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Efficiency of Share-Voting Systems: Report on Sweden

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B. Espen Eckbo
Darmouth College - Tuck School of Business and ECGI
Giulia Paone
Dartmouth College - Tuck School of Business
Runa Urheim
Central Bank of Norway

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Abstract

Institutional shareholders around the world increasingly use active share-voting to protect their portfolio investments and improve corporate governance. However, exercising voting rights involves costly and often arcane country-specific legal rules. This report on Sweden is one of a series examining the potential for increased harmonization of cross-border share-voting systems and proxy voting in the U.S. and Member States of the European Union (EU). The first report, on Italy, is found in Eckbo, Paone, and Urheim (2009). Our Swedish report describes the share-registration system and voting chain for publicly traded companies in Sweden. We highlight voting impediments and examine recent regulatory attempts to make the voting process both more efficient and conforming to the 2007 EU Shareholder Rights Directive. We also provide empirical evidence on how Swedish listed rms have adapted to Sweden's share-voting system.

Keywords: Share Voting, Shareholder Rights Directive, Corporate Governance, Hare Holding System, Corporate Law

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B. Espen Eckbo
Tuck School of Business at Dartmouth
Hanover, NH 03755
United States
phone: 603-646-3953, fax: 603-646-3805
e-mail: b.espen.eckbo@dartmouth.edu

Giulia Paone*
Tuck School of Business at Dartmouth
Hanover, NH 03755
United States
e-mail: giulia.paone@tuck.dartmouth.edu

Runa Urheim
Central Bank of Norway
P.O. Box 1179
Oslo N-0107
Norway
e-mail: rur@nbim.no

*Corresponding Author

EFFICIENCY OF SHARE-VOTING SYSTEMS
Report on Sweden*

B. Espen Eckbo
Lindenauer Center for Corporate Governance, Tuck School of Business at Dartmouth College
Norwegian School of Economics and Business Administration and ECGI

Giulia Paone
Lindenauer Center for Corporate Governance, Tuck School of Business at Dartmouth College

Runa Urheim
Norges Bank Investment Management

August 2010

Abstract

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1 Introduction to the Series

1.1 Fundamentals of share-voting

Beneficial owners of common shares in a limited liability company - henceforth "shareholders" or "stockholders" - have only minimal contractual rights. For example, unlike owners of debt contracts, stockholders cannot put the company in bankruptcy, nor can they require company disbursements (such as dividends). Shareholders who are unhappy with the current management of the company have basically two options: sell ("the Wall Street Walk") or exercise voting rights in order to elect directors better able to protect shareholder interests. The first option requires a deep and liquid stock market and is becoming increasingly impractical for large institutional owners such as hedge funds, pension funds, and sovereign wealth funds.

Unfortunately, the second option - voting - is fraught with obstacles and costly impediments. First and foremost, it requires shareholders to be sufficiently informed about company management policies to pass an independent judgment on management and director quality. Arriving at an independent opinion requires committing time and resources which quickly become prohibitive for smaller shareholders. Thus, small shareholders rationally do not exercise their votes.

Furthermore, even many large shareholders have historically elected not to vote - or simply to passively cast their votes in favor of management. This passive approach to voting reflects a number of reasons, ranging from outright regulatory roadblocks on voting facing certain institutional owners, to the classical "free rider" problem: while the cost of voting is borne by the voting shareholder only, the benefits are shared also with shareholders who do not vote, encouraging some shareholders to free-ride on the voting effort of others.

When large blocks of votes passively favor management, the corporate governance system suffers. Poor governance accentuates the potential for costly conflicts of interest between shareholders and their agents (managers and directors), and between large and small shareholders. Such conflicts result in various forms of shareholder wealth expropriation. Firms pay up front for market concerns with wealth expropriation through a higher cost of equity capital, which in turn stifles economic activity. The risk of expropriation generally depends on a country's legal and political system with the associated constraints on various forms of self-dealing.

While all countries find it optimal to allow some form of self-dealing within the law, systems vary

greatly in terms of (1) how such "garden variety" conflicted transactions are flagged and approved up front, (2) which parties are entitled to receive information, and (3) the opportunities for and costs of reversing the transactions through legal action after they occur. Since resorting to the court system is expensive, a more cost-effective approach to minimize the costs of garden-variety self-dealing is often to strengthen the shareholder vote. With this in mind, institutional investors are increasingly exercising their option to vote in stock markets around the world.

1.2 The Tuck share-voting research project

Share-voting requires navigation of often complex and arcane country-specific rules and regulations which likely deter a substantial fraction of shareholders from voting. Tuck's Lindenauer Center for Corporate Governance is therefore undertaking a comprehensive research project addressing issues concerning the efficiency of share-voting systems, with a particular focus on cross-border voting.

The project is undertaken in collaboration with Norges Bank Investment Management (NBIM) - the manager of Norway's $400 billion "Government Pension Fund". The Government Pension Fund, which is best characterized as a sovereign wealth fund (its name notwithstanding, it has no formal pension obligations), receives the bulk of Norway's oil export revenues. NBIM is required by law to invest the entire fund outside of Norway. Moreover, also by decree, NBIM must follow a highly diversified investment policy. As a result, the fund holds shares in a large number (currently eight thousand) of companies listed on the most liquid stock markets around the world.

Over the past decade, NBIM has increasingly implemented a policy of engaging in active share-voting around the world. The project focuses in particular on share-voting systems in countries where NBIM is heavily invested, as measured by the dollar value of the country weight in its world portfolio. The project will eventually produce five country reports: Italy, Sweden, Norway, UK, and the US. Although NBIM by statute must invest outside of Norway, we include Norway because it is an example of a centralized share registration system - which is a useful benchmark against which to measure the efficiency of other types of systems. The first report on Italy (Eckbo, Paone, and Urheim, 2009) is available in the Social Science Research Network Electronic Paper Collection at http://ssrn.com/abstract=1431733.

For each country, the project produces a detailed technical description on the country's voting system, as described by the existing legal rules and regulations. This description has value in of

itself as there is currently no uniform set of system descriptions available in the English language covering all of the countries studied here. Thus, to date, cross-border investors have faced not only a bewildering set of rules but also the problem of interpreting some of those complex rules through the often idiosyncratic legal jargon of a foreign language.

Our research team, being proficient in the major European languages, is providing translations of the core set of the various country rules. While an occasional language issue is inevitable, we believe our English translations accurately capture the original meaning and intent of the original legal terms. If in doubt, the country reports contain frequent references to the original language sources.

The voting-project (1) studies the efficiency of existing voting systems, (2) provides data on market practices by large publicly traded companies within these systems, and (3) suggests possible areas for systemic improvements. Any analysis of the efficiency of voting systems must contemplate the possibility of "straight through processing"—the automatization of the entire proxy voting process from start to finish.[1]

A key element of straight through processing system is a centralized share registry (referred to below as the Central Security Depository or CSD). While virtually all modern capital markets operate through a CSD today, the role of the CSD in the voting-chain may sometimes be improved. Another element involves separating the voting chain from the custody chain so as to simplify the distribution of general meeting-related information. Also, direct electronic voting platforms, offered by individual companies rather than by middlemen, may economize on voting costs. Based on the reports of the individual country voting systems, the project integrates its data on market practices with its analysis of the likely efficiency of straight through voting systems and alternatives. This integration of data into our systemic analysis of cross-border rules and regulations makes the Tuck Share-Voting Project unique in the current debate.

[1]In 2009, the JOINT WORKING GROUP ON GENERAL MEETINGS published the 'MARKET STANDARDS FOR GENERAL MEETINGS - Version subject to endorsement 30 October 2009' aimed at making the information flow between shareholders and the companies they own more efficient. The standards are available at http://www.europeanissuers.eu/en/.

1.3 Report outline

To ease exposition and promote accessibility, the individual country reports share a common format. This format reflects the fact that every country's share-voting system, as summarized in Figure 1, consists of a set of four key legal and regulatory components: (1) company and securities law, (2) listing rules, (3) CSD's regulations, and (4) corporate governance codes and principles. Section 2 (Regulatory Framework) of the report describes the design of each of these components for Sweden.

As mentioned above, shareholder incentives to vote depend on both the structure of ownership and the nature of shareholder rights. Section 3 characterizes the domestic and foreign ownership structures of Swedish listed companies and describes important aspects of shareholder rights, in particular those exercised at the general meeting (GM). Thus, this section discusses the existence of different classes of shares (which may deviate from the "one share - one vote" principle), voting caps, and other ownership limits. It also highlights important issues addressed by the GM, such as board elections and corporate control transfers.

The report, in Section 4, then explains technical aspects of the share-holding system, describing the role of the Central Securities Depository (CSD) and other securities intermediaries in the custody chain, and rules for proper authentication of registered shareholders casting votes at the GM. The shareholding system sets the parameters for—and is therefore intrinsically linked to—the voting system discussed later in the report.

Before detailing the share-voting process itself, Section 5 explains how the Swedish system, starting from 2007, mandates the production, storage, and dissemination of information to the public—so-called "regulated information". Regulated information includes information relevant for exercising shareholder rights, company information on ownership structures (major holdings, shareholder agreement), adoption of codes of conduct, protection of minority interests, and financial information. This information is, of course, crucial to the effectiveness of the entire voting system: it forms much of the basis on which shareholders vote.

Sections 6 to 10 describe rules governing the voting process and the exercise of voting rights at the GM. This includes rules governing calling a GM and the control over the GM agenda (Section 6), criteria for participating in the GM (Section 7), voting by proxy and following the GM by electronic means (Section 8), quorum and majority requirements for passing resolutions and other

functioning rules of the GM (Section 9), post-GM distribution of information to shareholders and the shareholders' right to challenge the GM outcome (Section 10).

Section 11 summarizes the entire voting chain. In sum, shareholders exercise voting rights at the GM directly or indirectly through financial intermediaries, including custodians and investment managers. The company calls the GM, sets the agenda, and discloses supporting documents. The country's corporate law, stock exchange listing rules, central securities depository (CSD) regulations, and governance codes regulate this information flow and shareholder solicitation activity. Large shareholders often purchase the advice of proxy voting agencies, and may instruct these and other agencies to cast the vote on their behalf. The legal rules affect both the feasibility of shareholders receiving timely information prior to the GM, and the effectiveness of the voting chain when it involves several intermediaries. The section also summarizes the timeline of activities around the GM (voting timeline).

In Section 12 we identify key impediments to voting Swedish shares, in particular from the perspective of cross-border voting by foreign institutional shareholders. Here we make specific recommendations for improvements to Sweden's share-voting system, which require changes to Swedish Company Law consistent with the EU Shareholder Rights Directive. The discussion in Section 12 is organized around the Report commissioned by the Swedish Government which includes proposals to implement the Directive in Sweden recommended by Professor Rolf Skog.[2]

Finally, the report contains information on the market practices observed in financial year 2008, 2009, and 2010 for a sample of ten of the largest companies listed on the Swedish Stock Exchange (NASDAQ OMX Stockholm).[3] The market practice information includes material published by the companies for the GM and describes how the GM is regulated in the company bylaws (articles of association— *"bolagsordning"*). We are particularly interested in criteria for GM participation and shareholder voting. Relevant aspects of the market practice information are disclosed throughout the report in order to illuminate the technical discussion. Moreover, a full disclosure of the information is given in Section 13 in the form of tables detailing each company studied.

The data and analysis of this report form the Swedish input to the ongoing cross-country analysis and recommendations under the larger Tuck Share-Voting project.

[2]See Skog (2008). The Report is available at http://www.sweden.gov.se/sb/d/9989/a/107463.

[3]The companies are: Ericsson, Svenska Handelsbanken, Skandinaviska Enskilda Banken (SEB), H&M, Volvo, Sandvik, Nordea, TeliaSonera, Atlas Copco, and Swedbank.

2 Regulatory framework

We describe the Swedish share-voting system in terms of the country's company and securities law, listing rules and corporate governance code and principles. As summarized in Figure 1, the regulatory framework determines the rights and obligations of shareholders and their listed companies, as well as the CSD, custodians, and voting service providers. We discuss each of these in turn. To ease the exposition, Table 1 lists references to seventeen of the most important elements of Sweden's legal framework.

2.1 Company and securities law

The Swedish public limited liability company is regulated by the Swedish Companies Act.

Before 2006, Swedish companies were regulated by the Swedish Companies Act (SFS 1975:1385) which came into force on January 1977. In 2005, a substantial review of the Act took place and, on January 1, 2006, the new Companies Act ("Aktiebolagslagen" (2005:551) –henceforth "ABL") took force. The act has been amended and supplemented by several subsequent acts, last amended in 2010 (SFS 2010:834).

The ABL regulates only 'limited liability companies' ("aktiebolag") and distinguishes between private and public limited liability companies.[4] Starting from April 1, 2010, in order to be classified as a limited liability company, a company must have a share capital amounting to at least SEK 50,000.[5] Approximately one quarter of all Swedish companies are limited companies.[6]

Only a public limited liability company (henceforth simply "company") whose share capital amounts to at least SEK 500,000 can promote the sale of its shares to broad circles of potential investors and list the shares for trading on a stock exchange or other organized marketplaces. Therefore, all listed companies are public limited liability companies.[7]

The Swedish corporate governance system has been significantly impacted by the EU Company Law Directives adopted so far by the European Parliament and the Council. As a Member State of the European Union, Sweden has to periodically implement the EU Directives as well as take

[4] ABL, Chapter 1, sections 1 and 2.
[5] ABL, Chapter 1, section 5 (as amended by SFS 2010:89 which came into force on April 1, 2010). Previously the minimum capital requirement was SEK 100,000.
[6] See "The Swedish Financial Market 2009", Sveriges Riksbank. Available at http://www.riksbank.com.
[7] ABL, Chapter 1, sections 7 and 8.

into account the Recommendations issued by the European Commission.[8]

In July 2006, the Swedish legislature has implemented the EU Directive on Takeover Bids through the Act on Public Takeover Bids in the Stock Market (SFS 2006:451).[9] The EU Directive on Markets in Financial Instruments (MiFID) was implemented in 2007.

In July 2007, Sweden also implemented the EU Transparency Directive.[10] Implementing rules were incorporated in several existing Acts such as the Annual Accounts Act ("Årsredovisningslagen" 1995:1554) and the Financial Instruments Trading Act ("Lag (1991:980) om handel med finansiella instrument").

On July 6, 2007, the Swedish Financial Supervisory Authority ("Finansinspektionen") issued "Regulations governing operations on trading venues" (FFFS 2007:17) which, among other things, contain detailed provisions regarding information and disclosure requirements for issuers of transferable securities and notification and disclosure of information related to shareholdings. Finansinspektionen is a public authority which authorizes, supervises, and monitors all companies operating in Swedish financial markets.[11]

New legislation on securities markets, the Securities Market Act (SFS 2007:528), came into force on November 1, 2007, and replaced the Securities Business Act and the Clearing Operations Act ("Lagen om börs och clearingverksamhet" 1992:543).

In 2008, the Swedish Government commissioned Professor Rolf Skog to study how the EU Shareholder Rights Directive of 2007 (EU Directive 2007/36/CE) should be transposed into Swedish law, resulting in Skog (2008). (See Section 12.2 below.)

EU Member States had until August 2009 to implement the Directive. As of today, Sweden has not yet fully implemented the Shareholder Rights Directive. Legal work to complete the

[8] Among the legal instruments available to the Community institutions to carry out their tasks under the Treaty establishing the European Community, the directives bind the Member States as to the results to be achieved; they have to be transposed into the national legal framework and thus leave a margin for manoeuvre as to the form and means of implementation. Recommendations are non-binding declaratory instruments.

[9] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids. Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0025:EN:HTML.

[10] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 (known as Transparency Directive). The directive introduced rules on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC. Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:390:0038:0057:EN:PDF.

[11] Companies offering financial services in Sweden (such as banks and other credit institutions, insurance companies, securities and fund management companies, stock exchanges, authorised marketplaces and clearing houses) need an authorization issued by Finansinspektionen.

implementation process is ongoing and the legislation implementing the Directive is expected to enter into force by January 1, 2011.[12] (See Section 12.2.)

2.2 Stock exchange listing rules

There are two Swedish stock exchanges authorized by the Swedish Financial Supervisory Authority (Finansinspektionen, henceforth "FSA"): NASDAQ OMX Stockholm AB and Nordic Growth Market AB (NGM).[13] In the following, we cover the listing rules for NASDAQ OMX Stockholm only, which represents more than 90% of the capitalization of Swedish stock markets.

The U.S. NASDAQ stock exchange merged with OMX Stockholm AB in 2008. The new group, NASDAQ OMX Group, Inc. is the world's largest exchange company. NASDAQ Marketplaces include NASDAQ Stock Market (the U.S. listings market), NASDAQ OMX Nordic, NASDAQ OMX Baltic, NASDAQ OMX First North,[14] and NASDAQ Dubai. NASDAQ OMX Nordic consists of four local stock exchanges in Copenhagen, Stockholm, Helsinki, and Iceland.[15] As of January 2010, the market capitalization of NASDAQ OMX Nordic was EUR 607 040.19 million and there were 788 companies (764 domestic and 24 foreign) listed on the four local exchanges.[16]

NASDAQ OMX Stockholm is a member of NOREX, the strategic alliance between the Nordic and Baltic Stock Exchanges (Norway, Denmark, Finland, Sweden, Iceland, Estonia, and Latvia). NOREX is the first alliance to implement a common cross-border trading system with harmonized rules for trading and membership requirements. In fact, financial instruments admitted to trading in Copenhagen, Helsinki, Oslo, Iceland, Riga, Stockholm, and Tallinn can be traded in the same system.[17] NOREX Member Rules are adopted by the NASDAQ OMX Nordic and Oslo Børs. NASDAQ OMX Baltic (the Riga Stock Exchange, Tallinn Stock Exchange, and Vilnius Stock Exchange) have adopted separate sets of rules, with very similar contents as the NOREX Member

[12] See http://www.regeringen.se/sb/d/12252/a/145938.

[13] NGM is the exchange for Nordic startup (small growth) companies. Listing on the NGM Stock Exchange requires 300 shareholders and at least 10% of shares and 10% of votes in public hands. NASDAQ OMX Stockholm requires at least 500 shareholders and at least 25% of shares in public hands (discussed further below). The NGM Stock Exchange offers listing and trading in equities on its NGM Equity list and derivatives trading on the Nordic Derivatives Exchange (NDX). NGM also operates Nordic MTF Stockholm, an unregulated market for trading in companies not yet publicly traded. More info on NGM are available at http://www.ngm.se/main.aspx?language=EN&siteid=A.

[14] NASDAQ OMX First North is an alternative to the Main market, with lighter requirements and rules, operated by the different exchanges within NASDAQ OMX. It does not have the legal status as an EU-regulated market.

[15] For more information on the OMX Nordic Market see http://nasdaqomx.com/listingcenter/nordicmarket/.

[16] Source: European Securities Exchange Statistics, Federation of European Securities Exchanges, January 2010, available at http://www.fese.be/en/?inc=art&id=3.

[17] Trading on the NOREX Exchanges takes place in the common trading system SAXESS.

Rules.[18]

Public companies listed on NASDAQ OMX Stockholm are presented on the Nordic list, which also presents the public companies listed on the stock exchanges in Helsinki, Copenhagen and Reykjavik. The Nordic list is divided into three segments: Large Cap (with the OMX Nordic 40 and the OMXS 30 indexes), Mid Cap, and Small Cap.[19] The Nordic Large Cap segment includes big companies with a market capitalization exceeding EUR 1 billion. Companies with a market value between EUR 150 billion and EUR 1 billion belong to the Mid Cap segment while companies with a capitalization below 150 million Euros are listed in the Small Cap segment.[20] OMX Stockholm 30 (OMXS30) is the NASDAQ OMX Stockholm's leading share index. The index consists of the 30 most actively traded stocks on the exchange.[21]

The Nordic list represents a harmonization of the listing requirements. To be listed on the Nordic Exchange, the expected market value of the equities must be no less than EUR 1 million. Further requirements are that the ownership must be sufficiently spread and that the business must have existed for a sufficiently long period (three years) and must show stable profitability or have financial resources to cover operations for at least twelve months.

The vast majority of the listing requirements are harmonized between NASDAQ OMX Helsinki Oy, NASDAQ OMX Stockholm AB, NASDAQ OMX Copenhagen A/S and NASDAQ OMX Iceland HF. Because of special requirements regarding, inter alia, national legislation or other differences in the regulatory framework in a specific jurisdiction, some minor differences still exist in the Listing Requirements between Exchanges in Helsinki, Stockholm, Copenhagen and Iceland. The rules regarding shares are in substance harmonized between NASDAQ OMX Nordic exchanges, especially the listing requirements and the disclosure rules.[22]

In the report we make reference to listing rules that govern companies listed on the NASDAQ

[18] The latest updated version of the NOREX MEMBER RULES came into force in October 2009 and is available on the NASDAQ OMX Stockholm web site.

