SWEDISH
CORPORATE
GOVERNANCE BOARD

Annual report 2017

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If you have any questions or comments for the Swedish Corporate Governance Board, please contact:

Arne Karlsson (Chair of the Board)
Bonnier Holding
SE-113 90 Stockholm
Telephone: +46 8 736 4000
arne.karlsson@bonnier.se

Björn Kristiansson (Executive Director)
The Swedish Corporate Governance Board
Väpnargatan 8
SE-114 51 Stockholm
Telephone: +46 76 000 0078
bjorn.kristiansson@bolagsstyrningskollegiet.se

Tobias Hultén (Legal Associate)
The Swedish Corporate Governance Board
Väpnargatan 8
SE-114 51 Stockholm
Telephone: +46 73 314 0370
tobias.hulten@bolagsstyrningskollegiet.se

Foreword

I believe in the Swedish corporate governance model. I therefore also belief in self-regulation, which is a key feature of this Swedish model. I do so not only in my role as a board professional, but also, and equally so, as a member of the general public.

The corporate governance model of self-regulation has contributed to the long-term profitable development of Swedish companies and thus to the development of the welfare state in a highly export-dependent country with a high proportion of multinational companies per capita. Our model works well not only seen through domestic eyes - the results are also impressive in an international perspective.

The Swedish, principle-based corporate governance model, built to create flexibility to meet increasingly challenging international competition, is therefore one of the cornerstones that enables companies to continue developing in an optimal way for the individual company.

Strategic review

In 2016/17, the Swedish Corporate Governance Board carried out a major strategy project, resulting in the Board's adoption of a business plan (”Strategy 2017-2020”). The work and the analyses have helped us to define even more clearly why we exist and what we are to focus on in our work, as well as where our borders lie in relation to other bodies and actors in the field of corporate governance. We have also made decisions on key priorities for the future, as the Board is an organisation with a comparatively small budget and whose activities are partly reliant on unpaid work.

Different conditions – different models

The different corporate governance models that exist in Europe and the rest of the world have evolved from different environments, contexts and cultures and with different ownership models, laws and regulations as a basis. For example, each EU member state still has its own corporate legislation and governance model, based on traditions, ownership structures, financing and legal systems. The introduction without careful consideration of even seemingly good examples from other countries if they are not suitable for another country's own circumstances can therefore have devastating consequences.

This of course does not mean that we cannot learn from other countries' methods. The Board continuously monitors developments in other countries, participates in international conferences on corporate governance issues and meets representatives of other national corporate governance bodies. Naturally, we give careful consideration to anything we believe can develop our own model.

The Swedish model under attack

The Swedish model is under attack both from forces around the world and from critics within Sweden.

One threat to the Swedish corporate governance model is that the European Union's, in particular the Commission's, attempts to provide detailed regulation on corporate governance issues, despite the fact that it has not (and is unlikely to be) possible to harmonise the underlying company legislation regarding the organisation of limited companies.

Another threat is a global capital market with investors who can seek conformance at the expense of individual countries' needs for flexibility.

A third threat is what I would like to call inadvertent domestic ”sniping”, which occurs when someone does not receive support for their interpretation of a rule and draws the hasty conclusion that the entire Swedish model is wrong.

My personal assessment is that there is no real intention to undermine our basic way of working with corporate governance issues in any of these cases. Nevertheless, the most important task for the Swedish Corporate Governance Board today and in the years to come is to defend our corporate governance model and our freedom to choose our own corporate governance model in Europe, on the international market and at home. This is a conclusion that is reinforced by the input we receive from our continuous contacts with the Board's stakeholders.

The threat from the European Commission

The EU's activities within the field of corporate governance are troubling. I am not thinking here primarily about the flood of legislative proposals from Brussels, whose consequences take up far too much of the Corporate Governance Board's time and energy, which is a problem in itself. This over-enthusiasm to regulate is beneficial to few but harmful to many. It provides no benefit to the competitiveness of stock exchange listed companies in the European Union. On the contrary, it creates additional bureaucracy and costs that are only of benefit to competitors in other parts of the world.

No, the biggest problem is that the EU seems to think its task is to introduce the Anglo-Saxon corporate governance model across Europe. It may appear to be trivial when a particular issue is in danger of being handled in a way that is adapted to a particular corporate governance model and that works well in this context. But it only needs a few such elements to sneak into Swedish corporate governance to cause the basic principles on which our model is based is to collapse and we will end up with a regulatory framework that is a mish-mash with no common thread.

Over the years, the Board has been successful in coping with this type of problem, often in cooperation with the corporate sector, politicians and legislators. This work, however, is now also under threat from the European Commission, which adopted a new strategy a few years ago. The Commission has now been granted the right to issue ”guidelines” for the application of various measures within EU legislation. These guidelines are issued without any of the influence from the member states which normally takes place as part of the legislative process. The background to this is that the Commission has found it increasingly difficult in recent years to achieve the far-reaching harmonisation of corporate governance within the EU it has been pursued since issuing its action plan in 2003, not least due to clear opposition from the Nordic countries.

The Commission admittedly always points out that these guidelines are not mandatory, but merely ”advisory” to the companies to which they are addressed. In reality, however, there is a danger that they create a generally applicable norm that in practice governs how companies are expected to apply the underlying regulation. The risk therefore is that such guidelines will be used to actually implement more far-reaching and detailed regulation than it was able to achieve in the legislation itself.

Global capital market

Another development that creates problems for the work of the Corporate Governance Board is the friction between the needs of individual companies and countries for flexible regulatory frameworks and the globalised capital market's pursuit of convergence to facilitate cross-border activity. This leads to demands for changes in the way shareholders govern Swedish listed companies, sometimes based on misunderstandings about how our model actually works.

Unintentional “sniping”

What I mean by domestic criticism of the Swedish model is the frequent and unfortunate development that debaters - within the business world, politics, institutions and the media - in their eagerness to push an individual issue on which they have a strong opinion, do not distinguish between this issue and possible structural problems. If their own perception is not supported by the Board, for example, they hastily draw the conclusion that self-regulation does not work.

I have on file many examples of this from recent years, where dissatisfaction with the status quo has been combined with the conclusion that the Swedish self-regulation model does not work. Examples include statements like ”you should not concern yourselves with the gender balance in our board”, ”if you don't take into account foreign shareholders' views on voting procedures, that shows the shortcomings of self-regulation”,” the Swedish nomination committee model does not work, institutions are too far from removed from reality, you need to introduce the Anglo-Saxon model, which works much better” and so on.

Paradoxically, it often turns out in individual conversations that the person in question actually thinks that most of the model works well and should continue to apply. And so this kind of sweeping and generalising criticism is in fact just inadvertent ”sniping”.

Strategic priorities

This list of threats shows that we need to monitor continuously those developments occurring around us that can affect us here in Sweden.

A cohesive Nordic approach is one possible and important way to defend the Swedish and the basically similar Nordic corporate governance models.

Together, the Nordic countries provide a global perspective G11 and we are thus an even more significant power factor within Europe. Our plan therefore includes a central goal to seek to deepen cooperation with our Nordic colleagues. In this work we can also be inspired by the successful Nordic cooperation in the field of auditing. With Nordic cohesion and coordination, we aim to create a major and significant international player.

Our plan also includes more clearly focused activities in Brussels in particular, largely – for cost reasons – through partners.

In the international capital market, the Board hopes to contribute to a better understanding of the Swedish corporate governance model’s benefits through increased dissemination of knowledge and dialogue.

In the EU, globally and at home, more information, explanation and dissemination of knowledge about the Swedish model is needed. We will describe the characteristics of Swedish corporate governance – both corporate legislation and self-regulation.

And – of course – we will continue to focus on development of the Swedish Corporate Governance Code and good practice in the Swedish stock market. This is the basis of our mission and we wish to continue this work in close cooperation with all our stakeholders.

In a few years, we will know if we have succeeded in our endeavors.

Stockholm, June 2017

Arne Karlsson
Chair of the Board

I. ACTIVITY REPORT

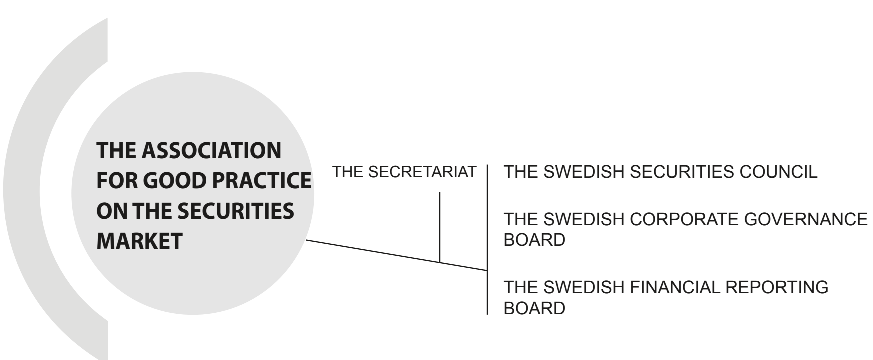
This part of the annual report describes the work of the Board during 2016–2017 and discusses current issues regarding the Swedish Corporate Governance Code and Swedish corporate governance in general.

