the stock exchange and enjoy the advantages that brings, well that's the price you pay to have transparency and to gain the trust of the market. "The payback in terms of the stamp of quality and having a better run company should be regarded more as an investment than a continuous problem.

More women on boards – but too few

When the composition of boards is discussed publicly, the focus is often the proportion of women and the issue of age – an unofficial limit of 70 years of age.

“Obviously the figure of 24 percent women, and more in larger companies, shows that we have a skewed recruitment pool when compared with the population as a whole,” says Anders Ullberg, “but if we look at the executive management of companies, I wonder if things aren’t even worse there. The work needs to begin somewhere other than in the board room.”

The three outgoing members believe there are other access routes to board nomination than experience of company management, but you can’t have a board that has never worked with the running of a company. The balance between an executive background and other experience is central. Lars-Erik Forsgårdh underlines that every member of the board is equally responsible for major investment decisions, and that requires a certain amount of experience of corporate finance.

All three feel that there should be more focus on what has actually been achieved in increasing the number of women on boards in recent years. The efforts have yielded rewards, but it must be borne in mind that this is as much a problem in society as a whole as it is in company boardrooms.

Anders Ullberg thinks that the issue of diversity should be examined from more perspectives. It’s not just a question of gender or age. There is a whole host of parameters that are just as important.

“The institutions have a fairly clear unofficial age limit of 70,” says Lars-Erik Forsgårdh. “I stubbornly maintain that we should look at the person, not his or her age. But then I’m 69 years old, so you can understand why I feel that way.”

“No, it shouldn’t be an issue,” says Marianne Nilsson. “It’s like deciding when people are too tired. There are tired 50 year olds. The issue of the composition of the board comes up every year, and all members should be discussed and assessed, individually. There is no age limit specified in the Code.”

Remuneration without performance damages confidence

Whenever confidence in listed companies is surveyed, the issue of executive pay is a negative factor. The participants in our discussion are in agreement that it is the remuneration levels that stand out and that the general public has difficulty understanding the link to actual performance.

“We could write absolutely anything about remuneration in the Code. The problem will always be that application of the rules will not be in line with the expectations of the general public,” says Lars-Erik Forsgårdh. “We will have this problem for as long as the Code does not regulate pay levels. Company boards must realise that the decisions come back to haunt them. Once again, it’s a question of judgement, and no code in the world can eliminate poor judgement.

“We can’t legislate on pay,” says Marianne Nilsson. “I think there is a greater acceptance of large rewards for fantastic performance. It is more questionable when there is no link between pay and performance or when people receive large sums of money when they leave. Strange severance payments and sky high salaries in poorly performing companies are other dubious areas. Mistrust grows when there is no logical connection.”

“One positive thing is that we have achieved transparency,” says Anders Ullberg, “that we can clearly see what executives are paid. It’s no longer a matter of deals made in darkened rooms. On the other hand, I’m quite



convinced that increased transparency has also resulted in higher remuneration levels for company executives and directors."

Marianne Nilsson points out that the issue of pay levels and pay structures lies outside the responsibility of the Corporate Governance Board. Pay structures must of course be adapted to the individual company, without outside interference.

Nordic cooperation within the EU

The members continue to warn about developments in the EU. The Union's interest in influencing the corporate governance codes and corporate legislation of individual countries is very worrying, especially from a self-regulation perspective. All three believe that the Swedish model is so strong that it should be given a chance. The situation would be even better if there were a Nordic foundation to build upon. That would make for a stronger bargaining position in the EU.

"Clearly the Corporate Governance Board must devote more resources to working Brussels in the future if it wishes to defend the Swedish or Nordic model and promote self regulation," says Lars-Erik Forsgårdh.

"As a rule we tend to wait too long for legislators to do everything," says Marianne Nilsson. "It's much better for self regulation to be proactive. A joint Nordic initiative would show that we mean business."