[19] Companies belong to a market cap segment (small-, mid- and large cap) based on their average market value during the given review month. In 2009, NASDAQ OMX Nordic amended the market capitalization (market cap) classification standards at NASDAQ OMX Nordic Exchanges. For more details see http://ir.nasdaqomx.com/releasedetail.cfm?releaseid=386626.

[20] Companies within each segment are also divided into sectors according to the international Global Industry Classification Standard (GICS).

[21] See http://omxnordicexchange.com/products/indexes/OMX_indexes/OMXS_Local_Index/ The composition of the OMXS30 index is revised twice a year.

[22] Section 2.1.2 of the NASDAQ OMX Stockholm's Rule Book for Issuers.

OMX Stockholm (hereafter "NOS").[23]

Each company listed on the NOS must enter into a Listing Agreement with the exchange and follow the applicable NOS listing requirements included in the Rule Book for Issuers (hereafter "NOS Rules").[24] Listed companies are subject to sanctions which could follow from a potential breach of the rules. Under the NOS Rules:

- Share negotiability: The company's shares must be freely negotiable.[25]
- Financial statements and sufficient operating history: The company must have published the annual accounts dictated by the national accounting law for the last three financial years. Where applicable, the accounts must also include consolidated accounts for the company and all its subsidiaries. Moreover, the line(s) of business and the field of operation of the company and its group shall have a sufficient operating history. In evaluating the operating history, a company that has conducted its current business for three years and is able to present financial accounts for these years is normally deemed to fulfill the requirement.[26]
- Profitability and financial resources: The company must document stable profitability or, alternatively, demonstrate to have sufficient working capital (financial resources) for its planned business for twelve months following the first day of listing.[27]
- Liquidity and market depth: As a general requirement, the company must have a sufficient number of shares (25% within the same class) in public hands[28] and a sufficient number of shareholders. Under normal circumstances, companies having at least 500 shareholders holding shares with a value of around EUR 1000 will be considered to fulfill the requirement regarding the number of shareholders.[29]

[23]NASDAQ OMX Stockholm rules and regulation are available at http://nasdaqomx.com/listingcenter/nordicmarket/rulesandregulations/stockholm/.

[24]The most up to date verison of the NASDAQ OMX Stockholm's Rule Book for Issuers came into force on July 1, 2010.

[25] Section 2.3.3 of the NOS Rules. See also Chapter 15, section 2, of the Act (2007:528) on Securities Market.

[26]Sections 2.3.5 and 2.3.6 of the NOS Rules.

[27]Sections 2.3.7 and 2.3.8 of the NOS Rules.

[28]Here "public hands" means a person who directly or indirectly owns less than 10% of the company's shares or voting rights. The Exchange clarifies that the 25-percent rule is to be seen as a proxy, supporting the main principle that there should be a sufficient share distribution. Consequently, once a company is admitted to trading and listing, the Exchange will continuously assess whether share distribution and liquidity are sufficient from an overall viewpoint, and the 25-percent rule will thus become only one of many components in the Exchange's assessment.

[29]Sections 2.3.9 - 2.3.12 of the NOS Rules.

- Market capitalization: The expected total market value of the shares shall be at least EUR 1 million.[30]

- Administration of the company: members of the board of directors and the company's management must have a sufficient degree of competence and experience to govern and manage a listed company.[31]

- Information disclosure: Well ahead of the listing, the company must have an established organization (procedures and control systems) that ensures timely dissemination of reliable, accurate, and up-to-date information to the stock market in accordance with the rules of the Exchange.[32] (For more details about NOS's disclosure rules see Section 5.1 below.)

- Compliance with generally acceptable behavior in the securities market: In addition to laws, other regulations, and the NOS Rules, the company must also comply with generally acceptable behavior in the securities market. Section 5 of the NOS Rules defines "generally acceptable behavior" as "the actual standard practice in the stock market for the behavior of listed companies. Such standard practice could, for example, gain expression in the comments issued by the Swedish Security Council, recommendations from the Swedish Financial Reporting Board or the Swedish Code of Corporate Governance".

It is interesting to notice that rules on director independence have been removed from the NOS Rules, revised, and included in the Revised Corporate Governance Code which came into force on February 1, 2010. (For more details see Section 3.3.4 below.)

Exchange members must also comply with the rules issued by the Swedish Industry and Commerce Stock Exchange Committee (Näringslivets Börskommitté - NBK).

The NOS Rules for shares also include some specific provisions regarding for example repurchase and sales of a company's own shares and takeovers. (For more details on takeover rules see Section 3.3.8 below.)

If a company fails to comply with law, other regulations, NOS Rules, or generally acceptable

[30]Section 2.3.13 of the NOS Rules. The expected aggregate market value of the shares is typically evaluated based on the offering price in the Initial Public Offering, but other means of evaluation can be used as well. This requirement applies only prior to an initial listing on the Exchange.
[31]Sections 2.4.1 and 2.4.2 of the NOS Rules.
[32]Section 2.4.3 of the NOS Rules.

behavior in the securities market, the Exchange may resolve to delist the company's traded securities or, in other cases, impose a fine corresponding to no more than 15 times the annual fee paid by the company to the Exchange. For less serious non-compliances, the Exchange may also issue a warning in lieu of imposing a fine.[33]

2.3 Self-regulation in the Swedish securities market: the new Corporate Governance Code and other rules

Self-regulation represents a vital part of the Swedish regulatory framework for company law and corporate governance.

Self-regulation of the private business sector in Sweden is administered by the Association for Generally Accepted Principles in the Securities Market ("Föreningen för god sed på värdepappersmarknaden") which promotes compliance with and development of generally accepted principles in the securities market. The association was set up in 2005 by a number of corporate sector organizations.[34]

The Swedish Corporate Governance Board ("Kollegiet för svensk bolagsstyrning"), the Swedish Securities Council ("Aktiemarknadsnämnden"), and the Swedish Financial Reporting Board ("Rådet för finansiell rapportering") are the three specialist bodies through which the Association pursues its goal.

The Swedish Industry and Commerce Stock Exchange Committee ("Näringslivets Börskommitté" - NBK) has been the Association's fourth specialist body until May 18, 2010. NBK has been a self-regulatory body whose mission was to promote the observance and development of good practice on the Swedish stock market mainly through the issuance of rules. The Committee has produced several rules over the years such as rules about benefits to senior executives, disclosure rules and, most importantly rules on public takeover bids. In 2009, the Committee undertook a review of the takeover rules. (See below Section 3.3.8.) At the annual meeting of May 18, 2010, the Association for Generally Accepted Principles in the Securities Market decided to transfer the tasks of NBK to

[33] Section 5 of the NOS Rules.

[34] Members of the Association include: the Association of Stock Market Companies, the Institute for the Accountancy Profession in Sweden (FAR SRS), the Swedish Mutual Fund Association, the Institutional Owners Association for Regulatory Issues in the Stock Market, OMX Nordic Exchange Stockholm AB, the Stockholm Chamber of Commerce, the Swedish Bankers Association, the Swedish Securities Dealers' Association, the Confederation of Swedish Enterprise, and the Swedish Insurance Federation.

the Corporate Governance Board and to terminate NBK.

As discussed above, under the NOS Rules, listed companies must comply with recommendations from the Swedish Financial Reporting Board, adhere to the statements made by the Securities Council, and comply with the Swedish Code of Corporate Governance as well as any other generally accepted principle in the securities market.

In Sweden, the establishment and publication of annual accounts, consolidated accounts, and interim report is regulated by the Annual Accounts Act (Årsredovisningslag (1995:1554)). Statutory provisions are supplemented by standard-setting bodies and accounting practices. The Swedish Financial Reporting Board formulates the recommendations and statements for companies whose securities are listed on a regulated market in Sweden, on the basis of international accounting standards as adopted by the EU. Credit institutions, securities companies and insurances, in presenting their financial reports must comply with the regulations of the Swedish Financial Supervisory Authority, in addition to the statutory provisions and the recommendations of the Board. In the case of discrepancies, the regulations of the Financial Authority prevail on the recommendations of the Board.[35]

The Swedish Securities Council is a private self-regulatory body which, through statements, advice, and information promotes good practices in the Swedish stock market and offers guidance on specific corporate governance issues.[36] The Swedish Securities Council can issue statements on its own or after a petition. The Council gives special consideration to issues that set a principle or are of practical importance to the stock market.

The Swedish Corporate Governance Board was created in 2005 with the general aim of promoting the development of good corporate governance in Swedish stock exchange listed companies. This is mainly done providing norms for corporate governance of Swedish listed companies in the Corporate Governance Code. A key aspect of the board's mission is "to continuously ensure that Sweden has a relevant, modern and effective code for corporate governance of listed companies."[37]

Sweden's first generation Corporate Governance Code for the largest stock exchange listed

[35]More information about the Financial Reporting Board is available at http://www.radetforfinansiellrapportering.se/topmeny/in-english__4.

[36]More information about the Council is available at http://www.aktiemarknadsnamnden.se/ http://www.corporategovernanceboard.se/about-the-board/swedish-self-regulation/securities-council.

[37]More information about the Swedish Corporate Governance Board is available at http://www.corporategovernanceboard.se/.

companies came into force in July 2005. The Code brought Sweden in line with EU Directives and Recommendations. The Code affected director fiduciary duties and powers and suggested board compositions and committees. Furthermore, it enhanced the definition and role of non-executive independent directors.

In 2008, the Corporate Governance Board undertook a major review of the Code and a revised Code came into force in July 2008. While the 2005 Code was applicable only to the largest listed companies, the revised Code applies to all Swedish companies whose shares are admitted to trading on a regulated market. Like for the 2005 Code, compliance with the revised 2008 Code is based on the "comply or explain" principle. This means that companies required to apply the Code under the listing rules do not have to comply with every rule in the Code. Companies can deviate from a rule provided that they report the deviation and explain the reason for their non-compliance.

It is worth mentioning that the 2008 Code requires a company, in addition to explaining the reasons for its non-compliance, to describe the alternative preferred solutions and the reasons for them. Companies are required to include all this information in a Corporate Governance Report. Starting from March 2009, the ABL requires Swedish listed companies to publish a corporate governance report including information on the compliance with a corporate governance code. (See Section 6.4 for more details on the Corporate Governance Report.)

Swedish listed companies generally adopt the Corporate Governance Code issued by the Corporate Governance Board in 2008. In fact, all of the companies in our sample have adopted the Code and published the required annual report detailing their governance practices.

In 2009, the Swedish Corporate Governance Code has been revised in order to take into account the EU Commission's recommendation on directors' remuneration (2009/3177/EG) as well as certain changes in Swedish legislation. A draft revised Code was published on 27 October 2009. After an extensive consultation, the Board adopted the revised Code, which was published on the Board's website on 22 December 2009. The revised code came into force on February 1, 2010, and introduced new rules on director remuneration and independence as well as changes to the rules concerning audit committees. The Revised Code 2010 during a transition period will be applicable alongside with the Revised Code 2008 in accordance with the applicable transitional provisions.[38]

[38] The transitional provisions are available at: http://www.corporategovernanceboard.se/the-code/the-revised-code-2010.

In the following sections we analyze the main rules of the new Corporate Governance Code.

As we have seen above, while the Code is not formally a part of the NOS Rules, it is indirectly a part of the rules since it has to be seen as an expression of good market practice regarding corporate governance. The Exchange's rules state that a listed company shall conduct its business in line with common accepted market practice.[39]

3 Ownership structure and shareholder rights

In this section, we first briefly characterize foreign and domestic ownership structures of Swedish publicly traded firms. We then examine control-aspects of share-ownership structures and, in particular, how shareholder rights are played out in the context of the annual general meeting.

3.1 Ownership structure of Swedish listed companies

As discussed above, there are two regulated marketplaces in Sweden: NASDAQ OMX Stockholm, which has a dominant position, and NGM which offers listing and trading in equities on its NGM Equity list. At the end of 2009, there were 281 companies listed on these two regulated marketplaces.[40] Additionally, there were 241 companies listed on the multilateral trading facilities (MTF), Aktietorget, First North and NGM Nordic MTF, with a simpler trading environment than the regulated marketplaces. The total market value of all quoted classes of stock on all the market places was approximately SEK 3518 billion (USD 490 billion).[41]

Only about half of the companies are listed on the two regulated market places. However, at the end of 2008, NASDAQ OMX Stockholm and NGM Equity counted for more than 99% of the market capitalization of the equities traded in Sweden.[42]

Equity ownership on the Swedish stock exchange is concentrated among a few controlling owners who secure control through multiple classes of shares and pyramid structures. Nevertheless, there has been a dramatic change in the ownership structure in Swedish firms over the last 20 years, the major change being the strong increase of foreign ownership. This is of course partly due to

[39] http://www.nasdaqomx.com/listingcenter/nordicmarket/rulesandregulations/stockholm/corporategovernancestockholm/.

[40] 255 companies listed on NASDAQ OMX Stockholm and 26 listed on NGM Equity.

[41] See "Ownership of shares in companies quoted on Swedish exchanges, December 2009", Statistics Sweden. Available at http://www.scb.se/.

[42] See "The Swedish Financial Market 2009", Sveriges Riksbank. Available at http://www.riksbank.com.

the general trend towards globalization, but foreign ownership appears to have increased more in Sweden than in most other developed countries.[43]

Both foreign and domestic institutional investors are significant and represent in total more than 50% of the market cap of listed shares in Sweden.

3.1.1 Foreign ownership

Table 2 shows the ownership structure (by market cap) in Swedish listed companies as of December 2009. Foreign ownership in Swedish listed companies is about average for European stock markets. According to a 2008 report by the Federation of European Securities Exchanges (FESE), at the end of 2007, foreigners held 38% of the Swedish listed stocks, with the average across the 27 markets covered being 37%.[44] Since 1983, foreign ownership of Swedish stocks has increased from 8% to 38% in 2008 and is slightly down to 35.4% as of December 2009.[45] The majority of the increase came after 1993 when the restriction on foreign ownership was abolished.[46]

By the end of 2009, 24% of the shares held by foreigners was held by American shareholders and about 19% by British shareholders.[47] As is common in all stock markets, the degree of foreign ownership varies with the size of the company. Foreign ownership is generally higher in larger companies with a relatively deep and liquid market. In the 10 Swedish companies with the largest number of shareholders, and affiliated with the Swedish CSD (Euroclear Sweden), foreigners held between 15%-75% of the shares.[48]

In our sample companies, foreign shareholders hold between 16%-54% of the shares with Ericsson having the highest portion of foreign ownership and TeliaSonera the lowest.[49] (See Table 4 'Share classes and ownership structure' for more details.)

[43] See Henrekson and Jakobsson (2005).

[44] See the FESE report: "Shareownership Structure in Europe," December 2008, available at http://www.fese.be/_lib/files/Share_Ownership_Survey_2007_Final.pdf.

[45] See supra footnote 44 and "Ownership of shares in companies quoted on Swedish exchanges, December 2009", Statistics Sweden. Available at http://www.scb.se/.

[46] Until 1993, foreign investors could not hold more than 20 percent of any company's share capital.

[47] See "Ownership of shares in companies quoted on Swedish exchanges, December 2009", Statistics Sweden. Available at http://www.scb.se/.

[48] http://www.ncsd.eu/970_ENG_ST.htm.

[49] Data on ownership is taken from the companies' websites. For Nordea and TeliaSonera, which are dual listed on the Swedish and Finnish stock exchanges, holdings among Finnish shareholders are not regarded as foreign shareholding. H&M does not publish a breakdown between foreign and domestic shareholders on its website but Euroclear Sweden's statistics show that at the end of 2009 foreigners hold about 25% of the shares in H&M.

3.1.2 Domestic ownership

As shown in Table 2, at the end of 2009, individual investors held about 14% of the Swedish stock exchanges capitalization, which also equals the average across the 27 countries covered by the 2008 FESE report.[50] Over the past decade, individual investor ownership has decreased substantially in most stock markets, including Sweden.

The importance of institutional investors has increased over the last 20 years. Collective investments (included in Financial Enterprises in Table 2) are important in Sweden. At the end of 2009, about 28% of the shares were held by banks, insurance companies, pension funds, and mutual funds. Among the 27 markets covered by the 2008 FESE report, only in the UK, Austria, and France do we find a higher portion of collective investments than in Sweden.[51]

Among our sample companies, between 46%-84% of the shares were held by domestic investors, with TeliaSonera having the highest portion of domestic ownership and Ericsson the lowest.[52] (See Table 4 'Share classes and ownership structure' for more details.)

3.1.3 Structures influencing control

Historically, corporate control in Sweden has been highly concentrated. Most firms have been controlled by a single individual or a single family and the entire ownership on the Swedish stock exchange is dominated by a few controlling owners. More than half of the 20 largest Swedish companies, have a shareholder who controls more than 20% of the ownership.[53]

Investment companies organized as pyramidal holding companies have historically been important vehicles for control of the largest firms in Sweden. Following changes in the tax system in the early 1990s, most of the investment companies gradually disappeared. Today, Investor AB and AB Industrivärden are the two important investment companies controlling through pyramid structures. Investor AB is privately controlled by the Wallenberg family while AB Industrivärden is institutionally controlled and tied to Handelsbanken. The two pyramids are interlinked via

[50] See supra footnote 44.

[51] See supra footnote 44.

[52] Data on ownership is taken from the companies' websites. For Nordea and TeliaSonera, which are dual listed on the Swedish and Finnish stock exchanges, holdings among Finnish shareholders are not regarded as foreign shareholding.

[53] "Report on the Proportionality Principle in the European Union" by ISS Europe, ECGI and Shearman & Sterling, May 2007. The report was commissioned by the European Commission and is available at http://ec.europa.eu/internal_market/company/docs/shareholders/study/final_report_en.pdf.

Skandinaviska Enskilda Banken and Ericsson. At each level of the pyramid, voting rights are higher than ownership rights due to dual class shares and sometimes companies are subject to cross-shareholdings as well. These pyramid structures provide an effective defense against hostile takeover attempts.[54]

Henrekson and Jakobsson (2005) show that in 1998, the Wallenberg sphere through Investor AB controlled 14 large listed firms with a market value making up 42% of the total market capitalization of the Stockholm stock exchange. Wallenberg controlled Investor AB through the 19% percent (41% of the votes) it held of Investor. At the same time, Investor AB's share of the total market capitalization was only 5%. Hence, the Wallenberg's ownership of approximately 1% of the total market value of the stock exchange was sufficient to control 42% of the total market value. Similarly, the Handelsbanken sphere, through Industrivärden, controlled companies constituting 12% of the total market capitalization. Jointly the two ownership spheres thus controlled 54% of the total market value, using two closed-end funds with a combined market value of 6% of the stock exchange.

Pyramid structures can be identified for 65% of the largest Swedish companies and cross holdings can be identified in about 25%. Another form of control mechanism is shareholder agreements, which is present in about 5% of the largest holdings, but more common in recently listed companies than in more mature firms.[55]

Six of the ten companies in our sample are controlled through a pyramid structure, 5 of which through multiple-voting-rights shares.[56]

3.2 Deviations from "one share-one vote"

Few, if any, other industrial country exhibit the large gap between cash-flow rights and control rights seen in Sweden (Henrekson and Jakobsson, 2005). As described above, the most important control mechanisms used are dual-class shares, pyramiding, and cross-ownership. The widespread use of multiple-voting-rights shares and pyramid structures means that large ownership as measured by market capital does not necessarily translate into voting power.[57]

Under the Swedish Companies Act, as a general rule, all shares have equal rights in a company.

[54] See Henrekson and Jakobsson (2005) and supra footnote 53.
[55] See supra footnote 53.
[56] Data on ownership and share structure is taken from the companies' websites.
[57] See supra footnote 53.

However, companies are allowed to issue classes of shares with different voting rights. The articles of association may either prescribe that there must be shares of different classes or establish the right to issue such shares.[58] Swedish limited liability companies do not have the right to issue non-voting shares.

3.2.1 Shares with multiple voting rights

According to the 2007 "Report on the proportionality principle in the European Union", of the 20 largest Swedish companies, 16 have unequal voting rights.[59] Under the Swedish law, no share may carry voting rights which are more than ten times greater than the voting rights of any other share.[60] Historically, a voting differential of one to thousand was allowed. Ericsson, as the last company, reduced this ratio to one to ten in 2004. It is very common for companies to issue listed ordinary Series B shares with one vote each and Series A shares with ten votes per share, both with the same par value. The B shares usually represent more than half of the company's capital.

Six of the ten companies in our sample have shares with multiple voting rights, all with a 1 to 10 ratio.