The Mission of the Swedish Corporate Governance Board

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

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

The role of the Board in promoting Swedish corporate governance is to determine norms for good governance of listed companies. It does this by ensuring that the Swedish Corporate Governance Code remains appropri-



ate and relevant, not only in the Swedish context, but also with regard to international developments. The recently completed review of the Code is also described separately in this report.

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

The Board has no supervisory or adjudicative role regarding individual companies' application of the Code. Ensuring that companies apply the Code in accordance with stock exchange regulations and the Annual Accounts Act is the responsibility of the company auditor and the respective exchanges. The responsibility for evaluating and judging companies concerning their compliance or non-compliance with individual rules in the Code, however, lies with the actors on the capital markets. It is the current and future shareholders and their advisers who ultimately decide whether a company's application of the Code inspires confidence or not, and how that affects their view of the company's shares as an investment.

Interpretation of the Code is not a matter for the Board either. This is the responsibility of Aktiemarknadsnämnden, the Swedish Securities Council, which issues interpretations on request. This is discussed in detail later in this report.

The Work of the Board during the Year

In 2016, the Board initially consisted of Arne Karlsson (Chair), Staffan Bohman (Deputy Chair), Peter Clemedtson, Eva Halvarsson, Per Lekvall, Ulla Litzén, Annika Lundius, Tomas Nicolin, Lars Thalén and Caroline af Ugglas, as well as Executive Director Björn Kristiansson. At the parent organisation's annual meeting in May 2016, Staffan Bohman, Eva Halvarsson Tomas Nicolin, and Caroline af Ugglas left the Board, and Göran Espelund, Marianne Nilsson, Lena Olving and Olle Nordström were elected. Also, Andreas Gustafsson continued as a co-opted member of the Board.

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

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

Administrative changes

In February 2016, the Board recruited a legal associate, Karin Dahlström, whose main role was to support the Board's Executive Director in both legal issues and matters of a more administrative nature. Her duties also included being at the Securities Council's disposal to a certain limited extent. Karin Dahlström was replaced on 1 February 2017 by Tobias Hultén, who has long experience of working at law firms and whose most recent post was as Legal Director at Kinnevik AB. In addition to Karin's previous tasks, Tobias has also taken on greater responsibility for the Board's international contacts.

Strategy 2017–2020

During 2016 and 2017, the Board has implemented a strategic review to discuss and develop the Board's activity plan and priorities for the coming years. The Board has not previously had a comprehensive strategy paper. After a number of meetings, including an extraordinary Board meeting in autumn 2016, the Board adopted the Strategy 2017-2020 document at its regular meeting in May 2017. The next step is to operationalise this strategy document.

Follow up of the Code and Swedish corporate governance

In order to monitor that the Code is working as intended and to ascertain whether any modifications to the Code should be considered, the Board regularly conducts a variety of surveys of how the rules of the Code are applied in practice. The most important of these is its examination of Code companies' corporate governance reports and the corporate governance information on companies' websites, which it has carried out every year since the original version of the Code was introduced in 2005. Since 2015, this annual survey has been conducted on the Board's behalf by SIS Ägarservice.

Revision of the Code

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

The most recent major revision of the Code was implemented on 1 November 2015. However, work on revision of the Code continued in 2016. Due to the implementation into Swedish legislation of the directive and regulations concerning auditors and audits, the directive on non-financial information etc, as well as the market abuse regulation, the Board issued three Instructions in 2016. These Instructions, which are described in more detail below, were later implemented into the Code in a revised version that came into force on 1 December 2016. This version of the code is the one that currently applies.

In the field of auditing, the Swedish government presented a bill in April 2016 to implement the EU Directive on Auditors and Auditors and making necessary adjustments as a result of the EU regulation in the same area.

These law changes came into force on 17 June 2016. The Executive Director of the Board participated as an expert in the investigation which formed the basis of the bill. The new provisions on audit committees and elections of auditors led the Board to issue Instruction 2016:1, which contained some minor changes to the Code, mainly regarding the rules on audit committees and the work of nomination committees.

The EU market abuse regulation, and the amendments to the Act on Notification Obligations for Certain Holdings of Financial Instruments and the changes in the Stock Exchange Regulations as of 3 July 2016 that this necessitated, prompted the Board to issue Instruction 2016:2, which contained some minor changes to the Code regarding the information to be made available on the company's websites.

Finally, the Board issued Instruction 2016:3 following the EU Directive on Sustainability and Diversity Policy Reporting and the resulting changes in Swedish legislation with effect from 1 December 2016. This Instruction contained some minor changes to the Code to bring it into line with the legislation on diversity policy for company boards and on companies' sustainability reporting.

The Corporate Governance Board's continuing work with the Code is described below under Key issues for 2017.

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

KIn October 2015, the Board wrote to a position paper (which can be found in the section Perspectives in the 2016 Annual Report) on the subject of individual ballots and automatic counting of votes at the election of directors. This was prompted by a letter the Board received from international investors regarding the introduction of a rule in the Code about the election of directors. Similar demands had also come from Norges Bank Investment Management and some Swedish institutional investors, as well as in submissions during the consulting process in connection with the review of the Code.

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

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

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

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

In the light of the opportunities that Swedish company law provides and the well-functioning practices that currently exist within companies and their nomination committees, the Corporate Governance Board did not find sufficiently strong grounds for introducing rules into the Code which stipulate individual ballots or automatic counting of votes at the election of directors. The Board therefore decided to leave it to each company and its shareholders to decide upon how to conduct its board elections at each shareholders' meeting, while the Board noted that it is in each shareholder's power to request a count of votes if he or she desires.

The issue of individual ballots at the election of company directors was discussed before and at many annual general meetings of listed companies in 2016 and was discussed further at a seminar organised by Swedbank Robur in Almedalen in July 2016, where representatives of Norges Bank, the OECD and a number of Swedish institutional and private investors took part. The Executive Director of the Corporate Governance Board Member also participated in the discussion panel. The Board notes that a number of listed companies chose to hold individual ballots in 2016 and 2017, but that the issue was not the subject of extensive discussion ahead of the 2017 AGMs.

Gender balance on the boards of stock exchange listed companies

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

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

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

The Corporate Governance Board initially conducted an assessment of gender balance on the boards of listed companies twice a year – at the beginning of January, ahead of the annual general meetings season, and in July, when the annual general meetings season is over. The Board has now decided to conduct this assessment once a year, in July. The information acquired from these assessments is available on the Board's website, www.bolagsstyrning.se. The statistics for 2016 refer to the figures as of 10 June. The statistics for June 2017 were not yet available at the time of this annual report's publication.

The Board's calculation methods are as follows:

The Corporate Governance Board

The basis of the Board's calculation model is that only Swedish, not foreign, companies whose shares are admitted to trading on a Swedish regulated market (Nasdaq Stockholm and NGM Equity) are to be included, as it is these companies that must comply with Swedish company law. A follow-up of the Board's level of ambition shows the following development between measurements in January and June 2016.

1. *An approximate proportion of at least 40 per cent for each gender following the AGM season in 2020.* This includes all members of company boards elected by shareholders' meetings (meaning it includes CEOs who are elected to the board, but it does not include employee representatives) in all Swedish listed companies. On 10 June 2016, the proportion of female board members was 31.6 per cent, compared with 28.9 per cent on 31 December 2015, which is an increase of 2.7 percentage points.
2. *An approximate proportion of at least 35 per cent for each gender in large companies following the AGM season in 2017.* This includes all board members of Swedish Large Cap companies elected by shareholders' meetings. On 10 June 2016, the proportion of female board members was 36.2 per cent, compared with 32.9 per cent on 31 December 2015, which is an increase of 3.3 percentage points.
3. *An approximate proportion of at least 30 per cent for each gender in smaller companies following the AGM season in 2017.* This includes all board members of Swedish Mid and Small Cap companies and Swedish companies on the NGM Equity exchange elected by shareholders' meetings. On 10 June 2016, the proportion of female directors was 29.5 per cent, compared with 27.3 per cent on 31 December 2015, which is an increase of 2.2 percentage points.

The European Commission

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

- All Swedish companies whose shares are admitted to trading on a regulated market are covered, with the exception of SMEs (small and medium-sized enterprises), i.e. groups of companies with a maximum of

- 250 employees, and an annual turnover of less than EUR 50 million, or a balance sheet total of less than EUR 43 million, (only one of the thresholds of turnover or balance sheet needs to be applied). As of 15 June 2015, 68 Swedish listed companies were defined as SMEs.
- The calculation is to refer to all company directors that are not also members of the executive management, (i.e. non-executives), meaning that CEOs who are also elected to the board of a listed company are therefore excluded.
- Employee representatives are explicitly covered by the proposed directive.