"My impression is that Swedish politicians listen," says Anders Ullberg, "but the question is whether they have all the arguments and perspectives they need at their disposal in order to present the position forcefully. I think there is every reason to preserve the Swedish corporate model, with its clear distinction between the responsibilities of the owners, the board and the company management."

Lars-Erik Forsgårdh interprets the tendency towards detailed regulation as a way for the European Commission and politicians to show they are doing something. "They take the opportunity to act against companies after a financial crisis. This isn't the first time we have seen this happen."

Code rules on CSR work

The participants in the discussion can see the Corporate Governance Board becoming more active in the debate on corporate governance in the future, but this must not distract from its main assignment, which is to manage the Code. Another note to their successors is that self regulation needs to become even more proactive.

"Sustainability issues are becoming more and more important," says Marianne Nilsson. "The Board could play a key role here and help companies." She believes that Code rules on corporate social responsibility work would be a signal to companies that a proactive approach will be vital in future. She envisions it as a kind of best practice, or a guide to how companies should approach these issues.

"Yes, and it would tie in with building trust and confidence in business," adds Anders Ullberg.

"It's not a question of describing how things should be done in specific companies," says Lars-Erik Forsgårdh, "but more a set of guidelines, recommendations and advice on how to work with CSR."

"It's very easy for companies to give a dazed and bewildered impression when these issues blow up," says Marianne Nilsson. "The Code can set the tone and show that it is necessary to be proactive on these issues too." She says that the Code must not be allowed to be seen as merely procedural. There can be many areas where the Code can take up a position. Boards can be shown that it is important to take these issues seriously and to have a proactive approach while bearing in mind that each sector is unique. "But the company's CSR work is not done just because it has applied a code. There's much more to it than that. The situation has changed radically in the past ten years. Companies that don't manage their CSR work well have major problems. So it makes sense for the Swedish Corporate Governance Code to reflect the changes that have taken place."

"If we are at the forefront by working proactively, we reduce the risk of legislation," adds Lars-Erik Forsgårdh.

Better monitoring of the application of the Code

The outgoing members believe that the separation of the adjudicatory function from the legislative function in corporate governance is important. The Corporate Governance Board sets the Code and evaluates how it works in practice, but it is for the stock markets to monitor how individual companies apply the Code. But they agree on the value of improved supervision.

Marianne Nilsson says that the Board ensures a balance between stakeholders and provides a platform for fruitful discussions, so it is vital that it doesn't have different roles. "That is crucial if self regulation is to have any legitimacy."

"We can't avoid all responsibility for monitoring how the Code is applied," says Lars-Erik Forsgårdh. The Code is not enough in itself to ensure good results. We have a good Code, and where we see shortcomings, it is often a question of how the rules are applied. We could improve this in a number of ways, for instance by giving clearer feedback to companies on our analyses of how the Code is applied."

He suggests that the Board might distribute the results of its examination of all corporate governance reports to companies in the form of an unofficial summary and analysis of what has been found.

Disappointment and joy

The biggest disappointments during their time working on the Corporate Governance Board have been the inability to keep the legislators quieter and the EU's renewed attempts to interfere with the well-functioning self regulation model. Marianne Nilsson also mentions how tiresome it is to always have to argue against detailed regulation.

They all agree on the real positive during their period on the Board: That the Code has grown from something controversial and troublesome into something widely accepted and self-evident.

"Seeing the implementation of a national corporate governance code after 13 years of hard work," is Lars-Erik Forsgårdh's immediate reply.

"Going from creating the Code as a member of the Corporate Governance Board to implementing it as a member of a number of company boards," says Anders Ullberg. "It has been an enormously rewarding journey."

"And there has been such a wonderfully positive climate in the group throughout," adds Marianne Nilsson. "It has been such a fun group of people to work with."

"Much of that is down to the composition of the Board," says Lars-Erik Forsgårdh. It looks as it was originally intended: some people from the market, some from listed companies and some from the owners. That gives the Board legitimacy, and such a broad composition minimises the criticism from different stakeholder groups when the rules are issued."