3.2.2 Ownership limits and voting caps

Until 1999, unless the articles of association stated otherwise, each single shareholder could not vote for more than 20% of the total share capital, regardless of the amount of capital held. This mandatory provision was abolished in 1999. The articles of association of a company may provide that each shareholder may only vote for a certain number of shares but in practice such restrictions on voting rights are very rare. In our sample of large companies, only Svenska Handelsbanken operates with a voting cap of 10%.[61]

Regulations restricting foreigners' ability to invest in Swedish companies were abolished in 1993.

None of the 20 largest Swedish companies have issued shares with other special rights, like priority shares or golden shares for the benefit of governmental authorities.[62]

[58] ABL, Chapter 4, sections 1 and 2.
[59] See supra footnote 53.
[60] ABL, Chapter 4, section 5. Sweden introduced the maximum ratio 10:1 in 2004.
[61] Under the Articles of Association of Svenska Handelsbanken (Section 12), "(...) No person may speak or vote as representing more votes than ten percent of the aggregate number of votes accruing to the shares issued by the Bank."
[62] See supra footnote 53.

3.3 Shareholder rights and the power of the general meeting

"Nordic corporate governance is all about protecting small owners against big owners."

Per Lekvall (Secretary of the Swedish Corporate Governance Board)[63]

As we have seen above, the majority of Swedish listed companies have a concentrated and stable ownership structure. Companies are dominated by a few major shareholders who play a very active role in the management of the company and also serving as companies' directors. While the Swedish corporate governance system is skewed in favor of controlling owners through the widespread use of multiple classes of shares and pyramid structures, it nevertheless appears that individual and minority shareholders have relatively strong rights in Sweden.

For example, ownership of a single share is sufficient to submit a resolution to the general meeting as well as to raise a counterproposal at the general meeting. (See Section 6.3.) Any shareholder may ask questions to the board of directors and management on circumstances which may affect matters on the GM agenda. (See Section 9.6.) The share register must be kept at the offices of the company and be made available to the public. Hence, shareholders have access to the public register of shareholders. (See Section 4.3.) Shareholders representing 10% of the share capital may summon an extraordinary GM (EGM). Minority shareholders (representing at least 10% of all shares or one-third of the shares represented at the GM) may request the appointment of a minority auditor (for one year) or a special examination. Under request by minority shareholders (representing at least 10% of all shares) the annual GM (AGM) may approve the distribution of one half of the remaining profits for the year. The general meeting may at any time dismiss the board without a stated reason.

The presence of multiple classes of shares is most important in terms of determining the voting outcome for decisions such as composition of boards and nomination committees, approval of accounts, discharge from liability of boards and CEOs, remuneration of directors, and other issues. The reason is that these decisions typically only require a simple majority. For other decisions (i.e., changes to the articles of association and other fundamental decisions for the company such as new share issue, share repurchases, mergers, demergers, liquidation), Swedish law requires a supermajority. When a supermajority is required, the multiple voting rights have a more limited

[63]See Per Lekvall, 'The Nordic Corporate Governance Model', presentation at International Corporate Governance Network (ICGN) Mid-Year Meeting, Gothenburg 2008-03-05. See http://www.corporategovernanceboard.se/.

impact on decisions.[64] (For more details about supermajority requirements see Section 9.1.)

3.3.1 Governance Structure

Corporate governance of Swedish listed companies is regulated by a combination of legal requirements and self-regulation (generally accepted practices). The regulatory framework includes the Swedish Companies Act complemented by the Swedish Corporate Governance Code, NASDAQ OMX Stockholm listing rules, and statements by the Swedish Securities Council on what constitutes good practice in the Swedish securities market.

As for the governance structure, the ABL regulates the number, composition, power, and responsibilities of the company's decision-making bodies. Companies must have three decision-making bodies organized in a hierarchical structure: the general meeting of shareholders (GM), the board of directors, and the chief executive officer (CEO).[65] Figure 2 shows the typical governance structure of a Swedish listed company: the GM is the company's highest decision-making body which elects the members of the board of directors and can dismiss them without a cause. The board in turn elects the chief executive officer (CEO). The GM must also elect a controlling body, the company's auditor.[66]

3.3.1.1 The board of directors

Board composition

Under Swedish law, the board of directors must be appointed by the GM. The articles of association may prescribe that one or more members of the board must be appointed in a different way. However, neither the board as a whole nor a member of the board may be granted the right to appoint directors.[67]

Swedish listed companies are governed by a unitary board of directors which must consist of no fewer than three members. The company's articles of association must establish the number

[64] See the summary of the presentation of Professor Rolf Skog in the Report of the Conference "Better Regulation in EU Company Law, Process and Substance" held on 5 October 2006 at the National Museum in Helsinki. (The Conference Report is available at http://www.ecgi.org/presidency/background/2006_helsinki_report.php) See also supra footnote 53.

[65] See The Swedish Corporate Governance Code, Applicable from 1 February 2010, available at http://www.corporategovernanceboard.se/.

[66] For a detailed description of the Swedish model of corporate governance, see the introduction of the Swedish Corporate Governance Code 2010 and Lekvall (2009).

[67] ABL Chapter 8, section 8.

of members of the board of directors or the maximum and minimum number of board members. While the ABL establishes that the GM may also appoint deputies for board members,[68] under the Corporate Governance Code, deputies ("suppleanter") for shareholder-elected directors are not to be appointed.[69] Six of our sample companies mention in their articles of association that deputy members may be elected, but none of them elected deputy members for shareholder-elected directors at the 2009 AGM.

Under the Corporate Governance Code, only one member of the board may at the same time be a member of the executive management of the company or a subsidiary.[70] Half of Swedish listed companies use this possibility and normally appoint the CEO as a member of the board. Therefore, with the only exception of the CEO, boards of Swedish listed companies are entirely made up of non-executive directors.[71]

Out of the ten companies in our sample, six companies have their CEO on the board. Starting from 2009, anyone who has been an auditor of a company whose transferable securities are admitted to trading on a regulated market cannot be a director of the company, unless two years have elapsed since she left the audit engagement.[72]

As discussed above, under the listing rules, the board of listed companies needs to reflect the competence and experience required to govern a listed company and be sufficiently qualified based on an overall assessment.

Under the Corporate Governance Code, shareholder-elected board members must "collectively exhibit diversity and breadth of qualifications, experience and background" and "the company is to strive for equal gender distribution on the board."[73]

One of the members of the board is to be appointed chairman with the duty to lead the work of the board. Unless otherwise stated in the articles of association or decided by the GM, the board must elect its chairman.[74] However, according to the Corporate Governance Code, the chair of the board must be elected by the shareholder meeting.[75] As seems to be the general market practice,

[68] ABL, Chapter 8, sections 1, 3, and 46; Chapter 3, section 1.
[69] Swedish Corporate Governance Code 2010, section 4.2 (section 4.2 of the 2008 Code).
[70] Swedish Corporate Governance Code 2010, section 4.3. This rule was previously also included in the NASDAQ OMX Stockholm listing rules.
[71] See Lekvall (2009).
[72] ABL, Chapter 8, section 50a (introduced by Act (2009:565)).
[73] Swedish Corporate Governance Code 2010, section 4.1.
[74] ABL, Chapter 8, section 17.
[75] Swedish Corporate Governance Code 2010, section 6.1 (section 6.1 of the 2008 Code).

all of our sample companies have the chairman of the board of directors elected by the GM.

The ABL establishes a residence requirement for board members: at least half of the board members must live within the European Economic Area.[76]

Under Swedish law, board members are appointed for one year. However, the company's articles of association may establish a longer term of office up to four years.[77] The Corporate Governance Code establishes that members of the board must "be appointed for a period extending no longer than to the end of the next annual GM."[78] The typical market practice for Swedish companies is to follow the Code's rule and elect (confirm/renew) the board every year at the AGM. Directors of Swedish listed companies normally seek re-election to the company's board on an annual basis.

> Market practice example:
>
> From the Articles of association of Nordea:
>
> "The board members are elected at the general meeting for the period until the end of the first annual general meeting that is held after the year when the board member was elected."

Under certain conditions, employees of Swedish companies have the right to appoint representatives to serve on the board of directors.

Employee representation on the board of directors

Employee representation on the board of directors is regulated by the Board Representation (Private sector employees) Act (SFS 1987:1245).[79] The Act aims at affording employees information about and influence over the company's activities through representation on the board of directors.[80]

The employees of a company which, during the previous financial year, has employed in Sweden an average of at least 25 employees, are entitled to two representatives on the board of directors and an alternate for each such member. If the company is engaged in activities in different industries, and if it has, during the previous financial year, employed an average of at least 1.000 employees in Sweden, the employees are entitled to three representatives on the board of directors and one

[76] ABL, Chapter 8, section 9.
[77] ABL, Chapter, 8, section 13.
[78] Swedish Corporate Governance Code 2010, section 4.7 (section 4.5 of the 2008 Code).
[79] ABL, Chapter 8, section 2. The Board Representation (Private sector employees) Act has been last amended in 2008 (SFS 2008:13).
[80] Board Representation (Private sector employees) Act (1987:1245), section 1.

alternate for each such member. The number of employee representatives cannot exceed the number of other directors.[81] In this respect, the ABL establishes that, in a public company, more than half of the board members must be elected by the GM.[82] This means that the shareholder-elected board members must always outnumber the employee representatives on the board.[83]

As for the appointment of employee representatives, the decision to appoint employees to the board is made by a local employee organization (Trade Unions) which is bound by a collective bargaining agreement with the company. The employee organization that has appointed the employee representative fixes the term of the appointment. However, employee representatives' mandate cannot exceed four years.[84]

Subject to the provisions of the Board Representation Act and the provisions of other acts or regulations, rules concerning members of the board of directors and alternate members of a company's board apply also to employee representatives and alternates for such members.[85] This means that the employee representatives and alternate employee representatives have the same responsibilities and duties as the other members of the board appointed by the GM.[86]

In 2004, the most common size of board in Swedish companies was seven members, with two employee representatives.[87] Our sample companies have on average 9 shareholder-elected members on the board of directors. All but one company have employee representatives on the board of directors, with an average of 2.[88]

Sweden is the EU market with the third highest proportion of board members elected by employees (15 percent of all board members) behind Germany (41 percent of all board members) and Denmark (28 percent of all board members).[89]

[81] Act (1987:1245), section 4.
[82] ABL, Chapter 8, section 47.
[83] In the case of a parent company, all the employees of the group have the right to be elected to the board.
[84] Act (1987:1245), section 10.
[85] Act (1987:1245), section 11.
[86] See COUNTRY REPORT SWEDEN: Workers' participation at board level (by Roger Nilsson), in Hanns Böckler Foundation and European Trade Union Institute (ed.): "Workers' participation at board level in the EU-15 countries, Reports on the national systems and practices", Brussels, 2004. Available at http://www.seeurope-network.org/homepages/seeurope/countries/sweden.html.
[87] See supra footnote 86.
[88] The company without employee-elected representatives on the board of directors is Svenska Handelsbanken. The bank has instead two representatives on the board of the Bank's profit-sharing foundation, Oktogonen, but elected by the GM.
[89] "Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States", by Risk-Metrics Group in collaboration with BUSINESSEUROPE, ecoDa and Landwell & Associés, September 23, 2009. The report was commissioned by the European Commission and is available at http://ec.europa.eu/internal_market/company/ecgforum/studies_en.htm.

Board duties

The board is responsible for the organization and management of the company. It must continually asses the company's financial position and (where the company is a parent company) the group's financial position.[90] Under the equality principle, in making its decisions, the board of directors is obliged to promote the interest of all shareholders and cannot perform acts or take measures likely to give an unfair advantage to a shareholder or another person to the detriment of the company or any other shareholder.[91] Under the Corporate Governance Code, directors are required to form an independent opinion on each matter considered by the board and request all information believed to be necessary to make a well-founded decision. Each director must acquire the knowledge of company's operations, organizations, markets, etc., required for the assignment.[92]

The board is allowed to delegate certain duties to one or more board members or other persons. In this case, the board must always act with care and continuously monitor that the delegation works and can be maintained.[93]

As of July 2009, the board of companies whose transferable securities are admitted to trading on a regulated market must have an audit committee ("revisionsutskott"). No member of the committee can be employee of the company and at least one member must be independent and have accounting and/or auditing competence.[94] Under the Corporate Governance Code, the committee must consist of no fewer than three members, and the majority of the members must be independent of the company and its management. Moreover, at least one member must be independent not only of the company and its management but also of the company's major shareholders.[95] (For more details on independence criteria under the Corporate Governance Code, see below Section 3.3.4.)

The main duties of the audit committee include: monitoring the company's financial reporting; with respect to the financial reporting, monitoring the effectiveness of the company's internal controls, internal audit, and risk management; reviewing and monitoring the auditor's impartiality and independence; assisting in establishing the proposed resolution on the auditors for the GM.

A board may decide not to form an audit committee provided that the board nevertheless

[90] ABL, Chapter 8, section 4.
[91] ABL, Chapter 8, section 41.
[92] Swedish Corporate Governance Code 2010, sections 5.1 and 5.2.
[93] ABL, Chapter 8, section 4.
[94] ABL, Chapter 8, section 49a (introduced by Act 2009:565 which came into force on July 1, 2009). Previously Swedish listed companies were required to have an audit committee under the 2008 Corporate Governance Code.
[95] Swedish Corporate Governance Code 2010, section 7.3.

carries out the duties mentioned above and at least one member of the board is independent and have accounting and/or auditing competence.[96]

Under the Corporate Governance Code, the board must also establish a remuneration committee ("ersättningsutskott") whose main tasks are to: prepare proposals on remuneration and other terms of employment for the executive management, monitor and evaluate programmes for variable remuneration for the executive management, and monitor and evaluate the application of guidelines for executive remuneration approved by the GM.

The committee may be chaired by the chairman of the board. The other committee members appointed by the GM must be independent from the company and its management and must have appropriate knowledge and experience of executive remuneration issues. If considered more appropriate by the board, the entire board may perform the remuneration committee's tasks provided that no director who is also a member of the executive management participates in this work.[97]

All our sample companies have established an audit committee and all except one (H&M) have established a remuneration committee.

Every year the board must adopt written rules of procedure that govern its work (such as, rules about the allocation of work between the members of the board and frequency of board meetings). The board must also write instructions regarding when and how the information needed by the board to assess the company's financial position must be reported to the board and instructions regarding allocation of works between the board and the CEO (or other organs established by the board).[98] The Corporate Governance Code requires the board to review at least once a year the relevance and appropriateness of its formal work plan, reporting instructions, and instructions to the CEO. If the board has established special committees, the rules of procedure adopted by the board must specify tasks and decision-making powers delegated to these committees.[99]

As for the meetings of the board of directors, they are convened when so requested by a member of the board or by the CEO. Meetings have a quorum and are validly held only if more than half of the members (or a higher number established by the articles of association) is present. Unless otherwise stated in the articles of association, resolutions at board meetings are approved by a

[96] ABL, Chapter 8, sections 49a and 49b (introduced by Act 2009:565 which came into force on July 1, 2009).
[97] Swedish Corporate Governance Code 2010, sections 9.1 and 9.2. (These rules were included in sections 10.1 and 10.2 of the 2008 Code and have been slightly amended.)
[98] ABL, Chapter 8, sections 5, 6 and 7.
[99] Swedish Corporate Governance Code 2010, sections 7.1 and 7.2 (sections 7.1 and 7.2 of the 2008 Code).

simple majority of the members present. In the event of a tied vote, the board chairman has a casting vote. When not all directors are present at the meeting, a qualified majority of more than one-third of all the members of the board is required to approve a resolution. The articles may prescribe a different majority.[100]

Under the Corporate Governance Code, the chairman of the company and "as many members of the board as are required for a quorum are to be present at the shareholders' meetings." If possible, the entire board is to be present at the AGM.[101]

3.3.1.2 The chief executive officer

As we have seen above, the board of directors of public companies is obliged to appoint a chief executive officer ("verkställande direktör", henceforth "CEO"). The board of directors may appoint also one or more deputy CEOs ("vice verkställande direktörer").[102]

Under the Corporate Governance Code, the principal tasks of the board include appointing, evaluating and, if necessary, dismissing the CEO. The board must also approve any significant assignments that the CEO has outside the company.[103]

Under Swedish law, in a public company, the positions of chairman of the board of directors and CEO must be separated.[104] However, as we have seen above, the CEO can be appointed as member of the board and this is market practice for listed companies. Even when the CEO is not a member of the board, she has always the right to attend and speak at board meetings provided that the board does not decide otherwise in a particular case.[105]

As of June 2009, anyone who has been an auditor of a publicly traded company cannot hold the position of CEO or senior executive with the company, unless two years have elapsed since she left the audit engagement.[106]

The CEO is responsible for the day-to-day management of the company under the board's guidelines and instructions and has the right at any time to represent the company with regard to the duties that she is required to carry out. In addition, the CEO may take measures of unusual

[100] ABL, Chapter 8, sections 18, 21, and 22.
[101] Swedish Corporate Governance Code 2010, section 1.3.
[102] ABL, Chapter 8, sections 27, 28, and 50.
[103] Swedish Corporate Governance Code 2010, sections 3.1 and 3.2.
[104] ABL, Chapter 8, section 49
[105] ABL, Chapter 8, section 19.
[106] ABL, Chapter 8, section 50a.

nature or of exceptional importance without the board's authorization provided that a decision by the board cannot be awaited without significant prejudice to the company's operations.[107] Under the Corporate Governance Code, the CEO must attend the GM.[108]

3.3.1.3 The company's auditor

Swedish companies are required to have at least one auditor appointed by the GM. When the company must have more than one auditor, the company's articles of association may prescribe that one or more of the auditors, but not all of them, must be appointed in a different way than by the GM. A registered accounting firm can also be appointed as auditor.[109] 8 of our 10 sample companies state in their articles of association that either auditors with deputies or audit firms must be elected by the GM. Normally the requirement in the articles of association is that 1-2 auditors with deputies or 1-2 firms must be elected. One company states that 1-2 audit firms must be elected while one company does not seem to have an audit firm as an option. Only one of our sample companies (H&M) had 'election of auditors' as an agenda item for the 2009 GM. The nomination committee proposed the election of an audit firm as auditor.

Under Swedish law, any shareholder has the right to request the appointment of a minority auditor. In particular, any shareholder may propose that an auditor appointed by the County Administrative Board ("länsstyrelsen") shall participate in the company's audit together with other auditors. The proposal must be submitted either to a GM where the election of the auditors is an item on the agenda or at a GM where such a proposal in accordance with the GM notice has to be addressed. The County Administrative Board shall appoint an auditor only if the proposal receives a favorable vote of shareholders representing at least one-tenth of the share capital or at least one-third of the shares represented at the GM. Before the appointment of the auditor, the County Administrative Board must grant the board of directors the right to comment. The mandate of the minority auditor so appointed will finish at the end of the next AGM.[110]

Only an authorized public accountant or approved public accountant ("auktoriserad eller godkänd revisor") may be appointed as auditor. Only a person who is independent of the company, its board

[107] ABL, Chapter 8, sections 29 and 36.
[108] Swedish Corporate Governance Code 2010, section 1.3.
[109] ABL, Chapter 9, sections 1, 8, and 19. The company's articles of association must establish the number or the minimum and maximum number of auditors. One or more alternates can be appointed for one auditor. (ABL, Chapter 8, section 2.)
[110] ABL, Chapter 9, section 9.

of directors, and the CEO can be appointed as auditor.[111]

Companies' statutory auditors are normally appointed every four years. Starting from March 2009, auditors of companies whose transferable securities are admitted to trading on a regulated market can be appointed for a maximum of seven consecutive years. Anyone who has been auditor of the company for 7 years cannot be reappointed unless at least two years have elapsed since she left the audit engagement.[112]

The company's auditor has a supervisory function vis-a-vis the board of directors and the CEO and must examine the company's (and group's) annual report and accounts as well as the board's and CEO's management of the company. Auditors are accountable to the GM, must comply with the instructions issued by the GM, and report to the GM. The auditor must submit an auditor's report to the annual general meeting after each financial year.[113] (For more information on the auditor's report see below Section 6.4.2.)