On 10 June 2016, the gender balance according to the European Commission's calculation model was as follows:
- The proportion of female board members the boards of Swedish listed companies was 34.0 per cent, compared with 31.8 per cent on 31 December 2015, i.e. an increase of 2.2 percentage points.
- On the boards of Swedish Large Cap companies, the proportion of female board members was 35.9 per cent, compared with 33.4 per cent on 31 December 2015, i.e. an increase of 2.5 percentage points.

Employee representatives

The employee organizations appoint the employee representatives. The proportion of women among employee representatives in all Swedish listed companies on 10 June 2016 was 30.1 per cent, compared with 30.0 percent on 31 December 2015, i.e. an increase of 0.1 percentage points.

Developments in 2017

In 2016, the government launched a legislative proposal regarding quotas on the boards of stock exchange listed companies. This, however, did not lead to any legislation.

Preliminary statistics for May 2017 show that the proportion of female directors elected by shareholders' meetings continues to rise. The preliminary figures for Large Cap companies, which make up over 90 per cent of the total stock exchange value per capita, indicate an increase of over 2 percentage points, meaning that the proportion of female directors was just under 39 per cent. If CEOs are excluded from the figures, Large Cap companies have reached the level of 40 per cent female board directors for the first time.

The final statistics were due to be presented on the Corporate Governance Board's website in June/July 2017. The Board has chosen to no longer publish statistics according to the European Commission's calculation model.

Rules on generally accepted principles in the Swedish securities market

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

Takeover rules

As outlined above, the Board is responsible for proposing changes to the rules governing takeovers on the Nasdaq OMX Stockholm and NGM markets. The Board itself issues equivalent rules for the First North, Nordic MTFand AktieTorget trading platforms. The latest versions of the regulatory frameworks were issued on 1 February 2015.

In February 2017, a working group was set up under the leadership of Professor Rolf Skog, Executive Director of the Swedish Securities Council, assisted by Erik Sjöman, Special Adviser, Björn Kristiansson, Executive Director of the Board, and the Board's legal associate, Tobias Hultén, to conduct a review of the existing takeover rules. Within the framework of the review, the Board will consider whether competing bids with different time scales and other events associated with recent acquisition offers give rise to a need for changes to the regulatory framework. The same applies to the new market abuse rules which came into force in July 2016. Additionally, it will consider whether there is anything in the Swedish Securities Council's most recent statements that should be incorporated into the rules, such as the rules governing indirect control acquisitions. As in previous work to formulate and revise takeover rules, the process took place in close consultation with a broad reference group. It is expected that new rules will be presented in autumn 2017.

Rules on private placements in listed companies

The Swedish Corporate Governance Board has issued a recommendation regarding private placements in listed companies. The recommendation is applicable to placements announced on or after January 2015.

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

The Board accepts that the recommendation is fairly general in nature. In most cases, however, there should be no doubt about whether a new share issue or private placement is compatible with the recommendation or not, but should any doubts exist, the Board assumes that the matter of whether the share issue contravenes the recommendation will be submitted to the Swedish Securities Council for a ruling. The Board and the Council will monitor developments in this area and the Board is prepared to clarify the recommendation further if necessary.

In its statement AMN 2016:28, the Council declared that the Board's recommendation expresses what in some respects is good practice in the stock market for cash issues of shares, warrants and convertibles in limited companies whose shares are admitted to trading on a regulated market or traded on the First North, Nordic MTF or AktieTorget trading platforms. The scope of the recommendation coincides with the scope of AMN 2002:02. The Council's statement AMN 2016:28 confirmed that statement AMN 2002:02 can now be considered to have been replaced in its entirety by the Board's recommendation. A prerequisite for whether a private placement is to be considered compatible with good practice in the stock market is therefore that the instructions in the recommendation are observed.

Referrals etc.

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

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

In 2016, the Board submitted written comments on the following:

- *The European Commission's web survey on non-binding guidelines for the reporting of non-financial information*. The Board's basic position was that it is important that these are voluntary guidelines and that they should be developed on the basis of the framework of regulations that already exists.
- *The European Commission's draft directive on amendments to Directive 2013/34/EU regarding the publication of income tax information for some companies and branches*. The Board rejected this proposal and advocated instead that any expanded reporting be voluntary and developed on the basis of companies' existing financial accounting and sustainability reporting and, if necessary, be regulated within these frameworks.
- *The Swedish Ministry of Justice Paper on Auditor's Liability (SOU 2016:34)*. The Board rejected the proposal, advocating instead that a new investigation be put in place with the task of conducting a broader and deeper analysis of corporate responsibilities.
- *The Swedish Ministry of Justice Memorandum on Gender Balance on Company Boards (Ds 2016: 32)*. The Board considered that, in the light of the functioning self-regulation in this area, the current gender distribution in the listed companies' boards and the ongoing developments in the area, the proposal constituted a disproportionate interference in ownership rights. The Board rejected the proposal.

In 2017, the College has so far submitted its views on the Commission's draft of non-binding guidelines for the reporting of non-financial information. The Board's main view was that the draft guidelines were too detailed and in many respects prescriptive, which may lead in practice to the guidelines governing how companies apply them.

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

Action plan on corporate governance in listed companies and company law

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

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

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

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

The action plan consists of three main areas:

1. enhancing transparency;
2. engaging shareholders; and
3. improving the framework for cross-border operations of EU companies.

The section on enhancing transparency includes a number of different proposals. The first of these is the introduction of a requirement to report on diversity within the board of directors and on how the company manages non-financial risks. The proposal is to be implemented through amendment of the EU Accounting Directive. The Board submitted a formal response to this proposal to the Swedish government in 2013, expressing support for the requirements concerning CSR reports. However, the Board did not believe that the proposal concerning disclosure of diversity policy should be implemented. The amendments to the Directive were implemented by the European Commission in 2014, and in spring 2015, the Swedish government announced a memorandum on companies' reporting on sustainability and diversity policy (Ds 2014:45) with regard to the directive's implementation in Sweden. In its response in March 2015, the Board expressed criticism that the implementation proposal covers a far greater number of companies than the directive requires and was also critical of some of the details in the information requirements. On the matter of the requirement to have a written diversity policy, the Board suggested that companies could use the Code's stipulations regarding the composition of the company's board, Code rule 4.1, as their diversity policy. The proposal was referred to the Council on Legislation on 20 May

2016. The changes to the law came into force on 1 December 2016 and are applicable from the financial year starting immediately after the end of the year. As a result, the Board issued Instruction 2016:1 with certain changes to the Code, and these amendments have now been incorporated into the Revised Code that applies from 1 December 2016.

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

On 9 April, the Commission presented its recommendation on the quality of corporate governance reporting, ("comply or explain"). It also issued a draft of amendments to the Shareholder Rights Directive. The latter was further negotiated within the European Union. The Executive Director of the Corporate Governance Board participated in the Swedish government's consultation meetings regarding the government's position in these negotiations. The amendments to the Shareholders' Rights Directive have now been finalised and published in the Official Journal, and are presented in more detail later in this report, under Key Issues for 2017.

A further proposal contained in the main area Increased Transparency was adopted by the Commission in April 2016. This proposal amends the Accounting Directive 2013/34/EU and obliges multinational companies to publish annual reports country-by-country on issues such as the company's profits and the taxes that the company pays. Country-by-country reporting was a major issue in the negotiations on the Shareholder Rights Directive.

In accordance with the Action Plan, on 3 December 2015 the Commission adopted a proposal to codify and combine a number of directives in the field of company law. The objective of this proposal is to make company law within the EU more reader-friendly and to reduce the risk of future inconsistency. The proposal does not involve any material changes to the directives.

International and Nordic work

As in previous years, the Board was an active participant in international debate on corporate governance issues in 2016, with the aim of promoting Swedish interests and increasing knowledge and understanding of Swedish corporate governance internationally. The Board took part in several consultation meetings with representatives of the European Commission through its membership of the European Corporate Governance Code Network, ECGCN, a network of national corporate governance committees of EU member states. The ECGCN, (www.ecgcn.org), is not a formal cooperation, but the European Commission has granted it the status of a special group to consult on corporate governance issues within the community.

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

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

Key issues for 2017

The European Commission action plan on corporate governance and other regulatory issues

The European Commission's action plan on corporate governance, which began with Barnier's Green Paper in 2011, has now reached its final regulatory initiative, the Directive on Changes to the Shareholder Rights Directive (European Parliament and Council Directive 2017/828 of 17 May 2017 amending Directive 2007/36/EC regarding encouragement of long-term shareholder commitment). The Directive includes measures to make it easier for listed companies to identify who their owners are; requirements on institutional owners to publish their investment and engagement policies; transparency requirements for proxy advisers; and requirements for increased shareholder influence on matters relating to remuneration of the company board and management and on related party transactions. The Directive is to be implemented no later than 10 June 2019.

The Executive Director of the Swedish Corporate Governance Board will assist the Swedish Ministry of Justice with views on how these matters can be implemented into Swedish legislation. One key issue is whether any changes should be made to the Corporate Governance Code's rules on remuneration and the Swedish Securities Council's statements on good practice regarding incentive programs. One option that the Board will look at in more detail is whether to break out parts of current self-regulation in this area into a recommendation issued by the Board.