Much of the credit for the atmosphere in the group, the three outgoing members agree, is down to the work of the chair, Hans Dalborg. His mix of humour and authority has been particularly effective, even when there has been friction. Furthermore, a mutual respect for each member's knowledge, competence and experience has characterised the work of the Board throughout. The general desire to act and to bring about change is a further reason for the positive working climate.

"You don't sit on the Swedish Corporate Governance Board to monitor things, you sit there to develop and improve them," says Anders Ullberg

Lars Thalén
Erica Dahlquist

Christer Gardell:

"Swedish corporate governance is world class, but insider information in nomination committees is a grey area"

Sweden has a world class corporate governance model. That is the opinion of Christer Gardell, who highlights the clean, clear and transparent model for responsibility that characterises the Swedish system. He particularly emphasises the strong direct influence of shareholders and the active ownership responsibility shown by Swedish institutional investors. Gardell sees one major problem for the competitiveness of the Swedish model: "Differentiated voting rights. This is certainly regarded as something negative by global investors and it restricts the flow of capital," he says.

Christer Gardell is the founder and Managing Partner of Cevian Capital AB. Cevian Capital is an active shareholder in listed companies in northern Europe. He was previously the CEO of Custos, a partner at Nordic Capital and a consultant at McKinsey & Co. He has chaired five listed companies, been on the boards of another thirteen and been a member of four nomination committees.

The investor Christer Gardell has experience of the corporate governance models of a variety of countries. The corporate governance of different countries has a strong influence on where he chooses to invest.

"We want corporate governance with systems, structures and traditions we can trust. That's crucial for a minority investor, and it's why we have not invested in southern European countries like France, Spain and Italy, where we believe that corporate governance doesn't function as it should," he says.

Christer Gardell believes that many countries would have much to gain by adopting the Swedish corporate governance model. The clear division of responsibilities, where shareholders act through nomination committees that propose the make-up of the board, which in turn appoints the executive management, minimises the risk of confusion between different roles.

"Nomination committees have meant that shareholders in Swedish companies show greater engagement and a completely different degree of responsibility than those in other countries. Active shareholder responsibility – that can only be a good thing, provided that shareholder power is exercised through competence."

Mixed roles in the United Kingdom

Gardell says that the regulatory framework in the United Kingdom is quite similar to that in Sweden. The difference is in how it is applied and how the different actors behave within the framework. One key difference is that company boards comprise a mix of representatives of the executive management and external directors.

"I don't really like that," he says. "The management should not supervise its own work. The argument in favour of this model is that it ensures competence, that the external directors are not considered to have sufficient knowledge. That in itself is a declaration of incompetence for all external board members. In my experience of Swedish boards, this is absolutely not a problem. If there are bad apples on boards, they can be removed continuously each year."

Instead, Christer Gardell believes that there is a danger that the British model will result in strong company executives dominating the work of boards and employees deciding on the direction and strategy of the company.

"If the management of a company underperforms, it is easy to take action in the Swedish model. You simply remove the elements that are not doing a good job. The process in the United Kingdom is difficult and messy. And it takes time. It is in difficult situations that you see corporate governance models tested properly."

According to Gardell, institutional capital in the United Kingdom is to a large extent made up of passive index funds which do not take active responsibility for the companies in which they invest. "There isn't the same tradition of Swedish-style long-term, active ownership. Institutional investors in the United Kingdom are much more passive and short-sighted.

Limited power for German CEOs

German corporate governance has the same formal distinction between owners, board and management and in Sweden, but active ownership has traditionally been exercised more through families and insurance companies. "The concept is known as anchor shareholding and it is relatively common that the largest shareholder sits on the board in Germany. In contrast to the British, the Germans don't think it strange that the largest shareholder is a member of the board."

He says that institutional capital in Germany is relatively undeveloped compared with in Sweden. There are few small institutional investors in Germany. The German market in general is characterised by a fairly passive institutional capital structure. Power on German boards is evenly balanced between shareholders and employee organisations and the management is a collective appointed by the board. Decisions can be made by vote.