The auditor must be entitled to attend the GM and is obliged to be present when, in view of the issue to be addressed, the auditor's presence is considered necessary.[114] Under the Corporate Governance Code, at least one of the company's auditors must always be present at the AGM.[115]

3.3.2 Resolutions for the AGM

The general meeting of shareholders ("bolagsstämma") is the company's highest decision-making body.[116] In fact, under Swedish law, shareholders exercise the right to make decisions in corporate matters at the GM.[117] Under the equality principle, in exercising its decision-making power, the GM cannot adopt any resolution likely to give an unfair advantage to a shareholder or another person to the detriment of the company or any other shareholder.[118]

The ABL regulates the content of the AGM agenda of Swedish companies. The following routine items are mandatory on the AGM agenda:

- election of chairman of the general meeting

[111] ABL, Chapter 9, sections 12 and 17.
[112] ABL, Chapter 9, section 21a (as introduced by SFS 2009:565).
[113] ABL, Chapter 9, sections 3-5.
[114] ABL, Chapter 9, section 40.
[115] Swedish Corporate Governance Code 2010, section 1.3 (section 1.3 of the 2008 Code).
[116] Swedish Corporate Governance Code 2010, section 1.
[117] ABL, Chapter 7, section 1.
[118] ABL, Chapter 7, section 47.

- preparation and approval of the voting register
- approval of the GM agenda
- election of at least one minutes checker
- determination of whether the general meeting has been duly convened
- presentation of the annual report and the auditors' report and (if required) the consolidated accounts and the auditors' report on the consolidated accounts
- adoption of the profit and loss account and balance sheet
- allocation of the company's profits and losses
- discharge from liability of the members of the board and the CEO
- determination of board size and election of board members
- appointment of the auditor (when required)
- determination of compensation of directors
- determination of compensation of the auditor
- approval of guidelines for remuneration of senior executives

The AGM shall also approve resolutions regarding any other matter to be addressed by the GM under the ABL or the company's articles of association.[119]

The GM approval is also required for non-routine items such as[120]:

- amendments to the articles of association
- approval of merger plans
- reduction of the share capital
- acquisition of the company's own shares
- share and share-price related incentive schemes

In the following, we comment on several of these actions.

[119] ABL, Chapter 7, sections 10, 11, 13, 26, 29, 30, 31, and 61.
[120] ABL, sections 11 and 61.

3.3.3 The nomination committee and election of directors and statutory auditors

The Swedish Corporate Governance Code requires Swedish listed companies to have a nomination committee whose sole task is to propose recommendations to the GM on electoral and remuneration issues.[121]

It is important to highlight that when it comes to the composition of the nomination committee, Sweden has applied a concept that differs from the standard practice of several other countries. In fact, while in many other countries the nomination committee is a subcommittee of the board (made up, for the majority, of independent directors), nomination committees of Swedish listed companies are normally appointed by shareholders and represent the company's major owners.[122]

The Corporate Governance Code regulates the appointment, composition, tasks, and responsibilities of the nomination committee. The AGM must either appoint members of the nomination committee or specify how they must be appointed.[123] Regardless of how they are appointed, members of the nomination committee are required to promote the interest of all shareholders.[124]

According to market practice, companies approve at the AGM principles for appointing the nomination committee and determining its duties. In fact, typically the nomination committee presents at the AGM a resolution on the procedure of appointment of the members of the nomination committee and determination of the assignment of the committee. When the GM approves the procedure for the appointment of the following's year nomination committee, it must also decide on procedures for replacing members of the nomination committee who leave before its work is concluded.

As for its composition, the committee must consist of no fewer than three members, with the majority being independent of the company and its executives. Moreover, at least one member must be independent of the company's largest shareholders in terms of vote as well as of any group of shareholders acting in concert. (For more details on independence criteria under the Corporate Governance Code, see below Section 3.3.4.) The CEO and other members of the executive man-

[121]Swedish Corporate Governance Code 2010, section 2.1.

[122]For an analysis of the main characteristics of nomination committees of Swedish listed companies see Lekvall (2008). Available at http://www.corporategovernanceboard.se. For a study of Swedish nomination committees and their relevance and applicability in the British corporate governance system, see "Tomorrow's Corporate Governance: Bridging the UK engagement gap through Swedish-style nomination committees", Tomorrow's Company, available at http://www.tomorrowscompany.com/publications.aspx.

[123]Swedish Corporate Governance Code 2010, section 2.2.

[124]Swedish Corporate Governance Code 2010, section 2.

agement cannot be member of the committee. The chairman and other members of the board of directors can be members of the committee but cannot represent the majority or chair the committee. When more directors sit on the committee, no more than one of them can be dependent of a major shareholder of the company.[125]

Normally the largest shareholders are entitled to appoint one member each for the nomination committee. All the companies in our sample have a nomination committee consisting of five members: one of the members is the chairman of the board and the other four represent the four largest shareholders of the company in terms of voting rights. This seems to be market practice for Swedish listed companies. (See Figure 2.)

Companies are required by the Corporate Governance Code to announce the names of members of the nomination committee on their website no later than six months before the annual general meeting. For each member who represents a particular owner, the owner's name must be stated. Companies must also provide information about members who leave the committee and new members appointed.[126]

The main assignment of the committee is to provide proposals for:

- chairman of the GM;
- number of board members to be elected by the GM;
- chairman of the board of directors and other members of the board of directors to be elected by the GM;
- fees payable to non-employed members of the board of directors (including remuneration for work on board committees);
- fees payable to the auditors and, when applicable, election of auditors;
- procedure on appointment of the members of the nomination committee and determination of the assignment of the committee; and
- possible fees payable to the members of the nomination committee.

[125]Swedish Corporate Governance Code 2010, sections 2.2 - 2.4.
[126]Swedish Corporate Governance Code 2010, section 2.5.

As we will see in more details in Section 6.2.3 below, under the Corporate Governance Code, all the nomination committee's proposals must be included in the GM notice and posted on the company's website. When the notice is issued, the committee must publish a statement on the company's website explaining its proposals concerning the board of directors with specific regard to the requirements on the composition of the board set by the Code. Recall that under the Code, shareholder-elected board members must "collectively exhibit diversity and breadth of qualifications, experience and background" and "the company is to strive for equal gender distribution on the board."[127]

In addition, specific information about candidates nominated for election or re-election to the board must be posted on the company's website:

- age, education and work experience;
- any work performed for the company and any other significant professional commitments outside the company;
- any holdings of shares and other financial instruments in the company by the candidate or a candidate's related natural or legal person;
- nomination committee's evaluation of the candidate's independence of the company, its executive management, and major shareholders according to the independence criteria set by the Code;
- the year in which the candidate was elected (in the case of re-election).[128]

Before the election of the board, in public companies, the chairman of the board is required to provide the GM with information about the positions held by nominees in other companies.[129]

At the AGM, members of company boards are elected by plurality vote (i.e., candidates who receive the largest number of votes are elected).[130] (See Section 9.1.)

Shareholder-elected directors may be appointed for a term of up to four years but, as we have seen above, at the AGM of Swedish listed companies, all the members of the board are up

[127] Swedish Corporate Governance Code 2010, sections 2.6 and 4.1.
[128] Swedish Corporate Governance Code 2010, sections 1.4, 2, and 2.6. These rules were already in the 2008 Code and have not been modified in the 2010 version.
[129] ABL, Chapter 8, section 48.
[130] ABL, Chapter 7, section 41.

for election (or re-election) every year. According to market practice, companies bundle director elections into one voting item. Typically the nominees to the board listed in the GM agenda are the ones proposed by the nomination committee and there are no alternative candidates proposed by shareholders included in the agenda.

Every shareholder (or proxyholder) present at the meeting can ask the chairman of the GM for a vote on each single nominee as well as propose alternative candidates directly at the GM. However, election of directors are very rarely conducted individually. In fact, when the number of nominees equals the number of seats, "for practical reasons, the chair of the AGM does not ask the shareholders to vote on each of the nominees separately. There would be no point in doing so, since all of the nominees will be elected as long as there is a single vote in favor of the nomination committee's proposal and there are no other candidates" (Unger, 2006).[131]

Nine of our ten sample companies bundled the election of all the board members in one agenda item ("Election of board members and chairman of the board" or simply "Election of the Board of Directors") for their 2010 AGMs. Only in the agenda of one company "Election of board members" and "Election of the Chairman of the Board" are two separate items. (For more details on the election of directors see Section 9.5 below.)

At least one member of the nomination committee must be present at the AGM. In fact, at GMs where the election of board members or auditor is on the agenda, the nomination committee must "give an account of how it has conducted its work and explain its proposals."[132]

3.3.4 Director independence

Before its update on July 1, 2008, the Swedish Code of Corporate Governance which came into force on July 1, 2005, included a clear definition of independence and specifically defined which relationships with the company, its management, and major shareholders could lead a director to be classified as non-independent.[133]

In the 2008 version of the Code, these rules were removed and some rules on director independence were included in the Nordic OMX Stockholm 'Rule Book for Issuers' to which the 2008

[131] Available at http://www.corporategovernanceboard.se/.
[132] Swedish Corporate Governance Code 2010, sections 1.3 and 2.7.
[133] Swedish Corporate Governance Code 2005, sections 3.2.3, 3.2.4, and 3.2.5.

Code makes reference.[134] Under the listing requirements, more than half of the members of the board elected by the shareholders had to be independent of the company and the management of the company. Companies were also required to have at least two shareholder-elected directors independent from the company's principal shareholders (defined as directly or indirectly controlling 10% or more of the shares or voting capital in the company).[135]

The Swedish stock exchange mentioned only some of the independence criteria included in the old 2005 Code of Corporate Governance. While the listing requirements did mention a number of factors that could lead to non-independence, these were all but considerations in an overall evaluation of director independence. Moreover, the broad principles for assessing independence were not included in the listing rules but provided as guidance for the interpretation of the rules. As such, the principles were not binding on listed companies.

In 2009, NASDAQ OMX Stockholm removed rules on director independence from the Rule Book for Issuers. As a result, the Corporate Governance Code rules on board independence have been revised and included in the new version of the Swedish Corporate Governance Code which came into force on February 1, 2010. Under the Code's transitional provisions, the new independence requirements must be applied by Swedish companies listed on NASDAQ OMX Stockholm with regard to individuals who are elected or re-elected after July 1, 2010.

New independence criteria

Under the Corporate Governance Code 2010 (section 4.4), the majority of shareholder-elected directors must be independent of the company and its executive management.

That said, the Code clarifies that the independence of a director must be determined on the basis of a "general assessment" of all factors that may give cause to question the director's independence of the company or its executive management.

The Code provides a non exhaustive list of factors to be considered in assessing the independence covering for example: permanence on the board as executive for the last 5 years; significant business relationships with the company (or a closely related company) in the last 5 years; additional non-insignificant remunerations for advice or other services from the company, a closely related company or a person in the management of the company apart from a fee received as director; etc.

[134] Swedish Corporate Governance Code 2008, section 4.3, footnote 5.
[135] Nordic OMX Stockholm 'Rule Book for Issuers', 1 January 2009, sections 2.4.4 and 2.4.5.

In practice, all the independence criteria included in the 2005 version of the Code have been reintroduced with one exception: the 12-year tenure limit in order for board members to be defined as independent has not been included.

In this respect, it is worth mentioning that the EU Recommendation on the role of non-executive and supervisory directors of 2005, among the situations frequently recognized as relevant in determining whether a non-executive or supervisory director may be regarded as independent, lists: "(h) not to have served on the (supervisory) board as a non-executive or supervisory director for more than three terms (or, alternatively, more than 12 years where national law provides for normal terms of a very small length)."[136]

The reason for the introduction of this situation in the Recommendation's list is that the long permanence on the board might put into doubt the independence of judgment of the director.

Moreover, at least two members of the board who are independent of the company and its executive management must also be independent of the company's major shareholders.[137]

In assessing the independence of a director from the company, company's management, and major shareholders, the nomination committee must take into account all the above mentioned factors.

As discussed above, under the Corporate Governance Code, only one member of the board may at the same time be a member of the executive management of the company or a subsidiary.[138]

As for independence between board chairman and CEO, the Swedish law requires separation of these functions in public companies. However, the company's chairman does not need to be independent.

Among our sample companies, five classify their chairman as independent and four companies do not have their CEO on the board. The level of independence of the board (shareholder-elected members) among our sample companies ranges from 50% to 100% with the average being 67%.

[136]EC Recommendation of 15 February 2005, on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board. Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:052:0051:0063:EN:PDF.

[137]Swedish Corporate Governance Code 2010, section 4.5. Under the Code, "a major shareholder is defined as controlling, directly or indirectly, at least ten per cent of the shares or votes in the company".

[138]Swedish Corporate Governance Code 2010, section 4.3. This rule was previously also included in the NASDAQ OMX Stockholm listing rules.

3.3.5 Remuneration of directors and senior executives

Rules on remuneration of directors of Swedish companies are based on the principle that, due to an intrinsic conflict of interest, directors cannot set and decide on their own compensation. The GM must decide on the remuneration of the board.

In particular, under the Swedish Companies Act, the GM shall decide on the remuneration (fees and other compensation, "arvode och annan ersättning") for board positions for each member of the board.[139] The GM must also approve incentive schemes for board members by simple majority. A 90% supermajority of both votes cast and shares represented at the GM is required if the scheme involves an issue of securities (shares, warrants, convertibles). However, under the Corporate Governance Code, non-executive directors cannot participate in share and share-price related incentive programmes designed for the company's management and other employees and cannot receive share options.[140]

Therefore, Swedish shareholders have a binding vote on the remuneration of directors.[141] Resolutions on director remuneration are routine mandatory items on the GM agenda of Swedish companies and are approved by shareholders representing a simple majority. As we will see in more details below, the nomination committee is required to present a proposal for directors' remuneration to the GM. The proposal must be included in the GM notice and posted on the company's website.

The remuneration of the CEO is decided by the board of directors. The CEO in turn will decide on the remuneration of other persons in the companies' management.[142]

The board may decide to perform this task through a remuneration committee whose tasks and composition we described in Section 3.3.1.1 above. As a result of the EU Commission's recommendation regarding remuneration of directors in listed companies (2009/3177/EC), the new Corporate Governance Code 2010 has been revised and new rules have been introduced regarding for example tasks and composition of the remuneration committee, variable remuneration, share

[139] ABL, Chapter 8, section 23a. This rule has been introduced in July 2006 (by Act (2006:562) amending the Companies Act (2005:551)).

[140] Swedish Corporate Governance Code 2010, section 9.8.

[141] For a comparative and empirical analysis of directors' pay in Europe, see Ferrarini, Moloney, and Ungureanu (2009), available http://ssrn.com/abstract=1418463.

[142] See Björn Kristiansson, "Directors' Remuneration in Listed Companies - Sweden", 2008, available at http://www.ecgi.org/remuneration/questionnaire/sweden_update_2008.pdf.

and share-price related incentive programmes. The new Code's rules must be applied not later than July 1, 2010.

The board of companies whose shares are admitted to trading on a regulated market in Sweden, must each year write down guidelines for the determination of the remuneration to the CEO and other members of the company's management.[143] The guidelines shall refer to a period starting from the next AGM.

The AGM of Swedish companies listed on a regulated market in Sweden shall decide on the guidelines (principles) for remuneration to senior executives ("riktlinjer för ersättning till ledande befattningshavare") proposed by the board.[144] Therefore, Swedish shareholders have the right to cast an 'ex ante' binding vote on the principles for executive remuneration.[145]

This rule has been introduced in the ABL in 2007 and consequently removed by the 2008 version of the Corporate Governance Code. At the moment Sweden is discussing a proposal to move the rule back to the Corporate Governance Code.[146]

In Sweden, share-based remuneration involving new share issues, share options or any other new share acquisition right must be approved by the general meeting.[147] In particular, granting of stock options requires a GM approval with a simple majority. However, all executive compensation programmes which involve a new issue of securities (shares, warrants, convertibles) are valid only if supported by shareholders holding at least 9/10 (90%) of both the votes cast and the shares represented at the GM.[148]

Under the Corporate Governance Code, the GM of Swedish listed companies must decide on all share and share-price related incentive schemes for the executive management. All the background material and documentation regarding the scheme must be made available to shareholder in good

[143] ABL, Chapter 8, section 51 (introduced in 2007 by Act (2007:566). Compensation includes also transfer of securities and the right to future acquisition of securities from the company.

[144] ABL, Chapter 7, section 61.

[145] See Ferrarini, Moloney, and Ungureanu (2009).

[146] "Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States", by Risk-Metrics Group in collaboration with BUSINESSEUROPE, ecoDa and Landwell & Associés, 2009. The report was commissioned by the European Commission. According to the study, 11 Member States have established the requirement to seek shareholders' vote either on remuneration policy (ex ante) or remuneration reports (ex post). Most of these Member States require a binding vote.

[147] COMMISSION STAFF WORKING DOCUMENT, Report on the application by Member States of the EU of the Commission Recommendation on directors remuneration, SEC(2007) 1022, Brussels, 13.07.2007.

[148] ABL, Chapter 16, section 2 and 8. See also Björn Kristiansson, "Directors' Remuneration in Listed Companies - Sweden", 2008, available at http://www.ecgi.org/remuneration/questionnaire/sweden_update_2008.pdf.

time before the GM.[149]

As for the disclosure of information on directors' and executives' remuneration, the total remuneration for each member of the board and the CEO (including pensions and similar benefits) must be included on an individual basis in the company's annual report. The annual report must also show the total amount of remuneration for the entire board, the CEO, and all the persons in the company's management.[150] Under the Swedish Companies Act and the Securities Council's Statement 2002:1 ("Incentive scheme") information on any share based incentive scheme must be included in the Annual Report. Shareholders must be able to follow the development of an incentive program for its entire duration.[151]

The Corporate Governance Code requires listed companies to post on their website a description of the company's system of variable remuneration to directors and of each outstanding share and share-price-related incentive scheme.[152] (For more details on remuneration disclosure see Section 6.4 below.)

3.3.6 Discharge from liability of directors and CEO and action against directors

Under Swedish law, the discharge from liability for board members and the CEO is a mandatory routine item on the AGM agenda of Swedish companies.[153]

Under the rules on conflict of interests established in the ABL, a shareholder who has served as a board member or CEO cannot vote (neither in person nor by proxy) on the resolution regarding her discharge from liability.[154] The resolution is adopted by a simple majority (i.e., 50% plus one vote) of the votes cast. However, even though a majority of shareholders supports the resolution, discharge is refused when a minority of shareholders representing at least 10% of the share capital vote against the resolution.[155]

As we will discuss in more details below (Section 6.4) the company's auditor must include in

[149] Swedish Corporate Governance Code 2010, section 9.7.
[150] Annual Accounts Act (1995:1554), Chapter 5, sections 19 and 20.
[151] For an analysis of the remuneration disclosure in Swedish listed companies see Björn Kristiansson, "Directors' Remuneration in Listed Companies - Sweden", 2008, available at http://www.ecgi.org/remuneration/questionnaire/sweden_update_2008.pdf The Securities Council's Statement 2002:1 is available at http://www.aktiemarknadsnamnden.se/.
[152] Swedish Corporate Governance Code 2010, section 10.3
[153] ABL, Chapter 7, section 11
[154] ABL, Chapter 7, section 46.
[155] ABL, Chapter 7 (section 40) and Chapter 29 (section 7). See Svernlöv (2007), available at http://www.corporategovernanceboard.se/.

the auditor's report a recommendation on whether or not the company's directors and CEO should be granted discharge from liability towards the company. The auditor is also required to report if any member of the board or the CEO has undertaken an action or been guilty of an omission that may result in liability for damages. The same applies if the auditor has found that any member of the board or the CEO has acted in any other way that is in contravention of the Companies Act, the applicable law on annual accounts or the company's articles of association.[156]

Almost without exception, the auditor of Swedish listed companies makes a clear recommendation to the shareholders to grant discharge from liability and it would be very rare for the GM not follow the auditor's recommendation. Shareholders are free to vote against discharge with or without a stated reason.[157] However, when the auditor recommends the discharge, a shareholder who decides to vote against the resolution should normally motivate her position.[158] At the 2009 AGM of our sample companies, the resolution on discharge from liability was always approved.