Review of the Code

The work to review and revise the Code is described above. The work does not end there, however.

At its meeting on 4 December 2015, the Board appointed a new internal working group consisting of Board members Eva Hägg, Bjorn Kristiansson, Per Lekvall and Annika Lundius, who were supplemented by Marianne Nilsson in May 2017. The group's task is to manage the continued process of revising the Code by developing proposed changes to Code rules.

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

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

The Board also looks forward to continued cooperation and discussion within the Nordic region through regular meetings. A common Nordic platform when submitting comments on the European Commission's proposals can carry more weight and have a greater impact than the views of the individual countries.

II. APPLICATION OF THE CODE IN 2016

The Swedish Corporate Governance Board conducts regular surveys and analysis in order to monitor how the Code is applied and to evaluate its functionality and effects on Swedish corporate governance. As in previous years, the Board commissioned a study of each Code company's application of the Code based on information published in annual reports, in corporate governance reports and on company websites. The results are summarised below. Also in this section, there is a presentation of the Swedish Securities Council's and the stock exchange disciplinary committees' approaches to Code issues.

Companies' application of the Code

Executive summary

With the proviso regarding comparability because of the change of survey supplier in 2015, this year's survey shows that companies' reporting on corporate governance issues has improved further. This means a continuation of the curve of steadily improving corporate governance reporting.

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

The number of deviations from the Code fell once again in 2016. This year's survey shows a decrease in the number of reported deviations at a smaller number of companies. Such a development can be interpreted both positively and negatively. The development is negative in the light of the Code's aim to make companies reflect and bring transparency to their corporate governance. The comply or explain principle on which the Code is based assumes that corporate governance is something fundamentally individual to each company, and even if the behaviour of companies means that they apply the majority of the rules in the Code, there should exist a large number of individual solutions that are more suitable for those particular companies than the standard methods prescribed in the Code. If companies feel that they must adapt their behaviour in order to comply with the Code, innovation and initiative may be stunted, to the detriment of the individual company and its shareholders. However, the development is positive in the sense that if the rules of the Code are respected, the standard of corporate governance within listed companies should be improved.

The survey continues to place particular emphasis on nomination committees' statements on proposed candidates to positions on the board of directors, not least with regard to the Code's requirement that listed companies strive to achieve gender balance on their boards. Regarding the latter, there is a continued positive trend, and the number of nomination committees that have explained their proposals clearly in relation to the Code requirement on gender balance continues to increase.

A new requirement was introduced when the EU Non-Financial Reporting Directive led to new rules on reporting on the company's diversity policy for its board. Only just over half of the companies concerned have reported the diversity policy that their nomination committees applied when preparing their proposals.

Aims and methods

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

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

The basis for the study is companies' own descriptions of how they have applied the Code in the corporate governance reports that are required by the Annual Accounts Act, in other parts of their annual reports and in the information on their websites. Since 2011, the survey has also examined whether the corporate governance information on companies' websites fulfils the requirements of the Code and whether corporate governance reports contain all the required formal details. No attempt is made to ensure that the information provided by the companies is complete and accurate.

As in previous years, the target group for the study was the companies whose shares or Swedish Depository Receipts, (SDRs), were available for trade on a regulated market and who were obliged to issue a corporate governance report as of 31 December 2016. Stock Exchange rules state that companies whose shares are traded on a regulated market run by the exchange are to adhere to generally accepted principles in the securities market, which includes applying the Swedish Corporate Governance Code[1]. Up to and including 2010, foreign companies were not obliged to apply the Code. Following an Instruction issued by the Swedish Corporate Governance Board, from 1 January 2011, foreign companies whose shares or SDRs are traded on a regulated market in Sweden are required to apply the Swedish Corporate Governance Code, the corporate governance code of the company's domicile country or the code of the country in which the company has its primary stock exchange listing.[2] If the company does not apply the Swedish Code, it is obliged to state which corporate governance code or corporate governance rules it applies and the reasons for so doing, as well as an explanation of in which significant ways the company's actions do not comply with the Swedish Code. This statement is to be included in or issued together with the company's governance report or, if no such report is issued, on the company's website.

On 31 December 2016, there were 302 companies whose shares or SDRs were available for trade on a regulated market in Sweden. Of these, 293 were listed on Nasdaq OMX Stockholm and nine on NGM Equity. Of those listed on Nasdaq OMX Stockholm, 23 were foreign companies, whereas none of the companies listed on NGM Equity were. Of the 23 foreign companies, seven have declared that they apply the Swedish Code, and these seven were therefore included in the survey. The remaining 16 foreign companies were excluded from the survey. This meant that the number of companies actually included in the survey was 286, of which 277 were listed on Nasdaq OMX Stockholm and nine on NGM Equity. See Table 1.

Table 1. Number of surveyed companies

	2016		2015		2014		2013		2012		2011		2010	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
NASDAQ Stockholm	293	97%	278	97%	265	96%	253	96%	253	95%	249	94%	232	92%
NGM Equity	9	3%	10	3%	10	4%	10	4%	12	5%	15	6%	20	8%
Total target group	302	100%	288	100%	275	100%	263	100%	265	100%	264	100%	252	100%
Excluded *)	16	5%	16	6%	23	8%	16	6%	18	7%	16	6%	13	5%
Total companies surveyed	286	95%	272	94%	252	92%	247	94%	247	98%	248	94%	239	95%

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

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

Companies' reports on corporate governance

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

As in previous years, all of the companies surveyed had submitted a formal corporate governance report, which is mandatory by law. Six companies chose to publish their corporate governance report on their websites only, compared with nine companies the previous year.[5] Of the vast majority of companies which include their corporate governance report in the printed annual report, just under half include it in the directors' report, while the other half published their corporate governance report as a separate part of the annual report. See Table 2.

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] One company failed to provide an internal controls report this year, compared with two companies last year, while it must be regarded as unclear whether another company fulfilled the requirement, the same number as last year. See Table 3. The Annual Accounts Act makes it a legal requirement for companies to report on their internal controls. The internal controls reports vary in their scope, from short summaries within the corporate governance report to separate reports.

The third paragraph of Code rule 7.3 states that a company which has not set up an internal audit is to explain the company board's position on this issue and its reasons why in the report on internal controls. Just over a fifth of the surveyed companies conducted an internal audit, showing a small decrease on the 2015 figure. Of the just under 80 per cent of companies that chose not to conduct internal audits, the boards of eight of these have not provided an explanation for this. See Table 4.

Since 2010, auditor review of corporate governance reports is now mandatory according to the Companies Act and the Annual Accounts Act[7]. See Table 5. Five companies have not reported that their corporate governance reports were reviewed by their auditors, and for one company it is not clear whether such a review took

Table 2. How is the corporate governance report presented?

	2016		2015		2014		2013	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
In the directors' report in the annual report	133	47%	121	44%	113	45 %	120	49%
A separate report within the annual report	147	51%	142	52%	133	53 %	117	47%
Only on the website	6	2%	9	3%	6	2 %	7	3%
Unclear	0	0%	0	0%	0	0 %	3	1%
Total	286	100%	272	100%	252	100 %	247	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 publishing it only on its website. (The report must in fact always be made available on the company's website.) If the corporate governance report is not contained in the directors' report, the company may choose whether to include it in the printed annual report – this is not regulated by law or by the Code.
6) See chapter 6, section 6, paragraph 2, point 2 the Annual Accounts Act, (1995:1554) and the third paragraph of rule 7.3 and rule 7.4 of the Code.
7) The requirement for auditor review of a corporate governance report if it is included in the director's report or of the information otherwise published in the company's or group of companies' director's report can be found in chapter 9, section 31 of the Companies Act (2005:551). The requirement for the auditor review of the corporate governance report to be published separately from the annual report can be found in chapter 6, section 9 of the Annual Accounts Act.

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

Reported non-compliance

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

In light of this, the development shown in Diagram 1 is worrying. Diagram 1 shows the proportion of surveyed companies that have reported instances of non-compliance since 2011. The proportion of companies that reported more than one instance of non-compliance in 2016 was 11 per cent, which is two percentage points

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

	2016		2015		2014	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes	284	99%	269	99%	248	98%
No	1	0%	2	1%	1	0%
Partly	1	0%	1	0%	3	1%
Total	286	100%	272	100%	252	100%

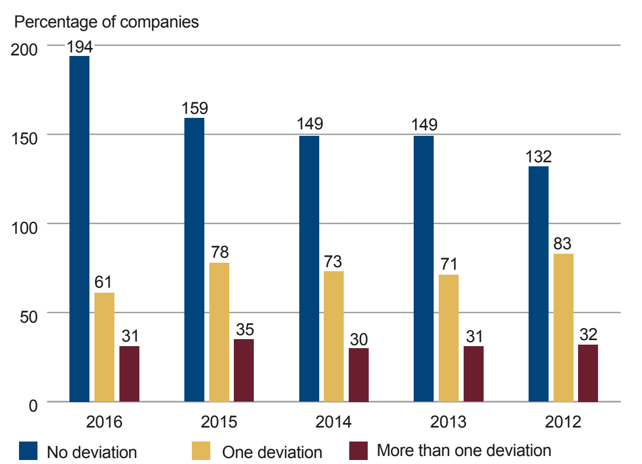
Table 4. If it is clear from the report on internal controls and risk management that no specific auditing function exists, are the board's reasons for this explained in the report?