"A German CEO therefore has less power than his or her Swedish counterparts. The bureaucracy of the boardroom has shifted power to the executive management. Consequently, as shareholders and investors, we devote more time to corporate management in Germany than we do in Sweden. But German companies are tough. Anyone who underperforms is replaced in the same way as they would be in Sweden."

"I'm really impressed by German companies. We meet so many talented, deeply knowledgeable management teams with thorough knowledge of their business and products – no waffle or blather. There is a genuine tradition of competence in German companies."

He sees Germany moving towards a model that has long characterised Swedish corporate governance: boards that challenge management and ensure that they run the business efficiently. However, Christer Gardell believes that Swedish companies are even more efficient due to the active manner in which Swedish boards steer companies towards optimum performance.

"Most of the people I come into contact with in other countries see the Swedish corporate governance model as a shining example. Wherever I describe it to people, they say the same thing: It is logical, simple and reliable. It also produces active shareholders."

Active institutional investors in Sweden

Christer Gardell believes that the Swedish Corporate Governance Code has developed in a positive way. The basic process can be found in the development of the institutional investors. He describes the early days as marked by teething troubles.

"Initially, there was a clear lack of ownership competence on the part of the institutions. But in general, the greatest change has been the nomination committees, that shareholders are given a clear role in the evaluation of the board."

Christer Gardell dismisses the danger of nomination committees becoming "superboards", saying that would only happen if the board was de facto too poor at its job. A weak chair who seeks advice and support from the chair of the nomination committee can open the door for a superboard. This may have occurred but it is very rare these days.

"Of course that is when you cross the line for insider information. And the issue of insider information hasn't been fully dealt with in the Code when it comes to communication between the company and its nomination committee. As active shareholders, we are very cautious about trading in a company's shares when we are represented on its nomination committee."

Christer Gardell describes the situation as a grey area. Could a major change at board level, for instance, be regarded as insider information?

"Even if the lawyers on the nomination committee assure us that it isn't insider information, we don't rely on that assurance. Our bar is set considerably higher than that of the lawyers. We have sometimes been surprised that some institutions are prepared to buy and sell using the information acquired through the nomination committee."

Differentiated voting rights a problem for foreign investors

In Gardell's opinion, good owners who are there because of their competence and who run the company efficiently but can constantly be challenged should lead to a higher share price for the company. But he believes they are punished if this position has been attained at the cost of the votes of the other shareholders.

"The key issue is that ownership competence can be challenged. If an owner runs a company in an incompetent fashion, there is a danger that differentiated voting rights will allow them to continue to do so, which is a problem. Swedish companies enjoy certain advantages as a result of long-term ownership if it is active, but foreign investors probably see different voting rights as more of a problem. And I don't think investment firms have succeeded here in convincing international investors that the system is as good as they say it is."

Christer Gardell would rather not discuss the importance of shareholders' meetings. He describes them as dull and a formality, where the election of the board is the main item on the agenda. "Furthermore, you talk mostly about a year that has already ended. They take one to two hours and are often sleepy affairs."

Use the stick too

In Gardell's view, the best incentive system for company directors and executives is not a certain kind of programme structure. The system is a board that is active, competent and puts pressure on the management. And where the consequence of underperformance is dismissal.

"It's not much fun being fired publicly in Sweden. We underestimate the value of the stick – it's almost never discussed. We only talk about carrots. The stick is an active board. Many remuneration levels are too high. Most people are not motivated by money; they are motivated by doing a good job. And that applies whether you add one, two or four zeros. If you have a CEO who is only driven by making money, you have the wrong person."

Gardell says he has often been sceptical towards incentive programmes. They are often so complex that many board members or those covered by the programmes don't understand how they work. "If you can't give a simple explanation of how the incentive systems work, you shouldn't have them," he says.