Under Swedish law, a director or CEO who, when carrying out their duties, either intentionally or negligently damages the company, must compensate any damage. The same applies if the damage is to a shareholder or other person as a consequence of a violation of the Companies Act, the applicable law on annual accounts or the company's articles of association.[159]

An action for liability may be initiated by the company, the board, or, on the company's behalf, by owners of at least 10% of the share capital (derivative suit).[160]

In particular, an action for damages may be brought if the majority of shareholders or shareholders representing at least 10% of the company's shares have, at a general meeting, voted in favor of a resolution to bring an action for damages or, with regard to a board member or the CEO, have voted against a resolution on discharge from liability.[161]

Moreover, owners representing at least 10% of all shares in the company may, in their own name but on behalf of the company, commence an action regarding damages to the company (derivative suit).[162]

A settlement in respect of liability to the company may be reached only by the general meeting

[156] ABL, Chapter 9, section 33.
[157] See Svernlöv (2007).
[158] See Unger (2006), available at http://www.corporategovernanceboard.se/.
[159] ABL, Chapter 29, section 1.
[160] See Svernlöv (2007).
[161] ABL, Chapter 29, section 7.
[162] ABL, Chapter 29, section 9.

and only if owners of at least one tenth of the entire shares capital do not vote against the proposed settlement. Where a shareholder initiates an action for damages on behalf of the company, a settlement may not be reached without her consent.[163]

An action for damages on behalf of the company must be initiated not later than one year from the date on which the annual accounts and audit report for the financial year was presented at the GM. Moreover, unless based on criminal acts, proceedings on behalf of the company cannot be brought against board members or the CEO after five years from the end of the financial year in which the decisions or measures on which the action is based were taken.[164]

As a result of the approval of the resolution on discharge, while the board members' and CEO's liability towards shareholders and others is not affected, the company is prevented from bringing an action against the board members and the CEO. However, when the GM has adopted a resolution on discharge or decided not to bring an action for damages without 10% of the shareholders voting against such resolutions, or the time to initiate an action is expired, the company can anyway initiate an action for damages if information provided to the GM in the annual report, auditor's report or otherwise, and regarding the resolution or the measure on which the action is based was materially incorrect and incomplete. In addition, the board of directors may always bring an action for damages based on criminal liability (even after the five-year period).[165]

Members of the board of directors of public companies elected by the GM can be removed by the GM (with simple majority) at any time and without stated reason.[166] Directors removed without cause are not entitled to damages. Members of the board who are employee representatives can be removed only by the employee organization that has appointed them. An assignment as a director shall terminate prematurely when the director or the person who appointed her notifies the board of directors that the appointment will end. When a director not elected by the GM decides to resign, the notification must also be sent to the party which appointed her.[167]

[163] ABL, Chapter 29, section 8.
[164] ABL, Chapter 29, sections 10 and 13.
[165] ABL, Chapter 29, sections 11 and 12.
[166] ABL, Chapter 7, section 59.
[167] ABL, Chapter 8, sections 13 and 14.

3.3.7 Attendance rates

The attendance rate at general meetings of Swedish companies is impacted by the very common use of shares with multiple voting rights as well as requirements for physical attendance, re-registration of nominee-registered shares, and the presentation of a power of attorney in the case of proxy voting. Historically, a very low percentage of shareholders have attended GMs. However, in terms of voting rights the attendance rate has been high since shares with multiple voting rights have been concentrated in a few hands.

As we will see below (Section 10.1), the typical market practice among large Swedish listed companies is to publish the minutes or results from the general meeting on the company's website. At the GM, a voting register including the names of the shareholders being present or represented at the general meeting must be prepared and approved.[168] However, the list is not published with the minutes and companies normally do not give in the GM minutes information on attendance rate.

RiskMetrics Group (RMG) reports that the average attendance rate in 2009 (measured in capital, not voting rights) was 45.9% for the OMXS 30 index.[169] Swedish companies do not normally publish attendance rates and RMG reports that very few of the OMXS 30 index companies disclose the attendance rate. So, the average rate reported by RMG does not cover all the 30 companies in the index. Specifically, only about 1/5 of the companies gave full disclosure of voting results while the majority of companies only disclosed if the resolutions were approved or not.

Of the ten companies in our sample only one gave the attendance rate for the 2009 AGM. We have been able to calculate the attendance rate for an additional four companies based on information on voting rights represented at the AGM as given in the minutes and the total voting rights outstanding as given in the GM notice. For these five companies the attendance rates range from 47% to 60%.

[168] ABL, Chapter 7, section 29.

[169] See "Voting results in Europe - Understanding shareholder behavior at general meetings", 8 September 2009, RiskMetrics Group.

3.3.8 Corporate takeovers

A fundamental shareholder right is the right to trade shares freely - including selling to the highest bidder in a corporate control contest and to participate in a control premium in an open-market controlling block trade. A corporate takeover bid almost always causes the share price of the target firm to rise, reflecting market capitalization of the sizable control premium. This control premium averages 40% in the U.S. (Betton, Eckbo, and Thorburn, 2008) and is typically large also in Swedish corporate control transactions. A well-functioning and orderly market for corporate control creates value by redirecting corporate resources to their highest-valued use. Efforts by corporate insiders to thwart takeovers in order to protect and prolong their private benefits of control therefore hurt not only individual shareholders but also the economy as a whole.

The EU Directive on Takeover Bids was implemented in Sweden in 2006.[170] Prior to the implementation, public takeovers were governed by rules concerning "Public Offers for the Acquisition of Shares" issued by the Swedish Industry and Commerce Stock Exchange Committee (Näringslivets Börskommitté - NBK). NBK rules were part of the listing agreement with the stock exchange/market place and therefore binding on listed companies. Besides the NBK rules, another self-regulatory body, the Swedish Securities Council (Aktiemarknadsnämnden), issued statements as to what constitutes good market practice in connection with public bids. Under the listing rules, listed companies were also required to follow the statements of the Securities Council.

During the implementation phase, the Swedish legislature decided to retain the material rules established by NBK and keep the self-regulatory approach. On July 1, 2006, the new Act (2006:451) on Public Takeover Bids in the Stock Market (hereafter "Takeover Act") came into force. The legislature also introduced a statutory obligation for the stock exchange to adopt takeover rules which are in compliance with the Takeover Directive.[171] The Swedish Financial Supervisory Authority supervises compliance with the Takeover Act and can decide on sanctions if the Act is not observed.

The Swedish Financial Supervisory Authority, stock exchanges, and other authorized market places have delegated certain duties to the Swedish Securities Council, which remains in charge of interpretation of takeover rules and of granting exemptions from these rules. Therefore, today the

[170] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids.

[171] The rule has been introduced in the Securities Exchange and Clearing Operations Act (1992:543). The Act has been repealed in 2007 and the stock exchange obligation is today established in Chapter 13 (section 8) of the Act on securities market (2007:528).

Swedish takeover regulation consists of a combination of legislation and self-regulation.

Under the Takeover Act, a public takeover bid for shares can only be made by a bidder who has undertaken to comply with the rules adopted by the stock exchange or authorized market place on which the shares of the target company are listed and to accept any sanctions which may be imposed by the stock exchange or authorized market place in the event of infringement of these rules.[172] The Act contains rules on mandatory bids under which a party with no shareholding or a shareholding that represents less than 30% of the votes for all shares must make a public takeover bid for the remaining shares in the company when she achieves a shareholding which represents at least 30% of the votes for all shares. The rule applies to the acquisition of shares in a Swedish limited company whose shares are admitted to trading on a regulated market or an equivalent market outside of the European Economic Area.[173]

Under the Act, the board of directors or the CEO of a target company are restricted from taking actions that could prevent the success of the offer, unless explicitly approved by shareholders in a shareholder meeting. However, the company can seek alternative offers without the approval of the GM. Moreover, Swedish limited companies whose shares are admitted to trading on a regulated market or an equivalent market outside of the European Economic Area can include in their articles of association a so-called 'breakthrough' provision which, in a takeover situation, prevents the target company from the use of defensive mechanisms such as restrictions on the transfer of securities or on voting rights provided for in the articles of association (see Berglöf and Burkart (2003) for a discussion of the economics of breakthrough provisions in the context of takeover bids). Such a decision is valid only if it has been supported by all shareholders attending the general meeting who jointly represent at least 90% of all shares in the company.[174]

In 2009, NBK has completed a review of the rules on public takeover bids in the stock market. The final proposals submitted by NBK in June 2009 was adopted by both NASDAQ OMX Stockholm and Nordic Growth Market (NGM). The revised rules, relating to takeover bids for companies whose shares are admitted to trading on the regulated markets operated by these exchanges, came into force on 1 October 2009 and include, among other things, stricter demands on pre-announcements, fairness opinions and withdrawal of bids, as well as new rules for price differ-

[172] Takeover Act, Chapter 2, section 1.
[173] Takeover Act, Chapter 3, section 1.
[174] Takeover Act, Chapter 5 (section 1) and Chapter 6 (sections 1 and 2).

ences between A and B shares. The latter amendment would allow for a difference in the pricing between A and B shares only in very limited circumstances as compared to the previous less strict rules. According to NBK, besides the 30% threshold for mandatory bids, the takeover rules should also involve an additional limit at 50%. On November 10, 2009, NBK sent a letter to the Justice Department proposing an additional mandatory bid limit at 50%.

4 The Swedish shareownership registration system

4.1 Basics of registration systems

In order to vote shares at the GM, receive dividends and other company shareholder disbursements, or to sell the shares, stockholders must show proof of shareownership. Proof may be generated via the information recorded by the financial intermediary (broker or custodian bank) originally used to execute the share trade. However, modern financial markets, where literally millions of investors and their companies require proof on a regular basis, have developed more sophisticated shareownership registration systems which economize on information collection costs.

A basic component of a modern registration systems is a "Central Securities Depository" (CSD).[175] The CSD is typically a regulated privately owned company— normally a user-owned market infrastructure provider —and it may offer clearing and settlement services in addition to acting as a share registry. By opening an account at the local CSD, the account information may be used as proof of ownership. Moreover, in preparation for, say, company disbursements and voting at GM, companies may obtain shareholder lists electronically and at a lower cost than were they to generate this information on their own.

While all countries allow financial intermediaries to open CSD accounts, only some countries permit other shareholders to directly open such accounts. We label systems which allow shareholders and their nominees to directly hold CSD accounts as "direct account" or "centralized" registration systems. Conversely, when shareholder accounts are not permitted, forcing sharehold-

[175] Every European country (EU member or not) has a CSD (See https://www.ecsda.com/portal/what_is_ecsda_/members/). For members of the Asia-Pacific CSD Group, see http://www.acgcsd.org/acg_03.aspx. Also, the Americas' Central Securities Depository Association (ACSDA) includes 25 depositories and clearing organizations from 28 countries: Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Jamaica, Mexico, Nicaragua, Panama, Peru, Dominican Republic, South Africa, Trinidad and Tobago, United States, Uruguay and 8 countries of the Eastern Caribbean.

ers to register information indirectly via their financial intermediaries, as "indirect account" or "decentralized" registration systems.

As explained below, Sweden is a centralized registration system. Shareholders (domestic and foreign) can decide either to open direct accounts in their own name with the local CSD or hold shares indirectly through financial intermediaries (brokers or custodian banks). Even when shares are held indirectly, financial intermediaries cannot exercise shareholder voting rights without a written proxy from their clients.

In the following sections, we describe the Swedish share-holding system focusing on the role of the Swedish Central Securities Depository and other securities intermediaries (account operators and account providers) in the custody chain through which domestic as well as foreign shareholders of Swedish listed companies hold their shares.

4.2 The Swedish CSD system

4.2.1 The Swedish CSD and CSD companies

The Swedish Securities Registry or Central Securities Depository ("central värdepappersförvarare", henceforth "CSD") is Euroclear Sweden AB (henceforth "ES"). In 2008, the Belgian group Euroclear acquired the Nordic Central Securities Depository (NCSD), which comprised the Swedish CSD Värdepapperscentralen AB (VPC) and the Finnish CSD (APK) and renamed them respectively Euroclear Sweden and Euroclear Finland.[176]

ES is an authorized CSD in accordance with the Financial Instruments Account Act (SFS 1998:1479) as well as a clearing organization pursuant to the Securities Market Act (SFS 2007:528). ES is also the administrator of a securities settlement system (the VPC System, "VPC-systemet") approved within the European Union by the Swedish Financial Supervisory Authority ("Finansinspektionen" - FSA). ES is subject to the supervision of the FSA.

The VPC system is ES's technical system for the registration of securities and the clearing and settlement of transfer orders.[177] As of today ES is the only authorized CSD in Sweden.

[176] VPC was created in 1971. In December 2004, VPC bought 100% of the shares of its Finnish counterpart APK and established a normal Group relationship with VPC as the parent company and APK as a wholly owned subsidiary. Business operations were conducted under the brand name 'NCSD Group'. (Source: http://www.ncsd.eu/594_ENG_ST.htm).

[177] See the "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Section A.1), available at http://www.ncsd.eu/552_ENG_ST.htm.

In Sweden, securities can be issued in both physical and dematerialized forms. Dematerialization of securities (securities recorded electronically in a book-entry system) was introduced in Sweden in 1989 and today all shares issued by Swedish companies listed on NASDAQ OMX Stockholm are centrally managed in dematerialized form by ES. Dematerialization is in practice mandatory for securities traded on a Swedish regulated market.

In fact, even though the use of Euroclear Sweden as depository is not compulsory by law, currently for all cash instruments traded at NASDAQ OMX Stockholm, Euroclear Sweden has been chosen as the designated CSD (unless the parties in a trade agree differently). Close to 100% (excluding internalization on the systems of banks and brokers) of the total market in Sweden is settled within ES.[178] Securities held outside ES cannot be traded on a regulated market, only on the over-the-counter (OTC).

The Swedish Companies Act (ABL) establishes the concept of 'CSD company' (or CSD-registered company) under which a CSD company ("avstämningsbolag") is a limited liability company ("aktiebolag") whose articles of association contain a clause ("avstämningsförbehåll") stating that the company's shares must be registered in a register kept by the CSD ("avstämningsregister" - CSD register) pursuant to the Financial Instruments (Accounts) Act (SFS 1998:1479).[179] A company need not be public or listed to become an issuer at Euroclear Sweden. Many private companies are affiliated.[180]

By signing an Affiliation Agreement with ES, the Issuer is bound by the "Rules for Issuers and Issuer Agents" according to the wording applicable at the time.[181] Under the Affiliation Agreement, ES is required to maintain a CSD register in accordance with the Financial Instruments Accounts Act and, where applicable, to maintain the Issuer's Register of Shareholders in accordance with the Swedish Companies Act.[182] For each Issuer, ES automatically opens a ES Account ('issuer account').[183] The issuer account shows the total amount of shares outstanding.

[178] See the 'Association of Global Custodians - Questionnaire (2009-2010)', available at http://www.euroclear.com.
[179] ABL, Chapter 1 (section 10) and Financial Instruments Account Act (SFS 1998:1479), Chapter 4, section 2 under which, "shares in a CSD company must be registered in a CSD register".
[180] http://www.ncsd.eu/1661_ENG_ST.htm.
[181] See "Rules for Issuers and Issuer Agents, Version 2010:1" (section A 3.3.1), approved by Euroclear Sweden AB and effective from May 1, 2010. Available at http://www.ncsd.eu/664_ENG_ST.htm.
[182] See "Rules for Issuers and Issuer Agents, Version 2010:1" (section A 3.2), approved by Euroclear Sweden AB and effective from May 1, 2010.
[183] See "Rules for Issuers and Issuer Agents, Version 2010:1" (section A 3.3.1), approved by Euroclear Sweden AB and effective from May 1, 2010.

ES holds only registered securities in dematerialized form and securities are recorded only electronically in a book-entry system. Therefore, as discussed above, in order to be affiliated with ES and keep their shares in the VPC system, companies listed in Sweden must issue registered shares in dematerialized form.[184] Physical securities are not accepted in the VPC system. However, ES also holds foreign securities for which immobilization is allowed.[185] While ES has a direct relationship with domestic Swedish firms (see Figure 5), for securities issued by foreign companies ES establishes links with foreign CSDs.[186]

Under Swedish law, Swedish companies are required to keep their dematerialized shares in only one CSD (ES).[187] When a company's dematerialized securities are admitted by the VPC system, the full issue must be held by ES. Issuers can interact with ES directly or via issuer agents ("Emissionsinstitut"). Only account operators can participate in the VPC system as issuer agents.[188] (See Section 4.2.2.1 for more details on which entities can become ES participants.) In some cases issuers are required to appoint an agent. The requirement applies on initial affiliation of the issuer's financial instruments and primarily when undertaking voluntary corporate actions.[189]

4.2.2 Securities accounts in Euroclear Sweden

As discussed above, Sweden is a centralized registration system where shareholders (both domestic and foreign) who hold shares in CSD companies affiliated with ES are allowed to keep their securities in the VPC system either by registering a VPC account ("Vp-konto") in their own name, known as 'owner account' (we also call it 'direct account'), or by holding a custody account, known as

[184]Swedish companies that are registered with ES may not issue share certificates. ABL, Chapter 6, section 10, establishes that: "Chapter 4, section 5, of the Financial Instruments (Accounts) Act (SFS 1998:1479) provides that share certificates or interim certificates may not be issued in respect of shares in CSD companies."

[185]Foreign securities in ES are normally dematerialized. Only a small share of foreign securities is immobilized in ES (that is, represented by a global certificate held elsewhere). (See "Assessment of Securities Settlement in Sweden 2008" by Riksbank and Finansinspektionen, available at http://www.fi.se Foreign securities registered in the CSD Register at ES correspond to the number of shares issued by the Issuer that are registered in ES's account with another Central Securities Depository or equivalent in the Issuer's home. (See rule A 3.5.1 of the "Rules for Issuers and Issuer Agents, Version 2010:1".)

[186]Euroclear Sweden has direct links with other CSDs such as the Finnish CSD (Euroclear Finland), the Danish CSD (VP), the Swiss CSD (Sega Inter Settle), the British CSD (Euroclear UK), and the Belgian one (Euroclear Belgium).

[187]Financial Instruments Account Act (SFS 1998:1479), Chapter 4, section 4.

[188]The "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Section A.1), define the issuer agent as an Account Operator specifically authorized by ES to process and register issues in the VPC System.

[189]See Section A 5.1 of the "Rules for Issuers and Issuer Agents, Version 2010:1", approved by Euroclear Sweden AB and effective from May 1, 2010. Some examples of issues where an agent must be appointed are: rights issue, takeover bid, and purchase offer.

'nominee account' ("förvaltarkonto"), with a nominee (bank or broker) who in turn is affiliated with ES (ES participant).[190]

4.2.2.1 Owner accounts

Both individual as well as institutional shareholders may have an owner account in the VPC system.[191] However, individuals are not allowed to become direct participants of ES and need to use an intermediary to keep their shares in the VPC system. In order to open an owner account in ES, shareholders must approach their intermediary (custodian bank or broker) who in the capacity as an account operator ("Kontoförande Institut" - hereafter "AO") opens an account in ES on behalf of the investor. Only AOs are allowed to open VPC accounts.

In Figure 5 we describe a simplified example of a custody chain where the shareholder decides to keep her shares in a VPC owner account. To do so, the shareholder appoints an account operator that opens the account in the VPC system. It is important to notice that, even if the investor is required to pass through an intermediary (bank or broker) to open an owner account, the investor is the account holder ("Kontohavare") and the account is opened in the investor's name.[192] In this case, the investor's name is automatically registered in the share register of the company kept by ES.[193] The AO is normally characterized as an agent between the investor and ES and not as an account provider. Therefore, we call 'owner accounts' also 'direct accounts'.

Only firms belonging to one of the qualifying legal entities (mostly financial institutions - banks, investment firms, stock brokers - Swedish and foreign clearing organization or CSDs, etc.) defined in the Financial Instruments Account Act (SFS 1998:1479) can participate in ES as an AO on behalf of a third party.[194] A company authorized as an AO is given the right, on behalf of ES, to open VPC accounts and/or to register new or amended data in VPC accounts.[195] AOs maintain a register in a specific VPC account opened in the name of the shareholder and have a technical

[190] Under the "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Section B 3.1.1), a VPC account is an account created by ES, which constitutes a combination of one or more CSD accounts, included in one or more CSD registers. A VPC account is opened in the name of the shareholder or a nominee.

[191] Owner accounts contain several different types of securities, not only shares.

[192] The "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Section A.1), define the account holder as the holder of VPC account.

[193] Several people can jointly own the holding on a VPC Owner Account, known as a Joint Owner Account. More information on the VPC account structure are available at http://www.ncsd.eu/538_ENG_ST.htm.

[194] Financial Instruments Account Act (SFS 1998:1479), Chapter 3 (sections 1 and 2) and "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Section 3.1.2).

[195] "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Section B.1.2).

connection with ES allowing them to register instructions in the VPC system.[196] It is always the AO who answers all questions, carries out all registrations on the account (owner account or nominee account), and handles changes and updates in the holdings.[197] All legal entities accepted as account operators may effect registrations on accounts opened on their own behalf.[198]

There is no cost charged to the shareholder (account holder) by ES for the opening of the first VPC owner account. For each additional account ES charges an annual administrative fee.[199]

4.2.2.2 Nominee accounts

Shareholders can also decide to hold shares through an intermediary (custodian) authorized as a nominee ("förvaltare") in a nominee account: in this case shares are called 'nominee-registered shares'. Nominee accounts are opened in the name of the custodian/nominee. Custodians are registered as holders of the VPC account with a notation that the securities are held on behalf of the owner.[200]

Nominee status can be granted to any of the legal entities allowed to become account operators mentioned above. Nominees can open one or more nominee accounts. A nominee must be an AO or contract an AO.