	2016		2015		2014	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes, reasons presented	215	75%	197	72%	181	72%
No, no reasons presented	8	3%	10	4%	11	4%
Partial explanation	0	0%	0	0%	1	0%
Unclear	0	0%	0	0%	2	1%
Not applicable/ own internal auditor	63	22%	65	24%	57	23%
Total	286	100%	272	100%	252	100%

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

	2016		2015		2014	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes	280	98%	265	97%	243	96%
No	5	2%	6	2%	7	3%
No information/ unclear	1	0%	1	0%	2	1%
Total companies	286	100%	272	100%	252	100%

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



2016: 286 companies 2015: 272 companies 2014: 252 companies
2013: 251 companies 2012: 247 companies

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.

lower than in the previous year. This means that the remaining 89 per cent of companies reported a maximum of one deviation from the Code rules. The proportion of companies that reported a single deviation from the Code fell by eight percentage points to approximately 21 per cent. Approximately 68 per cent, or 194 companies, reported no deviations at all in 2016, which is a significant increase compared with the previous year's figure of just over 58 per cent.

A total of 133 deviations from 25 different rules were reported in 2016, which gives an average of 1.45 deviations per company reporting at least one deviation. This is in line with last year's average figure of deviations per company.

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

Which rules do companies not comply with?

The Code was updated during the year, and the current version came into force on 1 December 2016. The rule numbers in this year's survey refer to the numbering in the new Code text. Table 7 shows the number of deviations per rule from which deviation has been reported. The five rules for which the most companies report non-compliance, see Diagram 2, are commented on in brief below.

As in previous years, the rule with by far the most instances of non-compliance was Code rule 2.4. Over 15 per cent of all Code companies report some kind of deviation, which is five percentage points lower than last year's figure. Rule 2.4 states that members of the company board may not constitute a majority on the nomination committee and that the chair of the board may not be chair of the nomination committee. If more than one member of the board is a member of the nomination committee, only one member may have a dependent relationship to major shareholders in the company.

The most common form of non-compliance with this rule was that the chair of the board, or in some cases another member of the board, was appointed chair of the nomination committee. The most common explanation for this was that the person concerned was a major shareholder and/or deemed to be the most competent and therefore considered best suited to lead the work of the committee. In some cases, more than one of several members of the board who were on the committee were not independent of major shareholders, and in a small number of companies, members of the board formed a 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 next-highest frequency of non-compliance was rule 2.3, which concerns the size and composition of nomination committees, primarily with regard to committee members' independence. Seventeen companies, (just under five per cent), deviated from this rule. In the majority of cases, the non-compliance involves the CEO and/or other members of the company's executive management being members of the nomination commit-

Table 6. Reported non-compliance

	2016	2015	2014	2013
Number of companies reporting no deviations	194	159	149	149
Number of companies reporting deviations	92	113	103	102
Companies reporting one deviation	61	78	73	71
Companies reporting more than one deviation	31	35	30	31
Percentage of companies reporting deviations	32%	42%	41%	41%
Total number of companies	286	272	252	251
Number of reported deviations	133	163	142	143
Number of rules for which deviations reported	25	21	21	23
Average number of deviations per rule	5.32	7.76	6.76	6.22
Average number of deviations per company	1.45	1.44	1.38	1.40

tee. The explanation given for this is that they are also major shareholders in the company. In a small number of cases, the nomination committee consisted entirely of representatives of the largest shareholder in terms of voting rights, meaning that the company did not comply with the rule that states that at least one member of the committee is to be independent in relation to the largest shareholder. Some nomination committees did not fulfil the Code requirement that they must comprise at least three members.

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

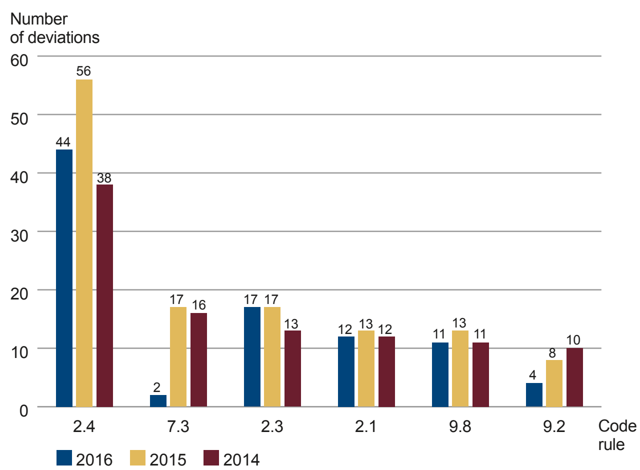
Eleven companies, (less than four per cent), reported non-compliance with rule 9.7, concerning incentive programmes. The majority of these deviated from the requirement that the vesting period is to be at least three years.

There were almost no "new" explanations in 2016, i.e. explanations of non-compliance with rules that have previously had no deviation reported.

Table 7. Number of deviations from individual Code rules reported in corporate governance reports

Rule	2016	2015
2.4	44	56
2.3	17	17
2.1	12	13
9.7	11	13
2.5	9	8
7.6	6	8
1.2	5	
9.2	4	8
1.1	3	2
4.2	3	5
2.6	2	3
4.3	2	2
4.4	2	4
4.5	2	
7.3	2	17
1.4	1	
1.5	1	2
4.1	1	1
8.1	1	
8.2	1	2
9.1	1	2
9.4	1	
10.2	1	
10.3	1	

Diagram 2. Instances of non-compliance per Code rule



Explanations of non-compliance

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

Up until 2014, the information value of the explanations was patchy, with a high proportion of explanations with poor information. This seems to be an international problem for this kind of corporate governance code. The primary aim of the European Commission's recommendation on corporate governance is to improve these explanations, not least by introducing the solution that has been in existence in the Swedish Code in 2008, namely that each instance of non-compliance is not only to be explained, but a description of the chosen solution also provided.

Swedish companies' reporting of non-compliance in 2016 continued the recent improved trend, and the companies' explanations of non-compliance are generally of a high standard. All of the surveyed companies, (compared with all but one in 2015), explained their reasons for non-compliance.

As in previous years, an attempt has also been made to assess the quality of explanations offered. This necessarily involves a large element of subjectivity. The Corporate Governance Board's analysis has therefore limited itself to identifying companies which provided insufficient explanation of their non-compliance in the view of the survey institute. The change of survey method means that comparisons with previous years' surveys are of limited value.

Last year's survey showed further improvement, at least on paper. In 2016, just two companies provided explanations of insufficient quality, compared with six companies last year. The hope is that next year we will no

Tabell 9. The detailed content of corporate governance reports

	Yes	No	Partly
Does the report contain information on the nomination committee?			
Composition	269	16	1
Representation	250	29	7
Does the report contain information on board members?			
Age	283	2	1
Educational background	250	10	26
Professional experience	239	29	18
Work performed for the company	285	1	0
Other professional commitments	260	2	24
Shareholding in the company	280	2	4
Independence	282	2	2
Year of election	283	2	1

	Yes	No	Partly
Does the report contain information on the board?			
Allocation of tasks	285	1	0
Number of meetings	286	0	0
Attendance	286	0	0

	Yes	No	Partly	Not applicable
Does the report contain information on board committees?				
Tasks and decision-making authority	250	9	4	23
Number of meetings	212	13	4	57
Attendance	193	32	2	59

	Yes	No
Does the report contain information on the CEO?		
Age	283	3
Educational background	266	20
Professional experience	239	47
Professional commitments outside the company	193	93
Shareholding in the company	283	3
Shareholding in adjacent companies	16	270

longer see any poor explanations, i.e. explanations without any information value.

The content of corporate governance reports

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

Compliance with the detailed requirements of the Code concerning information[9] still leaves room for improvement, despite some improvement on last year. See Table 9 for details. Almost 30 companies did not provide information on the professional experience of their board members, a similar number of companies did not state who had appointed members of their nomination committees, and almost 50 companies did not list the previous professional experience of their chief executive officers. Breaches regarding these requirements were pointed out in previous years. The percentage of companies not reporting the previous experience of the members of the board has fallen from 13 per cent in 2015 to 10 per cent in 2016, while the number of companies failing to report the previous experience of the chief executive officer has fallen from 18 per cent to 16 per cent. The proportion of companies who report whom members of the nomination committee represent has risen by two percentage points compared with last year.

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

	2016		2015	
	Number	Percentage	Number	Percentage
Yes	277	97%	264	97%
Acceptable	8	3%	8	3%
No	1	0%	0	0%
Total	286	100%	272	100%

[9] Code rule 10.2

Another Code requirement is that companies who have been found by the Stock Exchange Disciplinary Committee or the Swedish Securities Council to have committed breaches against the rules of the stock exchange or generally accepted principles in the securities market during the financial year are to report this in their corporate governance reports. Only one of the five companies to which this rule applied provided information about the breach, which is significantly worse than in previous years.