The level of shareholder lethargy is closely related to the level of remuneration and incentive structures. The United States is at one extreme, with ridiculously high rewards for extremely modest performance. He illustrates this using the example of Swedish companies that are run by "proper" owners, i.e. real people, and which tend to "left behind" on the question of incentive programmes. He doesn't believe that Ingvar Kamprad is at the top of the high-earners list, and there is absolutely no evidence that these companies are less well run – quite the contrary.

There are more generous salaries in the Wallenberg sphere. Industrivärlden traditionally had a culture of restraint, but this has changed as the old guard has been replaced. Private capital is not represented in these spheres in the same way as it is in family-owned companies.

Shareholder rights and shareholder responsibilities

According to Christer Gardell, the challenge for corporate governance in the years ahead is institutional shareholder responsibility, the acceptance by institutions of their ownership role and competence in the execution of their assignment as shareholders.

"They must assume the role of owner in a "proper" manner. It is not actually their own money that they are investing."

He also questions the detailed regulation of corporate governance by the European Union and wonders where their competence in this area comes from. Gardell says he is worried about restrictions on the role of owners.

"Somehow it's only natural that you will pay the price if you do not perform adequately in the role of owner. In the shareholder model, the owner of a company is the leading stakeholder and the one best placed to balance the interests of all the company's stakeholders. There is no unproductive contradiction here. If the owners do not ensure that the company takes responsibility for its environmental impact, for instance, its customers, suppliers and employees will react in a way that reduces the value of the company.".

Erica Dahlquist

A Path Worth Following

Dr Jesper Lau Hansen is a professor of law at the University of Copenhagen. He works mainly with financial markets and publicly traded companies. He was part of the Commission's Reflection Group on the future of EU company law and serves on the ESMA's Stakeholder Group and on various committees, including the one in charge of drafting the new 2009 Danish Companies Act. In his article, Jesper makes some comparisons between the Swedish and Danish corporate governance codes.

By Jesper Lau Hansen, Professor of Company Law and Financial Market Law, University of Copenhagen

As a Danish law professor, I am very pleased to be given this opportunity to contribute to the annual report of the Swedish Corporate Governance Board, because the Swedish Code is, in my opinion, superior to many other codes, including, I'm sorry to say, that of my native Denmark. In this article, I will explain why and I trust the reader will not just be flattered to hear a foreigner's compliments, but will also agree that there is an important lesson to be learned on how a mid-sized jurisdiction should respond to the on-going harmonisation efforts of the European Union.

The law and the governance of companies

In recent works on comparative law, law is said to be path-dependant, that is, it continues traditions and supports existing institutions. Stated this way, law sounds even more boring than it is. So perhaps the American scholar and judge Oliver Wendell Holmes Jr. expressed it better more than a hundred years ago when he wrote that the life of the law is experience. Law is made to suit the special circumstances where it is applied and changes are made piecemeal and in response to challenges met and overcome. Some of the greatest tragedies of mankind have resulted from the attempts by impatient reformers to turn society into a *tabula rasa*.

This is not to deny the possibility of cross-fertilisation of legal ideas or the beneficial effect such mutual inspiration may bring. In fact, the laws of the Nordic countries are near identical on many subjects due to cooperation and mutual deliberations stretching back generations. This is particularly evident within company law and has resulted in a governance system that is distinct and highly sophisticated. The main traits of this system is first and foremost the strictly hierarchical governance system with the general meeting at top and then the dual executive system beneath it with its division of management between a superior level occupied by the board of directors and an inferior level consisting of one or more executive officers. This system is clearly visible from the company law legislation of the five Nordic countries, but as all lawyers know, black-letter law is sadly inadequate to reveal the real nature of law. To understand the Nordic system of governance it is paramount to understand the role of dominant shareholders. Many systems place importance on shareholders, but few systems actually provide them with the influence that the Nordic system does.