Nominee accounts are omnibus accounts that show the total holdings in the VPC account for the nominee's customers (shareholders or other financial intermediaries): the shareholdings belonging to more than one client are pooled and registered in the name of the same intermediary. Under Swedish law, nominees are required to keep their clients' financial instruments segregated from the nominee's own assets, unless the client has expressly agreed otherwise.[201]

Under the "General Terms and Conditions" of Euroclear Sweden, nominees are required to

[196] For more information about participation in Euroclear Sweden see "Participation in Euroclear Sweden and Euroclear Finland" , 2009-02-12, available at http://www.ncsd.eu/.

[197] http://www.ncsd.eu/616_ENG_ST.htm.

[198] See "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Section A 3.1.2).

[199] There is no limit to the number of securities accounts an owner or custodian may open. Investors normally open only one account for all the shares they own in different Swedish companies. There are very few functional reasons for opening additional accounts. If an end customer opens more than one VPC account, the participant is charged 10.00 SEK for each additional VPC account. ES's "List of fees and charges 2010:1" in force since January 1, 2010 is available at http://www.ncsd.eu/files/List_of_fees_and_charges_2010-1(12).pdf.

[200] See "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Section 3.2.2).

[201] See Securities Market Act (2007:528), Chapter 8 (section 34) and "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Section 4.3). There are a few examples where clients of the ES participants wish to segregate their holdings from other clients' assets. This is normally done by opening a separate nominee account for that particular client but the nominee account is still registered in the name of the ES participant (on behalf of one or more underlying clients).

maintain a list of owners and other rights holders regarding the financial instruments managed on behalf of the customers.[202]

Whenever requested by ES, nominees must provide information about underlying owners (shareholders and other intermediaries holders of financial instruments), known as 'nominee reporting' or 'nominee list of owners'.[203] Such reporting includes those shareholders that can be found in the register of shareholders under the name of the nominee, with the addition "on behalf of the owner". The reporting must include: the shareholders' name and personal identification number, corporate identity number or other identification numbers, postal address, and the number of shares of different classes which each shareholder owns. The information must relate to the conditions at the time as the CSD determines. Under request by CSD companies, the CSD must provide them with the information about the company's shareholders referred to above.[204]

A nominee reporting is commonly requested prior to the general meetings of shareholders. (See below Section 4.3 for more details about the share register and nominee list of owners.)

While most individual domestic shareholders hold shares through owner accounts, foreign shareholders normally hold shares through nominee accounts. About 80% of the shares registered in Euroclear Sweden are nominee-registered; the rest are registered on owner accounts opened directly in the name of the individual shareholders (mainly Swedish retail investors).[205] Foreign investors normally hold shares through several layers of securities intermediaries (global and sub custodians) and the last securities intermediary in the custody chain must open a nominee account with ES (directly if the nominee is an AO itself or through a contracted AO). The last intermediary in the custody chain for foreign investors is normally a local/sub-custodian (typically a Swedish bank).

Figure 6 shows a simplified example of a custody chain through which foreign institutional shareholders of Swedish listed companies hold their shares. We describe here a common setup for a foreign large institutional shareholder who decides not to open an owner account with ES and holds shares in a nominee account through a chain of intermediaries. The shareholder appoints a global custodian which does not open an account with the local CSD (ES) and uses its network of

[202] See "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Section 2.3).

[203] See ES's "Rules for Issuers and Issuer Agents, Version 2010:1" (Section B.2.3).

[204] Financial Instruments Account Act (SFS 1998:1479), Chapter 3, section 12. See also "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Section 4.5).

[205] See "Market Standards for General Meetings - Response to consultation", of the Swedish Securities Dealers Association ("Svenska Fondhandlareföreningen"), February 18, 2009. Available at http://www.fondhandlarna.se/index.php/sv/publicerat/remisser/cat_view/41-remisser/172-2009.

local custodians (Swedish custodian banks). The local custodians are CSD participants and AOs or contracts an AO. They are account holders and shares are registered in the VPC system in their name. The institutional shareholder also appoints one or more investment managers that manage part of the shareholder's assets.

The solid black arrows highlight the custody agreements existing among the different participants in the chain. The dotted arrow describes the relationship between the local custodian/nominee and the CSD: the nominee is the account holder and shares are registered on the company's share register kept by ES in the name of the nominee on behalf of the shareholders (and other underlying owners).

The dashed arrow shows the relationship between the investment manager and the global custodian. Under the agreement with the shareholder, the investment manager is required to open an account with the global custodian for the assets managed on behalf of the shareholder. The account is normally opened in the name of the shareholder.

An alternative to the nominee system for the custody of securities is the VPC Service Account. From a legal point of view, a VPC service account is an owner-registered account and securities are owner-registered in the VPC system.[206] Nominee's clients are registered in the service account as owners. Therefore, the nominee does not need to report lists of owners and address details and to take care of the registration of voting rights before the GM. To open a service account it is necessary to enter into an agreement with the investors and obtain the consent of the account holder concerning access to information on the account. Only nominees affiliated as account operators with ES can open a service account with ES and only owner accounts can be opened as service accounts.[207]

Each holder of a VPC account is notified by ES of any change which occurs in the VPC account as well as of any payment made regarding securities registered in the account. Moreover, each year before the end of January holders of VPC accounts receive from ES an annual statement including information on the account content as of December 31 of the previous year.[208]

[206] http://www.ncsd.eu/1070_ENG_ST.htm This service is offered to banks who do not wish to keep their own IT system for retail clients and instead outsource the account keeping and related services to ES.

[207] See also "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Sections B.3.2.4).

[208] Financial Instruments Account Act (SFS 1998:1479), Chapter 8, section 1. See also "General Terms and Conditions" of Euroclear Sweden, 2009-02-07 (Sections 4.1 and 4.2.1) Notifications are written in Swedish to recipients domiciled in Sweden, Norway and Denmark, as well as to those with a Swedish personal identification number domiciled in other countries. All other recipients will be notified in English.

ES has the legal responsibility to ensure that the total amount of securities issued by affiliated companies is identical to the total amount of securities held by ES accounts holders (direct-registered shareholders or nominees).

4.2.3 Ownership rights

Under Swedish law, a person who is registered as owner ("ägare") in a CSD account ('avstämningskonto') must, subject to the restrictions set out in the account, be deemed to have the right to dispose of the financial instruments.[209] Therefore, registration in the VPC system gives legal title to the owner of securities. (See below Section 7 for more details about shareholders' economic and voting rights.)

Beneficial ownership rights for shareholders result from the Euroclear Sweden's records for shareholders who open an owner account in ES and from the ES participants' books for shareholders who hold nominee-registered shares through a nominee account with a custodian affiliated to ES. Therefore, for nominee-registered securities, beneficial ownership can only be determined from the books of the custodians.

4.3 Authentication of registered shareholders and public nature of the share register

Swedish limited liability companies must have a share register (or register of shareholders - "aktieboken") that contains all the information regarding shares and shareholders as prescribed by the ABL.[210] CSD companies must keep the register using automated processing.

As discussed above, CSD companies must have their shares registered in a CSD register. The CSD (Euroclear Sweden) keeps the official share register of Swedish listed companies and is legally responsible for providing a correct register to the issuer. In the report we call the 'company's share register' interchangeably 'share register' and 'CSD register'. In fact, when the company orders an updated share register to ES, the register provided by ES to the company contains the same information available in the CSD register kept at that time by ES.

Under the "Rules for Issuers and Issuer Agents, Version 2010:1" (section A.1 and B.2), Euroclear

[209] Financial Instruments Account Act (SFS 1998:1479), Chapter 6, section 1.
[210] ABL, Chapter 5, sections 1 and 2.

Sweden maintains and produces three types of list of owners for directly registered holders of financial instruments: Register of Shareholders, Register of Creditors, and Other Register. Directly registered holders of financial instruments and nominees according to the Financial instruments Account Act are entered in the Register of Shareholders, Register of Creditors, and Other Register maintained by ES.[211]

Under Swedish law, the share register of a CSD company must include for each shareholder information such as: name and personal identification number, organization number or other identification number; mail address; number of shares held; and, if the company has different classes of shares, number of shares of different classes held.[212] Besides the share type, the register also indicates the voting power.[213]

This information is directly available to ES for directly-registered shares, that is, shares held by the shareholder in an owner account. In fact, as a general rule, any person who has been registered as a shareholder on a CSD account (that is, the holder of an owner account) must be immediately entered in the company's share register.

For nominee-registered holdings, under request by the shareholder, nominees authorized by the CSD can be entered in the register of shareholders instead of the shareholder. In this case, the share register must include a note specifying that the shares are held on behalf of someone else. All the information regarding shareholders mentioned above must also be included with regard to nominees.[214]

Therefore, the register of shareholders does not include information about nominees' underlying clients. Information about nominee-registered shares is obtained by securities intermediaries. As discussed above (Section 4.1), even though under Swedish law there is no general requirement that the identity of ultimate investors is registered (or disclosed to the CSD), under the Financial Instruments Accounts Act, the CSD (ES) and CSD companies have the right to request securities intermediaries to disclose the identity of their underlying clients.[215]

If a CSD company wishes to obtain information on the nominees' underlying holders of financial

[211]The Register of Creditors is a list of owners or nominees prepared for various types of debt instruments; the Other Register is a list of owners or nominees kept for those types of financial instruments that are neither shares nor debt instruments, such as warrants.
[212]ABL, Chapter 5, section 11.
[213]See "Rules for Issuers and Issuer Agents, Version 2010:1", of Euroclear Sweden AB, section B.2.1.
[214]ABL, Chapter 5, sections 13 and 14.
[215]Financial Instruments Accounts Act, Chapter 3, section 12.

instruments, it is possible to order from ES a Nominee list of owners regarding such financial instruments.[216] ES offers issuers to subscribe to shareholder lists weekly and monthly. Normally there is weekly, monthly and quarterly reporting of beneficial owners from nominees to ES.

It is important to note that only nominees that are affiliated to Euroclear Sweden are required, under request by ES, to disclose the identity of their underlying clients. Under Swedish law, CSD participants are required to report only the identity of their direct clients (that is, nominee reporting must go only one layer down the custody chain). In a cross-border voting scenario, shares are typically held through a chain of financial intermediaries and, as we have seen in Figure 6, typically the direct client of a CSD participant is not the foreign shareholder but another financial intermediary in the custody chain (normally a global custodian). This means that nominee lists of owners may not contain information about shareholders. Nominee lists normally include the names of foreign banks that are often registered as holders of large amounts of stock.

So, how does the company get information about foreign shareholders or domestic shareholders that hold shares through more than one intermediary? Under request by CSD companies, as a supplement to the lists of owners, Euroclear Sweden offers information on foreign institutional ownership, such as non-Swedish fund managers and the holdings of their separate funds. However, given the present system, the share register of Swedish listed companies normally does not offer a complete picture of the shareholder base.

Once the share register has been prepared, the CSD must: maintain and store the register, examine issues concerning the entry of shareholders in the share register, take responsibility for transcriptions (printouts) of the share register, and prepare share registers as per the record date ("avstämma aktieboken").[217] As discussed below, ES must provide the company with the register of shareholders to be used at the GM (that is, the 'general meeting register of shareholders').

Public nature of the shareholder register

Under Swedish law, the CSD is required to produce a 'public register of shareholders' ("offentlig aktiebok") and a 'public nominee list of owners' ("offentlig förvaltarförteckning") regarding shares in CSD companies. Both the register (in the form of a printout, or other presentation of it) and the list:

[216] See "Rules for Issuers and Issuer Agents, Version 2010:1", of Euroclear Sweden AB, section B.2. The Nominee list can be produced together with a Register of Shareholders, Register of Creditors and Other Register.

[217] ABL, Chapter, 5, sections 11 and 12.

- must be made available to the general public at the offices of both the CSD (Euroclear Sweden) and the CSD company;
- cannot be older than 3 months (that is, they must be produced on a quarterly basis); and
- must include only shareholders that own more than 500 shares.

The 'public register of shareholder' lists all direct-registered owners and the 'public nominee list of owners' lists the nominee-registered owners. In practice, the list of owners made available to the public at both the CSD and the company contains information about direct-registered as well as nominee-registered owners, with a holding of more than 500 shares. Nominees' underlying clients are not included in the public list. Issuers can order the register and the list from ES and obtain them in electronic form via Euroclear Sweden's web service.

Anyone is entitled, at a charge to cover the costs, to order a copy of the public Register of Shareholders and the public Nominee List of Owners from ES or from the Issuer.[218]

The public register of shareholders and public nominee list of owners must not be confused with the 'general meeting register of shareholders' ("Bolagsstämmoaktiebok") that must be ordered by the issuer and is produced by ES before the GM (as per the record date).[219] The 'general meeting (GM) register of shareholders' brought forward for the GM is not public information; it is only viewable at the GM by the attending shareholders. In fact, under Swedish law, at the GM of CSD companies a printout or other presentation of the entire share register must be made available to shareholders.[220] (For more details about the 'GM register of shareholders', see Section 11 below.)

In addition, at the GM, a list must be prepared of shareholders, proxies, and assistants present (voting register or list) including the number of shares and votes represented at the GM by each shareholder and proxy.[221] (See below Section 9.3.)

All trades executed on the NASDAQ OMX Stockholm are cleared and settled in ES. They are consequently delivered from the seller's owner account or a nominee account held by the seller's

[218]Financial Instruments (Accounts) Act, Chapter 3, (section 13) and ABL, Chapter 5 (sections 14 and 19). See also "Rules for Issuers and Issuer Agents, Version 2010:1", of Euroclear Sweden AB, section B.2.4. Under Rule B.2.4, Euroclear Sweden produces the public Register of Shareholders and public Nominee List of Owners four times a year, on 31 March, 30 June, 30 September and 31 December. ES notifies the company every time someone orders a copy of the public register or list during a time other than those times when ES produces public lists by law.

[219]See ES's "Rules for Issuers and Issuer Agents, Version 2010:1", (section B 4.1).

[220]ABL, Chapter 7, section 28.

[221]ABL, Chapter 7, section 29.

intermediary to the buyer's account or a nominee account held by the buyer's intermediary. There is no actual reconciliation between ES and the Stock Exchange, since the settlement instructions based on the trades at the Stock Exchange are sent to ES from the participants and not from the Stock Exchange itself, though such a direct feed is possible and offered as a service by ES. For owner-registered accounts the holdings are updated daily based upon the results of the settlement; for nominee accounts the holdings are updated based upon the results of the settlement but the actual shareholder information in a specific nominee account is not disclosed until the company requires a shareholder list from ES.

5 Implementation of the Transparency Directive in Sweden

In this section we describe the main features of the systems for dissemination, filing, and storage of information that has to be made public by issuers of securities introduced in Sweden through the implementation of the EU Transparency Directive (TD). This helps prepare the reader for the subsequent discussion of the rules governing the voting process and the exercise of voting rights at the GM of Swedish listed companies.

The TD establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated or operating within a Member State.[222] The TD regulates the dissemination and access to regulated information. Regulated information means all information which the issuer is required to disclose under the TD, under Article 6 of Directive 2003/6/EC of January 2003 on insider dealing and market manipulation (market abuse),[223] or under more stringent requirements than those laid down in the TD adopted by a Member State. Article 12 of the directive 2007/14/EC of March 8, 2007, regulates the dissemination of regulated information and sets the minimum standards to follow in doing so.[224]

Rules implementing the TD in Sweden came into force on July 1, 2007 and were incorporated

[222] Transparency Directive, Article 1.

[223] Under Article 6, Member States must ensure that issuers of financial instruments inform the public as soon as possible of inside information which directly concerns the said issuers and, for an appropriate period, post on their web sites all inside information that they are required to disclose publicly.

[224] Commission Directive 2007/14/EC of 8 March 2007. The directive lays down detailed rules for the implementation of certain provisions of the TD on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

in several existing Acts such as: the Financial Instruments Trading Act (Lag (1991:980) om handel med finansiella instrument);[225] the Securities Market Act (Lag (2007:528) om värdepappersmarknaden) which regulates the disclosure of financial and other price sensitive information by issuers;[226] and the Annual Accounts Act (Årsredovisningslagen (1995:1554)) which regulates the content of financial information to be disclosed by issuers.

In 2007, the Swedish legislature adopted Ordinance (2007:572) on Securities Market and Ordinance (2007:375) on Trading with Financial Instruments which also implemented some provisions of the TD. In enactment of the two Ordinances, on July 6, 2007, the Swedish Financial Supervisory Authority (FSA) issued "Finansinspektionen's Regulations governing operations on trading venues" (FFFS 2007:17) which, among other things, contain detailed provisions regarding information requirements for issuers of transferable securities and notification and disclosure of information related to shareholdings.

5.1 Dissemination of regulated information

Under Swedish law, issuers of transferable securities admitted to trading on a regulated market whose home Member State is Sweden (that is, whose registered office is established in Sweden) are required to disclose (make available to the public) the following information:

- periodic financial information (that is, annual and consolidated account, half-yearly report, and quarterly reports);
- any other price sensitive information (that is, information regarding the company's operations and securities relevant for the assessment of the securities' market price);
- information on any changes in the rights attached to transferable securities and new loan issues;[227]
- information on any change in the total amount of shares or votes in the company (on the last trading day of the month it occurred);[228] and

[225] Act (2007:365) amended Act (1991:980) on trade in financial instruments and came into force on July 1, 2007.
[226] This Act repealed the Clearing Operations Act (Lagen (1992:543) om börs och clearingverksamhet).
[227] Act (2007:528) on Securities Market, Chapter 17, section 1.
[228] Act (1991:980) on financial instruments trading, Chapter 4, section 9.

- information on the acquisition or transfer of own shares (treasury shares) must be disclosed if the acquisition or transfer means that the proportion of the shares held by the company itself or the proportion of the total votes in the company represented by the company's own shares reaches, exceeds or falls below any of the following limits: 5, 10, 15, 20, 25, 30, 50, 66 2/3, and 90 percent.[229]

All the above mentioned information shall be made public so that it is promptly and in a non-discriminatory manner available to the public within the European Economic Area (EEA).[230] Moreover, under the FSA Regulations, the information must be effectively disseminated to the public in Sweden and in other states within the EEA as simultaneously as possible.[231]

Companies listed on the NASDAQ OMX Stockholm are required to disclose all the information to be disclosed under the Rule Book for Issuers (NOS Rules) in the same way, that is, in a manner that ensures fast access to such information on a non-discriminatory basis.[232] It is important to note that besides the above mentioned regulated information, companies listed on the Stockholm Exchange must also disclose other information such as the GM notice and an announcement including resolutions adopted at the GM.[233] Information to be disclosed by listed companies, must also be simultaneously submitted to the Exchange.

As we will see in more details below, all the information that has to be disclosed under the Swedish law and the NOS Rules, must also be published on the website of listed companies.[234] However, to be in compliance with the disclosure rules, the publication of the information only on the company's website is not enough. In order to ensure that all market participants have access to the same information at the same time, companies must disseminate the information to the media. To do so, they are in practice required to use an information distributor ("informationsdistributör").[235]

[229] Act (1991:980) on financial instruments trading, Chapter 4, sections 18 and 20.
[230] Act (2007:528) on Securities Market (Chapter 17, section 2) and Act (1991:980) on financial instruments trading (Chapter 4, section 20).
[231] Finansinspektionen's "Regulations governing operations on trading venues (FFFS 2007:17)", Chapter 10, section 10.
[232] NOS Rules, section 3.1.5.
[233] NOS Rules, section 3.1.5
[234] NOS Rules (section 3.1.6) and Finansinspektionen's "Regulations governing operations on trading venues (FFFS 2007:17)", Chapter 10, section 12.
[235] NOS Rules (section 3.1.5) and Finansinspektionen's "Regulations governing operations on trading venues (FFFS 2007:17)", Chapter 10, section 11.

Under the FSA Regulations, information distributed to the media must be submitted in unedited and full text and in a manner which ensures the security of the communication, minimizes the risk of data corruption and unauthorized access, and provides certainty as to the source of the regulated information. In addition, information shall be communicated to the media in a way which makes clear that the information is regulated information, identifies clearly the issuer concerned, the type of information and the time and date of the communication of the information to the media for publication. However, for annual reports, half-yearly and quarterly reports the distribution requirement is fulfilled if the information submitted to the media for publication contains a reference to the website where the documents are available.[236]

As for the language to use in the dissemination of information:

1. issuers with Sweden as home Member State and whose securities are admitted to trading only on a Swedish regulated market, must disclose the information in Swedish;

2. issuers with Sweden as home Member State and whose securities are admitted to trading on a Swedish regulated market and on a regulated market in one or more other states within the European Economic Area (EEA), must disclose the information in Swedish and in either English or a language approved by the competent authorities in the state(s);

3. issuers with Sweden as home Member State and whose securities are not admitted to trading on a Swedish regulated market but only on a regulated market in one or more other states within the EEA, must disclose the information in Swedish, English or a language approved by the competent authorities in the state(s);

4. an issuer that has another state within the EEA as its home Member State, shall disclose the information in Swedish or English;

5. by way of derogation from paragraphs 1-3 above, issuers of transferable securities whose denomination per unit on the issue day is at least EUR 50 000, shall disclose the information in Swedish, English or in a language approved by the competent authorities where the transferable securities are admitted to trading.[237]

[236] Finansinspektionen's "Regulations governing operations on trading venues (FFFS 2007:17)", Chapter 10, section 11.