Corporate governance information on company websites

For the seventh year, an analysis of corporate governance information on company websites has been carried out. As people increasingly search for information on the internet, the importance of providing immediate and easily accessible information to shareholders and other stakeholders through company websites has grown. This also applies to corporate governance information, and this year's survey is therefore particularly quality assured on the subject of information on websites.

The requirement regarding up-to-date information no longer covers members of the company board and CEOs, as well as their related parties' shareholdings. Corporate Governance Board Instruction 2-2016 stated that it is sufficient that the company collects this information in connection with the annual general meeting in order to be able to disclose the information on the company's website in connection with the notice of the AGM (regarding the board) and in the corporate governance report (board and CEO).

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

One of the questions in the survey concerns how easy it is to find corporate governance information on company websites. This assessment is subjective, but the hope is that an annual follow-up of this issue based on the same criteria will at least allow an examination of trends. The results of this year's survey of this area can be found in Table 10, which shows that 97 per cent of the companies surveyed have easily accessible corporate governance information, which is the same as last year's figure. One company failed fulfil the accessibility criteria entirely, while the standard for the remaining three per cent was acceptable, which is also in line with last year's figure.

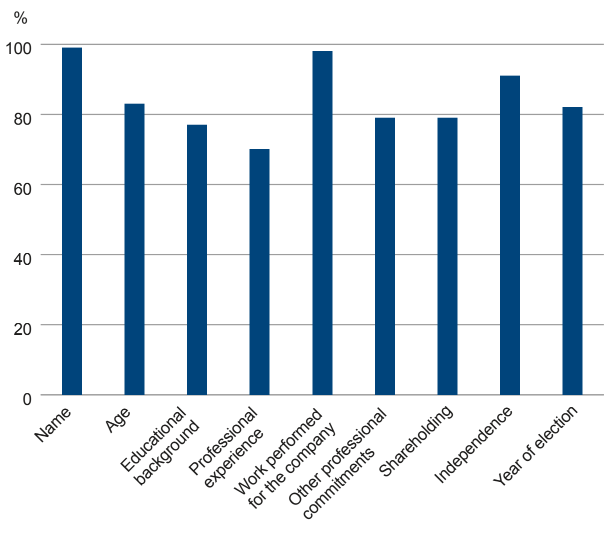
Code rule 10.3 also contains a list of information required on the corporate governance sections of websites. As well as the company's ten most recent corporate governance reports and the auditor's written statements on the corporate governance reports, the company's articles of association are also to be posted. At the time of the survey, one company did not fulfil the latter requirement, while the articles of association of the remaining 285 companies were accessible on the company website, which is a slight improvement on the previous year. Additionally, the Code requires companies to post information regarding the current board of directors, the CEO and the auditor. This requirement regarding the auditor was not fulfilled by all companies. See Table 11 for more detailed information.

Nomination committees are also required to fulfil certain information requirements. The Code requires the nomination committee to present information on its candidates to the board on the company website when notice of a shareholders' meeting is issued[10)]. Even if companies fulfil this requirement, their information on candidates is not complete – see Diagram 5. At the same time as it issues the notice of meeting, the nomination committee is also to issue a statement, which is also to be available on the website, with regard to the requirement in rule 4.1, that the proposed composition of the board is appropriate according to the criteria set out in the Code and that the company is to strive for gender balance. This year, eight per cent of the companies surveyed failed completely or partly to issue such a statement. Even though this is a slight improvement on last year's figure of 10 per cent, it is remarkable that almost one company in ten did not fulfil the requirements of a Code rule that has been in force since 2008. In 2013, 58 per cent of companies' nomination committees failed to make any comment on gender balance, while in 2014 24 per cent of the nomination committees did not comment on gender balance. The corresponding figure for 2015 was 18 per cent. The positive development continued this year, when the proportion of nomination committees that did not comment on gender balance was13 per cent. Against the background of the debate on the composition of boards, especially the issue of gender balance and the question of whether quotas should be introduced, it is not particularly surprising that the number of nomination committees that neglected to comment on gender has fallen in recent years – see Table 12. One of the aims of the introduction of the relevant Code rule was to avoid the introduction of quotas and instead allow nomination committees to explain how they had handled the issue of increasing the ratio of women on boards and bring the issue into focus. The Corporate Governance Board will continue to monitor gender balance on the boards of listed companies committees.

More than half of the companies covered by the new rules on reporting diversity policy have reported the diversity policy applied by the nomination committee in drafting its proposal.

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. Just over half of the companies surveyed still publish no information regarding such programmes on their websites. Many companies do not have such programmes, but that as many as half of the companies surveyed would have no current share or share price related incentive programmes seems a very high proportion.

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



10) See Code rule 2.6, paragraph 2.

Since 2010, rule 10.3 also requires companies to publish on their website a description of any ongoing variable remuneration programmes for the board of directors and the executive management, (though there is no requirement to issue information on variable remuneration programmes for other employees). This year, 77 per cent of the companies surveyed published such information on their websites, which is an increase on last year's figure of 73 per cent.

Finally, company websites are to provide information on the board's evaluation of remuneration within the company no later than three weeks before the annual general meeting[11]. This evaluation is to cover ongoing variable remuneration programmes for executives and directors and those programmes that have ended during the year; how the company's executive remuneration guidelines have been applied; and the current remuneration structures and remuneration levels within the company. This requirement was introduced in 2010 and the information was included in the survey for the first time in 2011. Table 13 shows that there has been some improvement in all three areas since last year and that almost 80 per cent of the companies surveyed fulfilled this requirement. It must, however, be regarded as unacceptable that over 20 per cent of the companies surveyed do not publish any evaluation or neglect to leave the evaluation in place on their website after the annual general meeting.

Table 11. Detailed information on company websites

2016	Yes	No	Partly	Total	Percentage Yes
Current board members	286	0	0	286	100%
Current CEO	286	0	0	286	100%
Current auditor	277	9	0	286	97%

2015	Yes	No	Partly	Total	Percentage Yes
Current board members	272	0	0	272	100%
Current CEO	271	1	0	272	100%
Current auditor	261	11	0	272	96%

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

	2016		2015	
	Number	Percentage	Number	Percentage
Partly	0	0%	3	1%
Yes	248	87%	220	81%
No	38	13%	49	18%
Total	286	100%	272	100%

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

2016	Yes	No	Partly	Total
Variable remuneration programmes	220	65	1	286
Remuneration policy	225	59	2	286
Remuneration structures and levels	223	62	1	286

2015	Yes	No	Partly	Total
Variable remuneration programmes	198	74	0	272
Remuneration policy	203	67	2	272
Remuneration structures and levels	200	71	1	272

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

Interpreting the Code

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

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

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

The Swedish Securities Council issued did not publish any statements on the Code in 2016. However, a statement from 2015 was published at the beginning of 2016 (AMN 2015:24 – see below). Over the years, the Council has issued six statements in total concerning interpretation of Code rules:

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

The disciplinary committees of the Nasdaq OMX Stockholm and Nordic Growth Market NGM stock markets did not issue any interpretations of the Code in 2016, and these two bodies have no tradition of issuing statements regarding interpretation of the Code.

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

There is not yet any established practice regarding the recommendation issued by the Swedish Corporate Governance Board on 1 January 2015 regarding private placement of shares. The Swedish Securities Council took up a number of issues regarding private placements in statements AMN 2015:18 and AMN 2016:9, but did not touch on the Board's recommendation. The Disciplinary Committee of Nasdaq Stockholm's decisions 2015:5 and 2016:9 also referred to private placements of shares, but no interpretation of the Board's recommendation was made in either decision. As explained above under The Work of the Board during the Year, the Swedish Securities Council statement AMN 2016:28 states that the Corporate Governance Board's recommendation expresses what in some respects constitutes good practice in the stock market regarding cash issues of shares, warrants and convertibles in limited companies whose shares are admitted to trading on a regulated market or traded on the First North, Nordic MTF or AktieTorget trading platforms.

III. PERSPECTIVES

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

This year's report contains two contributions:

- The first article was written by Halvor E Sigurdsen, the Chair of the Norwegian Corporate Governance Board. It follows last year's debate on individual ballots and vote counting at elections of company directors, the background to which was in part a request from Norges Bank Investment Management. The article gives an interesting insight into Norwegian nomination committee procedures, which in some respects differ from those in Sweden.
- The second article is written by Andreas Gustafsson, Senior Vice President and Chief Counsel Europe of Nasdaq, as well as a co-opted member of the Swedish Corporate Governance Board. In March 2017, Nasdaq's seven exchanges in the Nordic and Baltic countries launched a guide for ESG reporting, (Environment, Social, Governance), to engage, encourage and support listed companies that are interested in reporting on their environmental, social and corporate governance work. The article describes the background to Nasdaq's work with the guide and, among other things, illustrates how improved reporting on sustainability issues can help create value for reporting companies and their stakeholders.