One jurisdiction in particular has come to define a 'shareholder-centric' view and that is the UK. It is cherished and demonised in the international governance debate to the extent that it overshadows the great variety of systems within the European Union. Now it is not for me, who am fond of everything British and a great admirer of their highly sophisticated approach to regulation, based as it is on considerable experience from one of the largest and most vibrant financial markets in the world, to criticise this hegemony of British law within the area of company law and securities regulation; rather I want to point out that the British system is developed to fit the special circumstances of the British financial markets and that this may not fit other jurisdictions equally well. To make my point, I will at first dwell on a subject that I suspect will be popular with my Swedish readers and then I'll use up any sympathy thus gathered by making two additional points that are probably less well received.

Independent directors

In law, you may address a problem *ex ante* or *ex post*. When you rely on the former approach to regulation, you try to avoid the problem from occurring, which is usually done by prohibiting a certain behaviour. When you rely on the latter, you address the problem once it has occurred, usually on an *ad hoc* basis. The merit of the *ex ante* approach is its simplicity, the drawback is its inflexibility; and with the *ex post* approach the reverse is true: it is flexible, but obscure. In company law we can observe this difference in the regime of capital maintenance. The German regime enshrined in the original 2nd Company Law Directive is a clear example of the *ex ante* approach: capital must be paid into the company by the shareholders and their subsequent attempt to take it back is all but prohibited. It is simple, but inflexible. The *ex post* approach to the same problem is to require the company to have sufficient funds at all times compared to its business activities and then to make management, and if necessary shareholders, liable for a failure to meet this requirement. It is flexible, but less clear.

Equally, the British requirement that a majority of directors should be 'independent' appears to rest on an *ex ante* approach. The purpose is to avoid conflicts of interest by requiring the directors to be without any affiliation that may later produce such conflicts. However, that purpose could be reached by a more flexible standard, i.e. an *ex post* approach, by addressing the conflicts as they arise in which case the directors would have to excuse themselves *ad hoc*. This was until recently the favoured approach in Nordic company law legislation and appeared to work quite well until it was suddenly considered embarrassingly inadequate and replaced by requirements of independence in new corporate governance codes. The penchant for independence appears to have been brought about by EU harmonisation, albeit a most peculiar form of harmonisation, that of Commission recommendations. A recommendation in EU law is just that, a recommendation; in other words, it is not binding, which is why it can be adopted by the unelected Commission, and yet in the law abiding Northern Member States recommendations are treated virtually as mandatory. Thus, Recommendation (2005/162/EC) was soon implemented into national codes on governance, most often almost verbatim as was the case in Denmark.

The problem is that the Recommendation replicated British law and British law had its particular background in Britain. One has to wonder why the otherwise so flexible British would use the inflexible *ex ante* approach that they otherwise seldom rely on. One possible explanation could be that the requirement of 'independence' would strengthen the position of directors *vis-à-vis* shareholders, because independence was not just that it is helpful to observe a distinction between executive and non-executive directors in order to facilitate monitoring of the former by the latter – an observation universally attributed to the 1992 Cadbury Report, although it had been part of Nordic legislation for more than 60 years at that point – independence was expanded to include independence of shareholders as well. It may be that shareholders are considered the beneficial owners of the company in British law, but the actual absence of dominant shareholders in British companies has relegated them to the position reserved in Dickensian times for widows and orphans as somebody to be cared for but who should certainly not interfere with their guardians' decisions. In Nordic law, this paternalistic view of shareholders as passive beneficiaries goes against the whole structure of company law legislation, notably the provisions found in all Nordic Companies Acts that a majority of directors must be appointed by shareholders in general meeting and, much more important, may at any time be removed by the shareholders at their discretion. There is no better way to secure the undivided attention of directors than their knowledge that they may be removed at your whim.