[237] Finansinspektionen's "Regulations governing operations on trading venues (FFFS 2007:17)", Chapter 10, section 13.

Figure 3 shows the dissemination system for information that issuers of transferable securities admitted to trading on a regulated market whose home Member State is Sweden must make available to the public under the Swedish law, the Swedish FSA's Regulations, and the NASDAQ OMX Stockholm's Rule Book for Issuers ("regulated information"). The issuer is required to appoint an information distributor (i.e., Reuters, Bloomberg) to reach media across the European Economic Area. In addition, issuers can take care of the dissemination of regulated information to the public on their own. The arrows highlight the passages of regulated information along the chain of dissemination.

5.2 Filing and storage of regulated information

Under the Transparency Directive, the home Member State shall ensure that there is at least one filing system and one officially appointed mechanism for the central storage of regulated information.[238]

Under Swedish law, information that has to be disseminated to the media must also be simultaneously filed with the Swedish FSA. The law exempts information that are not price sensitive from this requirement. This means that in practice companies are not required to file with the FSA (and publish on their website) GM notices that do not include price sensitive information.

As discussed above, companies listed on the NASDAQ OMX Stockholm are required to disclose, publish on their website, and submit to the exchange the GM notice and an announcement including resolutions adopted at the GM. To our knowledge, it is market practice for Swedish listed companies to file with the FSA also the GM notice and other press releases that companies are required to submit to the Stock Exchange. In the end, companies file with the FSA and NASDAQ OMX Stockholm the same information.

FSA is the officially appointed mechanism for the central storage of the information to be made public by issuers. Regulated information filed with the Swedish FSA must be stored electronically.[239] (See Figure 4.)

Information stored by the Swedish FSA must be easily accessible by the public.[240]

[238] Transparency Directive, Article 21.
[239] Act (2007:528) on Securities Market (Chapter 17, section 4) and Act (1991:980) on financial instruments trading, Chapter 4, section 21.
[240] Act (2007:528) on Securities Market Chapter 17, section 4.

Ordinance (2007:572) on Securities Market regulates the storage function and the access by the public to stored information. Among other things, the storage function must:

- have sufficient capacity and be available to users around the clock in an Internet-based system;
- have adequate data protection;
- make information available as soon as possible after the information has been submitted; and
- establish a system that can be linked with other similar (corresponding) storage functionality within the EEA.

Users must be able to read, download, and print the stored information. It must be possible to search for information in the storage system and the search function must be available in Swedish and at least one more language that is widely used in international financial markets.[241] (See Figure 4.)

The Swedish FSA stores information submitted by issuers in the database "Stock exchange information" accessible from the FSA's website. Information is stored for at least five years.[242]

With the implementation of the TD in Sweden, shareholders are required to notify the market about major changes in ownership (so-called flagging notification). In particular, since July 1, 2007, shareholders who as a result of an acquisition or disposal of shares reach, exceed, or fall below the 5, 10, 15, 20, 25, 30, 50, 66 2 / 3, and 90 percent thresholds for voting rights or number of shares in the company, are required to notify both the company and the Swedish FSA. The flagging notification must be sent not later than the trading day after the triggering transaction is completed. The FSA is required to publish flagging notifications at the latest at 12:00pm on the day after the notification is received.[243]

It is worth mentioning that, in implementing the TD, Sweden introduced more stringent measures with regard to the deadline and content of flagging notifications.

The TD requires investors to report major holdings of voting rights as soon as possible after crossing the threshold, but no later than 4 days.[244] As we have seen above, the Sweden legislature

[241] Ordinance (2007:572) on Securities Market, Chapter 4, sections 1 - 3.
[242] For more information see http://www.fi.se/Templates/Page____9618.aspx.
[243] Act (1991:980) on trade in financial instruments, Chapter 4, sections 3, 5, 9, and 11.
[244] Transparency Directive, Article 12.

decided to adopt a one-day deadline to report flagging notifications. Moreover, under Articles 9 and 10 of TD, investors are required to disclose major holdings of voting rights. The Directive does not require disclosure of the share capital. Sweden has imposed disclosure of the percentage of share capital.

Figure 4 summarizes the filing and storage systems for regulated information. The FSA is required to make information on shareholdings (flagging notifications) available to the public in the European Economic Area. Swedish issuers listed on the NASDAQ OMX Stockholm are always required to file regulated information with the Exchange.

Below, we describe the specific requirements for the dissemination of GM-related information.

6 Calling a GM

In this section we describe the legal rules that regulate the convocation of the GM of Swedish listed companies and the distribution to shareholders and the public of GM-related information (GM notice and agenda, accounts, and reports) before the GM. We also describe the shareholder rights to add new items to the GM agenda and to ask questions related to the GM agenda before the GM.

6.1 Time and power to convene a GM

The general meeting ("bolagsstämma" - GM) of shareholders is the company's highest decision-making body.[245] In fact, under Swedish law, shareholders exercise the right to make decisions in corporate matters at the GM.[246] An ordinary GM or annual GM ("Årsstämma" - AGM) must be held by shareholders within six months of the end of each financial year. At the AGM, the board of directors presents the annual report and the auditor's report and, in the case of a parent company, the group accounts and the auditor's report for the group.[247]

For nine of our ten sample companies the financial year corresponds to the calendar year and this is the market practice for Swedish listed companies. Only for one company in our sample the financial year runs from 1 December to 30 November of the following year.

[245] Swedish Corporate Governance Code 2010, section 1.
[246] ABL, Chapter 7, section 1.
[247] ABL, Chapter 7, section 10.

Based on the general meetings of the Swedish companies in NBIM's portfolios, it seems like the majority of the companies tend to hold their annual general meeting 110-130 days after the close of the financial year. In 2009, 61% of the annual general meetings of the Swedish companies in NBIM's portfolios were held during the second half of April and the beginning of May.

Under Swedish law, the GM is called by the board of directors.[248] The company's articles of association may require shareholders to hold every year one or more additional ordinary GMs.[249] None of the companies in our sample have such a prescription in their articles and this in general does not seem to be very common.

An extraordinary general meeting (EGM) must be convened by the board of directors when:

1. the board believes there is a reason to hold a general meeting prior to the next ordinary GM;
2. a company's auditor or shareholders owning not less than one-tenth (10%) of the company's share capital demand in writing that such a general meeting be convened to address the matter specified in the request.[250]

Even though not explicitly allowed by the law, companies can set a threshold lower than 10% in their articles of association. None of the companies in our sample establish a lower threshold.

When a GM to be held under the ABL, the company's articles of association, or a resolution passed by a GM, is not convened in the prescribed manner, following notification by a member of the board of directors, the CEO, an auditor or a shareholder, the County Administrative Board ("länsstyrelsen") must convene the meeting immediately. The company always bears the expenses for convening any general meeting (annual, additional ordinary or extraordinary meeting).[251]

Regarding the location of GMs, the general rule is that the GM must be held where the company maintains its registered office (that is, where the board has its headquarters). However, the articles of association may establish that the meeting must or may be held in another specified place in Sweden. Under extraordinary circumstances, the GM may be held in a location different from the two mentioned above.[252] There is no mention in the law of the possibility to hold virtual (electronic) shareholder meetings.

[248] ABL, Chapter 7, section 17.
[249] ABL, Chapter 7, section 12.
[250] ABL, Chapter 7, section 13.
[251] ABL Chapter 7, section 17.
[252] ABL, Chapter 7, section 15.

According to market practice, listed companies hold GMs where the company has its registered office. As for our sample companies, 6 companies hold GMs where the company has its registered office; the articles of association of the other 4 companies establish that GMs can be held either at the company's registered office or in 2 or 3 other locations in Sweden.[253] When the articles indicate more than one location, the board of directors makes the decision as to where each GM will be held.

6.2 Notice of the GM

6.2.1 Notification date

Under Swedish law, a notice to attend the ordinary GM of a public company must be issued not earlier than 6 weeks and not later than 4 weeks prior to the meeting.[254]

The notice convening an EGM called to approve amendments to the articles of association, must be issued not earlier than 6 weeks and not later than 4 weeks prior to the meeting. For other types of EGMs the notice must be given not earlier than 6 weeks and not later than 2 weeks before the meeting.[255]

In the case of an EGM convened at the auditor or shareholder request, the notice must be issued within two weeks of receipt by the company of the written request.[256]

All the companies in our sample follow the deadlines for the convocation of ordinary GMs and EGMs established by the ABL and this seems to be the market practice for Swedish listed companies.

The Act Concerning Public Takeover Bids in the Stock Market (2006:451) regulates the publication of the notice convening the GM of Swedish listed companies with shares involved in a public takeover bid. In particular, if an offeror who, as a result of a public takeover bid, has reached a shareholding of at least three-quarters of the shares in a Swedish listed company whose articles of association contain a 'breakthrough' rule, requests that a GM be convened to amend the articles of association or to remove or appoint directors, the GM must be called as soon as possible and the

[253]The articles of association of Volvo for example establish that "A General Meeting shall be held at one of the following locations, following a decision by the Board, i.e. Gothenburg, Malmö or Stockholm." The articles are available at http://www.volvogroup.com.
[254]ABL, Chapter 7, section 18.
[255]ABL, Chapter 7, sections 19 and 20.
[256]ABL, Chapter 7, section 13.

notice convening the GM must be issued not earlier than 4 weeks and not than later than 2 weeks prior to the GM.[257]

Under the Listing Agreement, before the beginning of each financial year, the company must publish a calendar listing, among other things, the date of the annual general meeting.[258] The planned date for the annual general meeting must also be included in the annual financial statement release ("bokslutskommuniké") to be published once a year within two months from the expiry of the reporting period.[259] In both 2008 and 2009, the companies in our sample published the notice of their annual meeting between 4 and 6 weeks before the meeting date. For the AGM 2009, only three companies in our sample published the notice about 4 weeks ahead of the meeting; the rest of the companies published the GM notice about 5 - 6 weeks before the GM which also seems to be the market standard among listed companies. Most of the companies in our sample also gave a notice of the meeting date a few weeks before the full notice. The GM notice available on the companies' web site is normally not dated (only month and year are specified), but the date can be found by searching for the notice in the archive of press releases on the companies' website and in the Swedish Official Gazette (only in Swedish). (See Table 5.)

6.2.2 How to give notice of the GM

Under Swedish law, notice to attend the GM must be given to shareholders in the manner prescribed in the articles of association. Notice must be sent by post to every shareholder whose mail address is known to the company, where:

1) an ordinary GM has to be held at a different time than prescribed in the articles of association; or

2) the GM shall:

- address a matter regarding an alteration of the articles of association in certain cases established by the law (for example when the alteration entails a reduction of the shareholders' right in the company's profits or other assets or a reduction of the number of shares a shareholder may vote for at the GM);

[257] Lag (2006:451) om offentliga uppköpserbjudanden påa aktiemarknaden, Chapter 6, section 4.

[258] Section 3.3.12 of the NOS Rules. Companies are not required to publish the calendar on their website; in the explanatory text accompanying rule 3.3.12, the exchange writes that "the publication of the calendar is normally done on the company's website".

[259] Sections 3.2.2 and 3.2.3 of the NOS Rules.

- decide whether the company shall go into liquidation;
- review the liquidator's final report; and
- address the issue whether the liquidation of the company should be terminated.[260]

In addition, public companies must give the GM notice through an advertisement ("annonsering") in the Swedish Official Gazette ("Post-Och Inrikes Tidningar") and at least one national daily newspaper indicated in the company's articles of association.[261] Companies normally make their notice public in one of the three main daily newspapers (Dagens Nyheter, Svenska Dagbladet or Dagens Industri), sometimes also in a local newspaper when the company has its registered office outside Stockholm.

Starting from 2007, under certain conditions, public companies whose shares are traded on a regulated market or an equivalent market outside of the European Economic Area, may provide information, including the GM notice, to shareholders using electronic means even when the law states that information should be given in another way.[262] (See Section 6.4.4 for more details on the electronic distribution of GM-related information to shareholders.)

Under the listing agreement, notices of GM of shareholders must always be disclosed in a manner that ensures fast access to such information on a non-discriminatory basis; that is, all market participants must have access to the same information at the same time. In order to comply with this rule, in practice companies are required to use an established information distributor ("informationsdistributör") to disseminate the company's information.[263]

GM notices must always be disclosed:

1. whether or not they include price sensitive information;
2. irrespective of if the notice will be sent to the shareholders by post or in any other way will be made public (e.g. in a newspaper), and
3. even if certain information included in the notice had been previously disclosed according to the Exchange's disclosure requirements.

[260] ABL, Chapter 7, section 23.
[261] ABL, Chapter 7, section 56.
[262] ABL, Chapter 7, section 64.
[263] NOS Rules, sections 3.1.5 and 3.3.3.

As for the time to disclose the GM notice, under the NOS Rules, the notice must always be disclosed at the latest the evening before the notice is expected to be published in a newspaper and before it is made available on the company's web site. It is thus not sufficient to disclose the information the same morning as the notice will be published in a newspaper.[264] As we will see in more detail below (Section 6.2.3), the GM notice must include proposals by the board of directors, the nomination committee, and shareholders. Under the Exchange's disclosure rules, a proposal from the board of directors, or from anyone else, to a GM of shareholders which is price sensitive must be disclosed as soon as possible even though the content of the proposal will be later part of the GM notice.[265]

The GM notice must also be simultaneously provided to the Exchange in the way prescribed by the Exchange and promptly (that is, as soon as possible after it has been disclosed) made available on the company's website. In fact, listed companies must have a website where all the information disclosed by the company under the Exchange's disclosure requirements must be published and remain available for at least three years.[266]

For the AGM 2008 and 2009, companies were also required to publish the entire notice convening the GM in a press release. This rule has been repealed by the NOS Rules that came into force in January 2010.

As discussed in Section 5.1, in order to comply with the Exchange's disclosure rules, the GM notice must also be disseminated to the media for publication using an information distributor.

According to the Corporate Governance Code 2010, as a general rule, the notice of meeting and all the other documents relevant to the GM must be made available "in such time and in such a form that they provide shareholders with sufficient opportunity to form a well-founded opinion on the issues raised".[267] In particular, information about time and venue of the shareholders' meeting must be posted on the corporate governance section of the company's website as soon as they are decided and anyway no later than in conjunction with the third quarter report.[268]

[264]NOS Rules, section 3.3.3.
[265]NOS Rules, section 3.3.3.
[266]NOS Rules, sections 3.1.5 and 3.1.6.
[267]Swedish Corporate Governance Code 2010, sections 1.2. This section had been introduced in the revised 2008 version of the Code with the aim to make it easier for foreign shareholders to prepare for the shareholders' meeting. See "Comparison between the revised Swedish Corporate Governance Code and the previous Code", May 2008, available at http://www.corporategovernanceboard.se/.
[268]Swedish Corporate Governance Code 2010, sections 1.1 and 10.3. These rules were already included in the 2008 Code and have not been modified in the 2010 version.

Except in the above mentioned circumstances as regulated by law, listed companies normally do not send the GM notice to their registered shareholders by regular mail or by e-mail.

In their articles of association companies normally prescribe the notice to be published in the Swedish Official Gazette and two named daily newspapers. Swedish listed companies post the GM notice on their website, as required by the Listing Agreement and recommended by the Corporate Governance Code. In 2009, all of the companies in our sample published the GM notice by advertisement in the Swedish Official Gazette and in one or more national daily newspapers. In particular, the articles of association of two companies prescribe the publication of the GM notice in one daily newspaper, other two companies prescribe the publication in three daily newspapers, and the rest prescribe two daily newspapers. Companies normally publish the GM notice in the two national dailies Dagens Nyheter and Svenska Dagbladet. All the companies also published the GM notice on their web sites.

As we indicated in Section 2.1 above, Sweden is in the process of transposing the SRD into legislation. Skog (2008), proposes changes to the ABL to implement the directive. Among the proposed changes, Skog proposes to amend the current requirements for the publication of the GM notice by listed companies (that is, publication of the full GM notice in the Official Gazette and in at least one national daily newspaper). The new proposed provisions (ABL, Chapter 7, Article 56a), require public companies whose shares are traded on a regulated market or an equivalent market outside of the European Economic Area to give the full GM notice by advertisement in the Swedish Official Gazette and the company's website and to announce through advertisement in at least one national newspaper that the notice of the GM has been given. Companies are required to include in the newspaper ad specific information such as company's name and corporate identity, type of meeting to be held, time and venue of the GM, etc. (For more details about the implementation of the SRD in Sweden and changes to the ABL proposed in Skog (2008), see below Section 12.2.)

That said, it is important to note that the 2009 AGM agenda of several companies included a Board of Directors' proposal for resolution on "conditional" amendments of the Articles of Association regarding notice convening a General Meeting of Shareholders. In order to enable implementation as soon as practically possible of the more cost-effective procedures for convening general meetings proposed in Skog (2008), some Boards proposed to amend the existing wording of the arti-

cles of association regulating the procedures for convening general meetings.[269] Since the proposed changes to the ABL had not yet come into force at the time of the publication of the notice, the Board had to propose that the decision of the Annual General Meeting regarding the amendment of the Articles of Association shall be made conditional to the approval of the proposed changes to the ABL by the Swedish legislature and the proposed wording of the new article of association will come into force only if in compliance with the (changed) Swedish Companies Act. Meanwhile, the old provisions will have to be followed.

Four of our sample companies approved these changes to their articles of association at the AGM 2009. However, until the Swedish legislature approves the proposed changes to the ABL, the old provisions in the articles of association are still in force and companies had to publish the full notice of the 2010 AGM both on the Swedish Official Gazette and on the national daily newspaper/s specified in the company's articles of association.

An example is the following quote from the notice of the 2009 AGM of Ericsson:[270]

"Item 13 Conditional amendment of the articles of association

The Board of Directors proposes the Articles of Association (§ 13) are amended to adjust to new rules in the Companies Act that are expected to come into effect prior to the Annual General Meeting of Shareholders 2010.

Current wording: Notice convening a General Meeting shall be issued through announcement in Post-och Inrikes Tidningar as well as in Dagens Nyheter and Svenska Dagbladet.

Proposed wording: Notice convening a General Meeting shall be issued through announcement in Post-och Inrikes Tidningar as well as at the Company's website. Announcement to the effect that notice convening a General Meeting has been issued shall be made in Dagens Nyheter and Svenska Dagbladet.

Further, the Board of Directors proposes the resolution of the Meeting be subject to the amendment of the means of giving notice of a General Meeting in the Companies Act (SFS 2005:551) coming into effect, meaning that the proposed wording of § 13 above is in accordance with the Companies Act."

Nordea's Board of directors proposed such a change in the company's 2010 AGM agenda. The

[269] See the GM notices of Ericsson and TeliaSonera available respectively at http://www.ercsson.com and http://www.teliasonera.com.

[270] Available at http://www.ericsson.com.

AGM held on March 25, 2010, "resolved to amend article 10 of the articles of association so that the notice to attend the general meeting must be given by advertisement in the Swedish Official Gazette and on the Nordea's web site. That the notice has been given must be advertised in Dagens Nyheter. The resolution to amend the articles of association is conditional on an amendment regarding the way general meetings are convened in the Swedish Companies Act."[271]

6.2.3 Content and language of the GM notice and agenda

According to the Corporate Governance Code 2010, as part of the material to be presented to the GM, the GM notice must be available in Swedish and, "if the ownership structure warrants it, and it is financially feasible", the company is to offer translation of the GM notice in other relevant languages.[272]

All the companies in our sample translate their GM notice in English and publish the English version on their websites. As for the content of the GM notice, the ABL, the NOS rules, and the Corporate Governance Code, regulate it.

The GM notice must indicate time and place of the GM and include details on the conditions for shareholders to exercise their right to participate in the GM (established in Chapter 7, section 2, of the ABL) that is, deadline (record date) for the registration in the register of shareholders kept by the CSD and, if so requested by the company's articles, deadline to send the company a notice of intention to attend the GM. Criteria for participation and voting at the GM are analyzed in detail in Chapter 7 of this Report.