Norwegian nomination committees


Halvor E. Sigurdsen

Halvor E. Sigurdsen is Chairman of the Norwegian Corporate Governance Board. In this article he provides valuable insights into the nomination committee procedure in Norway, highlighting special features of the Norwegian model.

The Norwegian Corporate Governance code recommends that companies should have a nomination committee. The recommendation was introduced in the first edition in the Code in 2004.

Indisputably, such committees are important in the Norwegian markets since their recommendations are almost always followed by the general meeting. In this article, we highlight some of the main features of the board member nomination process in Norway.

The main task of the committee is to propose candidates for board membership. It is still up to the shareholders to elect the members of the board. The general meeting can propose and vote for whomever they wish. Another task is to propose candidates to the nomination committee itself. The committee also proposes the fees to be paid by the company to the board members and to the members of the nomination committee itself. Most nomination committees have three members.

(The employees are entitled to elect typically two or three board members in Norwegian companies or groups in certain circumstances. Nomination committees play no role in the employees' election. The concept of general assembly (bedriftsforsamling) is known as a typical Norwegian one. The general assembly elects board members. However, this concept is in use only by a handful of listed companies.)

There are two main differences between Norway and most other countries when it comes to how nomination committees are put together:

- Firstly, the members of the committee are not members/directors of the board.
- Secondly, the members of the committee are elected directly by the general meeting.

According to the guidelines (the ”commentaries”) in the Code the ambition is to ”balance differing aspects” when the committee is composed.

One aspect is to reflect ”the principles of independence and the avoidance of any conflict of interest between the nomination committee and the candidates it puts forward for election”. Another aspect has been to ”benefit from the knowledge from people with experience from the company's board”.

Contrary to the Swedish Code, the Norwegian code recommends that nomination committees consist solely of people that are not members of the board. However, there is one exemption: One board member may be a member of the nomination committee if he or she does not stand up for re-election as a board member. In practice, board members are excluded from participating in the nomination committee simply because they have not decided (or at least have not made public) to withdraw from the board at the time the committee is elected, most often in April/May biannually.

Another recommendation regarding the composition of the committee, is that a majority of its members should be independent from the board members and the company's top management. The CEO or other top executives should not serve as members of the committee.

There is no recommendation regarding the independence between the committee members and any of the shareholders. At least in principle, the major shareholders may constitute the nomination committee, as long as the committee is able ”to take into account the interests of shareholders in general”.

In conclusion, the Code is apparently quite strict when it comes to excluding the board and the board members from the nomination process, at least on the decision on candidates.

In 2014 the code included a new recommendation on how the committee should work in order to consult with shareholders, the board members and the CEO. The intention was that said stakeholders will get the opportunity to advise the nomination committee. The committee should also have access to the board evaluation. Even if board members do not get accepted to the nomination committee, the idea is that each of them will have a say on e.g. the board's need for additional competence or diversity.

In 2016 we mapped the compliance to the recommendations on nomination committees as reported by Norwegian companies for the financial year 2014.

Approximately 85 pct. of the listed companies incorporated in Norway report that they have a nomination committee. Among those, only a few deviates from the more detailed recommendations applying to nomination committees.

Many of the reports on deviations from the recommendations (the explanations) were unconvincing. Some examples are:

- ”The company does not have a nomination committee laid down in its articles of association and is thus deviating from the code.”
- ”The Company has no separate nomination committee. However, it follows by the Articles of Association that the Shareholders' Committee elects members to the Board.”
- ”Because of the company's special shareholder structure, where four shareholders, including the CEO, control more than 75 pct. of the shares, the board does not want the general meeting to direct the work of the nomination committee. In certain circumstances, such directions may restrict the nomination committee's independent position and the shareholders' dialogue with the committee.”
- ”The Group's main shareholder, including related parties, owns 69.8 pct. of the shares in the company. Thus, the company does not have a nomination committee. The company's board of directors propose new board members to the general meeting. This has functioned well so far and it has safeguarded the shareholders' interests.”
- ”Deviating from the code in the sense that [the company] does not have a nomination committee. The reason is the current shareholder structure, whereby the main shareholder holds more than 50 pct. of the shares.”
- ”More than 65 pct. of share capital is represented by the company's Board of Directors. It is therefore not deemed necessary to establish a separate nominating committee.”
- ”The company does not have a nomination committee and does not see that proper to have a nomination committee with the current shareholder structure.”
- ”The company does not have a nomination committee laid down in the articles of association. Candidates to the company's board are proposed directly by the company's owners to the general meeting.”
- ”Due to its size, the company has decided not to have a nomination committee.”

One concern is that shareholders and others do not get relevant information on the procedure by which candidates to the board are in fact nominated. Equally important is that the deviating companies do not explain why they have chosen not to comply with the recommendation. Most of the companies refer to the single fact that they have one, or a few, major shareholder(s) but they do not explain why that fact results in the deviation.

According to the Code, the nomination committees shall propose candidates to the boards so they ”can attend to the common interests of all shareholders and meets the company's need for expertise, capacity and diversity”. Furthermore, the board should ”operate independently of any special interests” and at least two of the board members should be independent of the company's main shareholder(s).

The Norwegian Corporate Governance Board believes that a nomination committee established according to the Code is in the shareholders' common interest. Such committee is best positioned to make the relevant considerations on the appointment of candidates to the board. The absence of such committee will require a thorough explanation.

The Code recommends that shareholders should be able to cast votes for each of the candidates that are proposed to the general meeting. Furthermore, the proxy vote forms available to the shareholders before the general meeting should accommodate such voting. Market practice in Norway is that board members are elected for two-year periods. With staggered boards, the number of board members to be elected at the general meeting is often limited to two or three.

Information on how the companies apply the recommendation will obviously be available via the general meeting documents. But we found that approximately 50 pct. of the corporate governance reports for 2014 lacked relevant information. More than 10 pct. of the companies expressly reported that they deviated from the code.

The Norwegian Corporate Governance Board aims at improving both the compliance and the quality of the reporting (including explanations for deviations). One possible measure might be to emphasize that the recommendation manifests that election of board members is (maybe) the most important decision to be made by the shareholders. Such decisions should not be presented as faits acompliis by the nomination committees.

The general impression is the candidates nominated by the nomination committees are rarely, if ever, contested. This is no surprise, as the committees consults with the largest shareholders as part of the nomination process.

Nasdaq's voluntary ESG Reporting Guide for Nordic and Baltic markets


Andreas Gustafsson

Andreas Gustafsson is Senior Vice President/Chief Counsel Europe Nasdaq and is managing the group that provides legal and regulatory support for Nasdaq's European regulated entities including Exchanges, CCPs, CSDs and investment firms. In this article he comments on the recent Nasdaq initiative to issue a guide for listed companies wanting to improve their reporting on ESG matters and highlights some of the potential value drivers for the companies and their stakeholders from doing so.

Introduction

In March 2017, Nasdaq's Nordic and Baltic exchanges issued a voluntary guide[1)] on environmental, social and governance (ESG) reporting to support its listed companies (the Guide).

Many Nordic companies are already global leaders in ESG reporting, and the aim of the Guide is to further engage and encourage companies in addressing these critical matters. The mission of Nasdaq Nordic is to provide fair, transparent, and efficient markets for all stakeholders.

The Guide presents Nasdaq's point of view regarding the long-term value of measuring, managing, and reporting environmental, social, and corporate governance (ESG) data. It is intended as a support tool for our listed companies, but was created with both companies and investors in mind. We focus on both broad economic principles and specific performance measurements, because bottom line impacts are paramount.

It is clear that the value of ESG reporting does not reside entirely in the output of data. The very process of gathering this data, integrating it into management practices, and improving performance often leads to significant operational efficiency, enhanced risk oversight, and superior product innovation.

For Nasdaq, issuing the guide for the Nordic and Baltic markets is an important step in supporting ESG reporting and a beginning of a conversation rather than a final pronouncement. Nasdaq Nordic does not require the participation of its listed companies in this process. This is a completely voluntary initiative. It is not intended to compete with, supersede, or supplement any existing framework – but rather act as an informational reference for companies that need support in coping with the rising stakeholder and regulatory demand for ESG transparency.

Nasdaq's ESG Reporting Guide reflects the existing recommendations by the United Nations (UN) and its Sustainable Stock Exchanges (SSE) initiative, the World Federation of Exchanges' Sustainability Working Group and the leading industry standards on ESG reporting, as well as the European Union directive on non-financial reporting.

The aim of Nasdaq's Reporting Guide is not to add to the regulatory burden of the listed companies. On the contrary, Nasdaq frequently advocates for self-control and self-regulation in the financial markets. There is no obligation to agree with the principles of the guide or to comply with its recommendations. Nasdaq encourages companies to decide themselves whether or not the benefits of ESG reporting outweigh any related costs.

Background

The capital markets are robust and resilient engines of commerce, efficiently adapted to raise and sustain businesses. Markets empower companies to create jobs, provide goods and services, and engage with investors in a diverse and dynamic way. But markets are also sensitive to change; the demand for new ideas, better tools, and bigger data never stops.