Consequently, in Nordic law emphasis is on the accountability of directors towards shareholders and not their independence of them. And yet, when the Danish Code was adapted, the list of what made a director 'independent' was meticulously copied from the British inspired Recommendation and applied to a majority of the board. This is where Swedish law stands out and should be lauded for it as the only true representative of the unique Nordic governance system. From the very outset of the Swedish Code the importance of dominant shareholders has been clearly stated. The Code employs 'a strict ownership orientation' and is explicit on the benign effect of dominant shareholders to the proper governance of a company that underlies the structure of the Companies Act. Most importantly, the Code makes a distinction between being independent of the present management and being independent of major shareholders and it is expressly mentioned that this distinction allows a dominant shareholder to appoint a majority of directors. Even the Swedish version of the nomination committee, which was arguably an experiment and is not perfect, has turned out to be a useful reinforcement of shareholders' control of management that should serve as inspiration for Denmark and other countries.

The lesson in this is two-fold: governance should not be harmonised as there is not likely one model that fits all, and second: when faced with attempts of harmonisation it is important to transform foreign input as far as possible to dovetail with the existing system. In order to do so, it is necessary first to appreciate what is the gist of your own system and not just adopt whatever the prevailing fashion within the governance debate has on offer.

This is even more important because the very concept of 'independence', so much in vogue only a few years ago, is now seriously challenged. As the recent financial crisis has proved, the requirement for 'independent' management was no panacea; on the contrary, it may have helped to isolate management and disengage shareholders and in this way may explain the unreasonable growth in remuneration and bonuses as well as other short-sighted follies that contributed to the crisis. Now, the trend is to make shareholders active, but it is very difficult to make institutional investors with their huge portfolios of minority stakes assume the role of dominant shareholders with large block holdings and new 'stewardship codes' may not be enough to bring about such a Damascene conversion. Countries that have dominant shareholders should count themselves lucky and protect the legal system that evolved to suit this particular trait. The Swedish Code is an important step in this direction.

Other issues

Having celebrated the Swedish Code in this way, I now venture to address two other imports from British law that in my view are ill suited outside the British Isles, and as this may be less popular I will do so only briefly.

One is the whole idea of self-regulation in the form of codes based on the comply-or-explain principle. The purported virtue should be its flexibility compared to legislation, but even in legislation it is possible to have default rules that offer the same flexibility. Naturally, it may be more fun for the industry to make up their own rules rather than rely on Parliament, but the counter argument would be that we did quite well without self-regulatory codes until fairly recently and there may be sound, legitimate reasons why regulation is vested with Parliament in the first place. It is no secret that the self-regulation both of the 1968 City Code and later following the 1992 Cadbury Report were originally introduced to avoid legislation, but it remains a mystery why jurisdictions that traditionally have enjoyed carefully calibrated and sensible legislation would pursue such a route. The choice of the comply-or-explain principle betrays the self-regulation's origin as a poor substitute for legislation, because it attempts to provide compliance although it cannot enforce it. Why should a company only explain when it chooses not to comply? It cannot be that the option preferred by the Code is superior, because then it should be cast in legislation, mandatory or declaratory as the case may be. If the preferred option in the Code really is just one option among several equally suitable outcomes, then a company should always explain its choice and not just comply.

Another issue is the mandatory bid rule (MBR), which in the British version is about 'sharing' the takeover premium with all remaining shareholders. But why should the parties to a control transaction share with other shareholders something that only belongs to them? Control is not an asset of the company, but can be sold to individual shareholders as is the case when shares are issued with additional voting rights and of course at a higher subscription price than other shares. It is better to use the German justification of the MBR which is to 'protect' minority shareholders from the possible, but by no means certain, future violations of the new controlling shareholder. In that case, the price to be paid for their shares should not apply the highest price-principle as presently required by the Takeover Directive, but a fair price based on an expert evaluation of the company. But this ex ante approach to minority protection would still beggar the question why the protection should only apply in the rare occurrence of a takeover. Is it not better to provide sufficient minority protection at all times; in which case even the German justification for the MBR would be moot.

These issues, however, are at present lost causes and I shall not pursue them any further in this article, which is mainly to celebrate that the Swedish Code is so much better than ours, even if it is not perfect. After all, nothing made by man is.

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