[1)] http://business.nasdaq.com/esg-guide/

The World Federation of Exchanges[2)] (WFE), the largest and most inclusive trade association for stock exchanges around the world, develops and promotes market standards, proposes innovations and reforms, fosters international cooperation and coordination among regulators. Sensing a change in the market demand for data – specifically the investor community quest for corporate environmental, social, and governance (ESG) performance indicators – Nasdaq asked the WFE to assist.

Creation of the WFE Sustainability Working Group (SWG) in 2014 signaled the industry's commitment to explore and integrate ESG issues. Led for its first two years by Nasdaq, but comprised of representatives from a diverse array of two dozen global stock exchanges, this group has explored the purpose, practicality, and materiality of ESG data.

The Guide considers the long-term value of strategic and transparent ESG practices, finding that they can be as beneficial to individual companies as they are (via disclosure) to investors. In this work we have focused on both economic principles and specific data, because bottom line impacts are paramount. The Guide also suggests that a focus on ESG can lead to improvement and harmonization of management practices.

ESG Regulation in Europe

Nordic businesses are now aware of an emerging regulatory effort[3)] from the European Commission (EC). This "Directive" (technically, Directive 2014/95/EU)[4)] requires large companies to disclose non-financial and diversity information on an annual basis. The directive was first launched in December 2014, and it itself an amendment to a previous effort (Directive 2013/34/EU)[5)] targeting better financial statements in general. EU nations must begin to implement the Directive this year, so that companies can report for the 2017 financial year.

This is an expansion of the existing reporting rules, requiring broader disclosure of "non-financial" performance measures. The Directive requires companies to append a management report to their financial statement that covers many environmental, social, and corporate governance (ESG) matters, including:

- Environmental matters
- Social and employee matters
- Respect for human rights
- Anti-corruption and bribery matters
- Diversity in the Board of Directors

The *format* of this disclosure, however, is not clearly understood. "There is significant flexibility for companies to disclose relevant information," the guidelines state, and they "may rely on international, European or national guidelines." There is an underlying "comply or explain" rationale included; companies not willing or able to report on these issues must provide valid reasons for their refusal.

The new disclosure requirements apply to large public-interest entities with more than 500 employees. "Public-interest entities" include all companies listed in EU markets and even some unlisted companies (credit institutions, insurance firms, etc.) that Member States designate for inclusion due to business type, activity, or size. At first glance, there seems to be about 6,000 companies covered by the Directive – including some based outside the EU.

The EC actively advocates for greater corporate social responsibility (CSR). "The Commission promotes CSR in the EU and encourages enterprises to adhere to international guidelines and principles," the Commission has said. "The EU's policy is built on an agenda for action to support this approach." The reasons for this outreach are made clear: CSR offers real benefits for companies (better risk oversight, lower costs), markets (investor trust, sustainable capital flow), and society (reduced inequalities, economic transformation).

The timeline for enactment of this provision has shifted slightly, specifically to integrate feedback from the Climate Disclosure Task Force[6)] established by the Financial Stability Board (FSB). But the non-binding guidelines may be published as soon as possible in the spring 2017.

2) www.world-exchanges.org/home/
3) http://ec.europa.eu/finance/company-reporting/non-financial_reporting/index_en.htm
4) http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095
5) http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0034
6) https://www.fsb-tcfd.org/

This kind of regulatory effort is not limited to Europe. When it comes to governments requiring corporate disclosure of ESG factors, at least 14 members of the G20 and 32 of the 50 largest country economies have at least one regulation covering an aspect of environmental, social, and governance disclosure. As these global regulatory actions continue to emerge, both in Europe and beyond, there are institutions tracking their progress and potential impact. The UN PRI, for example, maintains a current database of this information: Global Guide to Responsible Investment Regulation[7].

The Nasdaq View of ESG

While the Guide primarily uses the term ”ESG” because it is commonly used among investors, the term ”sustainability” is used interchangeably as it is more common among companies. While subtle nuances exist, both terms are seen as encompassing the broad set of environmental, social and governance considerations that can impact a company's ability to execute its business strategy and create value.

While ESG factors are at times called non-financial, how a company manages them undoubtedly has financial consequences. The very term *non-financial* is a controversial point of reference, because many believe that ESG information is no less relevant or useful to an investor in assessing the financial prospects and operational performance of a company than information channeled through traditional accounting practices.

Studies have found correlation between companies with good ESG practices and a lower cost of capital, lower stock price volatility, and better valuation over the long term. Deutsche Asset & Wealth Management, for example, published a study (ESG & Corporate Financial Performance: Mapping the global landscape)[8] in 2015, and UNEPFI recently published a paper titled Fiduciary Duty in the 21st Century[9], that reinforced this supposition.

As those sources make clear, academics and analysts have found that ESG creates real impacts upon a host of vital business drivers, including:

- Access to capital
- Cost savings and productivity
- Risk management
- Revenue growth and market access
- Brand value and reputation
- License to operate
- Human capital management
- Employee retention and recruitment
- Mergers and acquisitions
- New product and service innovation

But the list above does not address other impacts, tactical concerns that Nasdaq believes are of increasing importance to its issuer community. Some of these specific concerns are listed below.

- Framework & Questionnaire Overload
  - There are dozens of reputable reporting agencies and ratings firms covering ”sustainability” in the broadest sense; companies are besieged with requests for ESG information, especially in the supply chain and RFP process. ESG reporting advice from the exchange can help companies separate the meaningful from the esoteric and efficiently acquiesce to information requests.
- Competitive Advantage
  - Companies with the expertise and resources to gather and report ESG data – as well as handle the multitude of requests – are disproportionately winning contracts, customers, and media praise.
- Investor Outreach
  - According to the Forum for Sustainable and Responsible Investment[10] (U.S. SIF), ”more than one out of every five dollars under professional management in the United States – $8.72 trillion or more – was invested according to SRI [Sustainable, Responsible, Impact investing] strategies.”
  - A significant knowledge gap still exists between investors and corporate IR on the topic of sustainability (or ESG) data disclosure.

7) https://www.unpri.org/page/responsible-investment-regulation
8) https://institutional.deutscheam.com/content/_media/K15090_Academic_Insights_UK_EMEA_RZ_Online_151201_Final_(2).pdf
9) http://www.unepfi.org/fileadmin/documents/fiduciary_duty_21st_century.pdf
10) http://www.ussif.org/

- Internal Value
  - Successful integration and analysis of ESG data (and related exercises, such as materiality analyses) often leads to cost savings, organizational efficiency, new product innovation, and improved staff morale.
- Staff Recruitment & Retention
  - Good ESG policies (often expressed as Corporate Social Responsibility or CSR) are no longer optional; companies with a neutral or negative perception on this topic have trouble finding and keeping talent, and they tend to pay more for it.
- True Enterprise Risk Management
  - Companies (and boards) wishing to have a full understanding of their long-term risk profile cannot ignore ESG factors.

Based on these dynamics, feedback from investors and issuers, and the growing awareness of global regulators, it's clear to us that a smart and strategic guide to the reporting of ESG data is needed. This is not intended to compete with, supersede, or supplement any existing framework – but rather act as an informational reference for the listed companies that seek it.

Nasdaq is committed to operating orderly and fair markets, but we also hope to participate in the creation of a more just, sustainable, and inclusive world. This work is vital to the continued health and prosperity of our industry and our planet.

The metrics

The Nasdaq voluntary reporting guide focuses on the 33 ESG metrics that the WFE recommended to stock exchanges around the world. Each metric is presented in terms of a Q&A, with answers (wherever possible) to the following questions (i) what does this ESG metric measure? (ii) how is this ESG metric measured? and (iii) why should this ESG metric be reported?

ENVIRONMENTAL (E)	SOCIAL (S)	CORPORATE GOVERNANCE (G)
E1. Direct & Indirect GhG Emissions	S1. CEO Pay Ratio	G1. Board – Separation of Powers
E2. Carbon Intensity	S2. Gender Pay Ratio	G2. Board – Transparent Practices
E3. Direct & Indirect Energy Consumption	S3. Employee Turnover Ratio	G3. Incentivized Pay
E4. Energy Intensity	S4. Gender Diversity	G4. Fair Labor Practices
E5. Primary Energy Source	S5. Temporary Worker Ratio	G5. Supplier Code of Conduct
E6. Renewable Energy Intensity	S6. Non-Discrimination Policy	G6. Ethics Code of Conduct
E7. Water Management	S7. Injury Rate	G7. Bribery / Anti-Corruption Code
E8. Waste Management	S8. Global Health Policy	G8. Tax Transparency
E9. Environmental Policy	S9. Child & Forced Labor Policy	G9. Sustainability Report
E10. Environmental Impacts	S10. Human Rights Policy	G10. Other Framework Disclosures
	S11. Human Rights Violations	G11. External Validation, Assurance
	S12. Board – Diversity	

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SWEDISH
CORPORATE
GOVERNANCE BOARD
Väpnargatan 8, 6 tr | SE-114 51 Stockholm, Sweden
www.corporategovernanceboard.se