The notice must also include a proposed agenda for the general meeting in which the board of directors must describe clearly the matters to be discussed at the general meeting. The items on the agenda must be numbered and the main content of each proposal submitted must be indicated, unless the proposal involves a matter of minor importance for the company. If the proposal involves an amendment of the articles of association, the main content of the proposed alteration must always be stated no matter how relevant the proposed changes.[273]

The agenda attached to the GM notice shall be presented to the GM for approval and the

[271] Info available at http://www.nordea.com.
[272] Swedish Corporate Governance Code 2010, section 1.5. The rule was already in the 2008 Code and has not been modified in the 2010 version.
[273] ABL, Chapter 7, section 24 (as amended by Act (2007:373)).

numbering of the matters cannot be changed.[274]

Therefore, under Swedish law, with the only exception of matters of minor significance to the company, no matter can be voted upon at the GM if not previously stated in the GM agenda. Moreover, if a provision of the ABL or the articles of association regarding the GM notice or the provision of documents before the GM has been breached in any matter, the GM cannot adopt a resolution on that matter without the consent of the shareholders affected by the breach of the rules. However, even without such a consent, the general meeting may decide on a matter which has not been included in the notice of the meeting, provided that the matter according to the law or the articles of association falls within the competence of and must be addressed by the general meeting or it is immediately caused by another issue that must be decided by the general meeting.[275] This means that proposals and counterproposals (related to items already on the agenda) can always be raised by shareholders during the GM. (For more details on counterproposals see Section 6.3 below.) The general meeting may also decide to call an extraordinary general meeting to deal with the issue.[276]

When the company offers shareholders the opportunity to vote through a proxy form collected at the company's expense (under ABL, Chapter 7, section 4), the notice convening the GM must also state the manner through which shareholders can obtain the proxy form.[277]

In addition, since 2007, the GM notice of a Swedish public company whose shares are traded on a regulated market or an equivalent market outside of the European Economic Area, must also include information on the total number of shares and votes in the company. The information must relate to the situation at the time of the meeting or, in the case of a CSD company, to the record date established in Chapter 7, section 28 third part (that is, five business days prior to the meeting or a later date established by the articles of association). When this is not possible, the information must relate to the situation at the time of the notice.[278]

The ABL establishes special provisions regarding the content of the notice convening GMs that must address specific issues such as new issues of shares, distribution of profits, acquisition or transfer of company's own shares, reduction of share capital, company's liquidation. For example,

[274] ABL, Chapter 7, section 31.
[275] ABL, Chapter 7, section 26.
[276] ABL, Chapter 7, section 26.
[277] ABL, Chapter 7, section 24.
[278] ABL, Chapter 7, section 63.

when the GM must decide on a proposal regarding distribution of profits or a reduction of share capital, the GM notice must include the principal content of the proposal.[279]

Under the NOS Rules, listed companies must disclose, simultaneously submit to the Exchange, and promptly make available on the company's website, proposals and actual changes regarding the board of directors, any other significant change to the company's top management, and any change of the auditor. Proposals for board's nominees are normally included in the GM notice. Any announcement regarding new board members or a new managing director must include relevant information about the experience (relevant education) and former positions held (i.e., former and present board assignments).[280]

As we will discuss in detail below, under certain conditions, every shareholder has the right to put forward a new item for the GM agenda of Swedish listed companies. If the shareholder proposal is received by the company within the deadline set by the company itself, the board of directors must include the shareholder proposal in the GM notice. Companies' websites normally include information about the shareholder right to put items on the GM agenda. (See below Section 6.3.)

As we have seen above (Section 3.3.1), under the Corporate Governance Code, every listed company must have a nomination committee whose main task is to propose decisions to the shareholders' meeting on electoral and remuneration issues. The GM notice must include the name of the Chairman for the AGM proposed by the company's nomination committee and present all the other nomination committee's proposals. In addition, the proposals must also be made available on the company's website together with specific information about candidates nominated for election or re-election to the board (see Section 3.3.3 above).

Moreover, when the notice is issued, the nomination committee must issue a statement on the company's website explaining its proposals concerning the board of directors with specific regard to the requirements on the composition of the board set by the Corporate Governance Code. Recall that under the Code, shareholder-elected board members must "collectively exhibit diversity and breadth of qualifications, experience and background" and "the company is to strive for equal gender distribution on the board."[281]

In conclusion, the GM notice must include all the proposals by the board of directors, the

[279] ABL, Chapter 7, section 24; Chapter 18, sections 2 and 8; Chapter 20, section 16.
[280] NOS Rules, section 3.3.5.
[281] Swedish Corporate Governance Code 2010, sections 2.6 and 4.1.

nomination committee, and shareholders, if any.

Table 11 gives an example of a standard GM notice created on the basis of the GM notices of our sample companies.

6.3 Right to put items on the GM agenda

The ABL allows any shareholder (even if holding one single share!) to put an item on the agenda of a GM (annual, ordinary not annual or extraordinary) of a Swedish company. In order to have a matter addressed at a general meeting, a shareholder must submit a written request to the board of directors. In order for the proposed item to be included in the GM notice and discussed at the general meeting, the request must be received by the board of directors:

1. not later than 1 week prior to the earliest date (that is, 6 weeks before the GM) on which notice to attend the general meeting may be issued (in practice this means that such request must be submitted to the board not later than 7 weeks prior to the date of the GM); or

2. after the date specified in point 1 but in due time for the item to be included in the GM notice.[282]

As soon as the time and venue of the shareholders' meeting have been decided, and no later than in conjunction with the third quarter report, Swedish listed companies are required by the Corporate Governance Code to post on their website not only information on the time and venue of the GM, but also information on "the closing date for the issues to be submitted by shareholders for inclusion in the notice of meeting".[283]

According to market practice, listed companies state on their website the deadline to submit proposals in order to have them included in the GM notice. The majority of the companies in our sample give information about the shareholder right to place an item on the 2010 AGM agenda on their websites. The deadline is normally 7-8 weeks before the meeting; this also seems to be the market practice among listed companies. (See Table 6.)

As for the means by which shareholders are required to send the written request to the board, several companies allow shareholder to send the request to the board either by mail or by email.

[282] ABL, Chapter 7, section 16.

[283] Swedish Corporate Governance Code 2010, section 1.1. This rule was already included in the 2008 Code and has not been modified in the 2010 version.

3 companies in our sample ask shareholders to send the request by mail and do not provide any email address to use for this purpose.

From the website of TeliaSonera:

> "Annual General Meeting 2010
>
> The Annual General Meeting (AGM) will be held on April 7, 2010, at 14:00 (CET) at Cirkus, Stockholm. The record date entitling shareholders to attend the meeting will be March 30, 2010. Shareholders may file notice of intent to attend the AGM from March 8, 2010. TeliaSonera must receive notice of attendance no later than 16:00 (CET) on March 30, 2010. A shareholder is entitled to have a matter dealt with at a general meeting of shareholders, provided that the board of directors has received a request therefore early enough to include the matter in the notice convening the general meeting. In order to ensure that a matter may be included in the notice convening the annual general meeting to be held on April 7, 2010, a written request must be received by the board no later than February 17, 2010. The request is to be addressed to the board of directors and sent to General Counsel (...) or by e-mail to (...)."

In the 'Corporate Governance' section of Volvo's website, under the heading "General meeting of the shareholders", the company writes:

"A shareholder is entitled to have a matter dealt with at a general meeting provided the board of directors has received a request herefore at least one week before the earliest date that the notice convening the meeting may be issued. The request shall also be dealt with if it is received later, but can still be included in the notice convening the meeting."[284]

However, in the section of Volvo's website that provides information on the "Annual General Meeting 2010", the company establishes a deadline for shareholders to send the request to the board and does not explicitly mention the possibility to send the request to the board after the specified deadline (that is, 7 weeks before the GM).

From Volvo's website:

> "The Annual General Meeting of AB Volvo (publ) will be held on Wednesday, April 14, 2010 in Göteborg, Lisebergshallen

[284] Available at http://www.volvo.com.

> The Annual General Meeting of AB Volvo (publ) will be held on Wednesday, April 14, 2010. The notice will be published in March 2010.
>
> Shareholders are entitled to have a matter addressed at the Annual General Meeting provided that the request therefore has reached the Board of Directors no later than Wednesday, February 24, 2010. However, in order to ensure the matter's inclusion in the notice of the annual general meeting in a satisfactory way, the company recommends that the shareholder's request is sent to AB Volvo no later than February 19, 2010.
>
> The request shall be addressed to the Board of Directors but sent to: (...)"

A strict interpretation of Section 16, Chapter 7 of the ABL, would lead you to believe that shareholders are allowed to submit any type of proposals, including proposals regarding candidates for the election of the board of directors. However, even though any shareholder is allowed to present a list of board nominees, the board is not required to include such proposal in the GM agenda (not even if it is a clear cut proposal submitted 7 weeks ahead of the GM). The board normally only submits the shareholder proposal on board nominees to the nomination committee for consideration. Moreover, as we will discuss in Section 6.3.2 below, the nomination committee is not required to publish or make other shareholders aware of recommendations submitted by shareholders. The committee will not disclose lists of nominees proposed by shareholders and received by the board. As a result, in practice the right of any shareholder to submit proposals for board candidates is mute other than through the shareholder controlled nomination committee itself.

6.3.1 Shareholder proposals and counterproposals at the GM

As discussed in Section 6.2.3, during the GM, shareholders of Swedish companies can always raise proposals and counterproposals related to items already on the agenda. However, resolutions regarding specific matters (such as, new issues of shares, buy-back of own shares, and changes in the articles of association), cannot be changed (i.e., expanded) at the GM.[285] These are resolutions which, according to the Companies Act, require the board of directors (or a shareholder) to make the

[285] For example, if the board proposes to issue X new shares, shareholders at the GM can only propose the issuance of a number of shares lower than X.

final proposal and any required supporting documents, available for shareholders at the company's office not later than 2 weeks before the GM. Very often these resolutions have to be adopted by a supermajority.

To our knowledge, it is not uncommon for shareholders to make proposals or counterproposals related to items on the GM agenda at the GM of Swedish listed companies. However, the proposals are normally not successful.

At the 2009 AGM of Swedbank for example, Item 11 on the GM agenda was "Determination of the number of Directors"; the nomination committee proposed eight members and no deputies. One of the shareholders present at the meeting raised a counterproposal and proposed that "the meeting should resolve that the number of Board members should be seven and asked for the issue to be resolved by voting". The AGM voted in favor of the nomination committee's proposal.[286] (More details on type and number of proposals and counterproposals raised at the GM of our sample companies are available in Table 9.)

6.3.2 Right to submit recommendations to the nomination committee

Under the Corporate Governance Code, listed companies are required to provide on their website information on how shareholders may submit recommendations to the nomination committee.[287]

Companies do follow the Code's recommendation. In fact, to our knowledge, no company has made an explanation (under the comply or explain principle) regarding deviation from Section 2.5 of the Corporate Governance Code. This should imply that they typically post on their website information on the shareholder right to submit recommendations to the nomination committee.

The Corporate Governance Code does not limit the shareholder right to submit recommendations to the nomination committee to recommendations about nominees for the board of directors. Therefore, shareholders are allowed to submit recommendations about all the proposals that the committee is required to present to the GM. Reading the information posted by companies on their websites, it is not always clear whether the committee will consider shareholder recommendations about any of the proposals the nomination committee is empowered to present at the GM or only about nominees for the board of directors. Only two companies in our sample clearly specify the

[286] See the Minutes of the AGM 2009 of Swedbank, available at http://www.swedbank.com.

[287] Swedish Corporate Governance Code 2010, section 2.5. This rule was already included in the 2008 Code and has not been modified in the 2010 version.

content of the recommendations (that is, recommendations on a person(s) to become members of the board).

The Corporate Governance Code does not set a deadline for shareholders to send recommendations to the nomination committee and companies set very different deadlines. Some companies do not set any deadline, others specify a deadline by which the recommendations must reach the nomination committee in order to be considered. As for our sample companies, only three set a deadline. Deadlines vary from a minimum of 2 months to a maximum of 4 months before the GM.

Companies normally allow shareholders to send recommendations to the nomination committee by both mail and email, rarely only by mail.

While listed companies are required to include in the GM notice shareholder proposals received within the deadline specified on the company's website, neither the law nor the Corporate Governance Code requires companies to make other shareholders aware of recommendations to the nomination committee eventually submitted by shareholders. However, as we have seen above (Section 6.3.1), shareholders are always allowed to submit a proposal (before the GM) and to raise a counterproposal at the GM on all the proposals presented by the nomination committee (that is, on the election and remuneration of the board of directors and auditors, as well as on the election of the chairman of the GM).

6.4 Distribution of other GM-related information to shareholders and publication of accounts and reports

In this section we list the main information (announcements, financial statements, and reports) that Swedish companies listed in Sweden must publish and make available to shareholders before the GM or periodically. We focus on the deadlines by which companies must make this information available to the public and the formalities that companies must respect in doing so.

Recall that Swedish companies must submit the annual report and the auditor's report and, in the case of a parent company, the group accounts and the auditor's report for the group, to the AGM for approval. The Annual Accounts Act (1995:1554) regulates the establishment and publication of the annual report ("åarsredovisning"), consolidated accounts, ("koncernredovisning") and interim report ("delåarsrapport") of Swedish limited liability companies.[288]

[288] Act (1995:1559) on annual accounts of banks ("kreditinstitut") and investment firms ("värdepappersbolag") and

6.4.1 Annual report

The annual report must be written in a transparent manner (in plain readable form or in electronic form) and in accordance with generally accepted accounting principles. It must be written in Swedish and signed by all the members of the board of directors and the CEO.[289] According to the Corporate Governance Code, the board of directors must ensure that the company has adequate internal controls and formalized routines to ensure that approved principles for financial reporting and internal controls are applied, and that the company's financial reports are produced in accordance with legislation, applicable accounting standards and other requirements for listed companies.[290]

The annual report must consist of a balance sheet ("balansräkning"), a profit and loss account ("resultaträkning"), explanatory notes ("noter"), and a board of directors' report ("förvaltningsberättelse", henceforth "directors' report"). Companies whose shares, warrants, or debt securities are admitted to trading on a regulated market or an equivalent market outside of the European Economic Area (EEA), must include in the annual report also a financial analysis ("finansieringsanalys").

Balance sheet, profit and loss account, and the notes must be drawn up as a whole and give a true and fair view of the company's financial position and results. When necessary to give an accurate picture, additional information must be added.[291]

The notes to the annual report must include additional information such as information on: loans made to directors, CEO, or equivalent officers of the company; related party transactions; gender distribution among the directors, CEO, and other people in the company's management; salaries, other remuneration ("andra ersättningar"), and social security costs (with special reference to pension costs) for the financial year.[292]

The directors' report must contain a true and fair overview of the development of the company's operation, financial position, and results. Information to be provided in the report includes:

Act (1995:1560) on annual accounts of insurance companies establish special rules on the content and publication of accounts and reports of banks, investments firms, and insurances.

[289] Under Act (2007:528) on Securities Market (Chapter 16, section 9), those who sign annual and consolidated accounts must also indicate their position in the company.

[290] Swedish Corporate Governance Code 2010, section 7.4. This rule was already included in the 2008 Code (section 10.4) and has not been modified in the 2010 version.

[291] Annual Accounts Act (1995:1554), Chapter 1 (section 1) and Chapter 2 (sections 1, 2, 3, 5, and 7).

[292] Annual Accounts Act (1995:1554), Chapter 5, sections 12, 12a, 12b, 18b, 19, and 20. Further information about the financial year salaries and allowances paid to each member of the board and the CEO must be disclosed.

- conditions that are important to assess the development of the company's operation, financial position, but that are not required to be included in the balance sheet, profit and loss account or notes;
- events that are essential to the company and occurred during the financial year or after its end;
- company's expected future developments, including a description of material risks and uncertainties facing the company;
- the company's research and development activities;
- company's branches abroad;
- number and nominal value of own shares held by the company, the proportion of share capital that they represent and size of the compensation paid for the shares;
- number and nominal value of own shares acquired and transferred during the financial year by the company, the proportion of share capital that they represent and size of compensation paid or received as well as reasons for the acquisition or transfer.

The directors' report of companies whose shares are admitted to trading on a regulated market or an equivalent market outside of the EEA must also include other relevant information such as:

- the total number of shares of the Company, the number of shares of different classes and, for each class of shares, the rights attached to the shares;
- restrictions on the transfer of shares because of provisions in the law or in the articles;
- direct or indirect shareholding in the company, representing at least one tenth of the voting rights for all the shares in the company;
- employee shareholding in the company through pension funds or similar, if voting rights for those shares cannot be exercised directly by the employees;
- restrictions on the number of votes each shareholder may cast at a general meeting;

- agreements between shareholders which may result in restrictions on the transfer of shares known by the company;

- provisions of the articles of association concerning the appointment and dismissal of directors and amendments to the articles of association;

- authorization given by the General Meeting to the Board to decide if the company should issue new shares or acquire its own shares;

- agreements between the company and directors or employees providing for compensation if they resign or are fired without valid reason or if their employment ceases as a result of a public takeover bid for the shares in the company.

Companies listed in Sweden must include in the directors' report the most recently approved guidelines for the remuneration of senior executives and the board's proposed guidelines that will apply after the next AGM.[293]

As of March 2009, the directors' report of a company listed on a regulated market must include a corporate governance report ("bolagsstyrningsrapport").[294]

Under the ABL, the corporate governance report must include the following information:

1. the principles of corporate governance applied by the company, in addition to those imposed by law or regulations, and where information on these principles are available;

2. the main elements of the company's systems for internal control and risk management in the context of financial reporting;

3. direct or indirect shareholding in the company, representing at least one tenth of the votes for all shares in the company;

4. limitations on how many votes each shareholder may cast at a general meeting;

5. provisions in the articles of association concerning the appointment and dismissal of directors and amendments to the articles of association;

[293] Annual Accounts Act (1995:1554), Chapter 6, sections 1- 2a.
[294] Annual Accounts Act (1995:1554), Chapter 6, section 6 (introduced by Act (2009:34) amending the Annual Accounts Act (1995:1554) which came into force on March 1, 2009).

6. powers for the board to decide that it will issue new shares or acquire its own shares provided by the GM;

7. functioning rules of the GM, the general meeting's main decision-making rights, shareholder rights and how these rights are exercised, to the extent that these conditions are not established by the law or other regulations;

8. how the Board of directors and, where appropriate, committees established within the company, are constituted and how they work, to the extent that these conditions are not established by the law or other regulations.

If the company elects not to apply any code of corporate governance, it must explain why. If the company applies a code of corporate governance it should, where appropriate, indicate the parts of the code which the company departs from and the reasons for this.

As discussed above (Section 2.3), the Swedish Corporate Governance Code requires listed companies to state clearly in the report which Code rules it has not complied with, explain the reasons for each case of non-compliance and describe the solution it has adopted instead (the comply or explain principle).

Under the Code, if not already included in the annual report, the governance report must also include information on:

- the company's nomination committee (name of committee's members and owners who appointed the members);

- members of the board of directors (i.e., age, education, work experience, shareholdings, independence, etc.);

- division of the work among the board members and description of how the board's work has been conducted during the most recent financial year;

- composition, responsibility and powers of any board committee;

- the CEO (age, education, work experience, significant concurrent commitments outside the company, shareholdings);

- any infringement of listing rules and breach of good practice on the securities market reported by competent authorities during the most recent financial year.[295]

With regard to item 2 above, starting from March 2009, the ABL requires Swedish listed companies to include in the corporate governance report a report on internal controls and risk management.[296] For companies that do not have a separate internal audit function, the Corporate Governance Code requires the board of directors to evaluate the need for such a function annually and to justify its decision in the report on internal controls.[297]

Instead of including the corporate governance report in the directors' report, companies may decide to write it as a separate document from the annual report. In this case the report must be sent to the company's auditor at the same time as the annual report.[298] When the governance report is written as a separate document and the annual report already includes information under items 3 to 6 above, such information need not be included in the report. However, in this case the governance report must indicate the place in the annual report where the information is provided.[299] When the governance report is not part of the annual report, it has to be published together with the directors' report. Companies can also choose to publish the report by making it available on the company's web site. In this case, the directors' report must include information on this and indicate the web site where the corporate governance report is available.[300]

When the corporate governance report is part of the directors' report (that is, included in the annual report), the company's auditor is required to review it and include in the auditor's report a statement on whether information under items 2 to 6 above is consistent with the rest of the annual report. The same statement must be included in the auditor's report if the information under items 2 to 6 above is included directly in the director's report.[301] When the director's report states that the governance report has been prepared as a separate document, the company's auditor, in a written and signed opinion must comment on whether the governance report has been prepared or

[295] Swedish Corporate Governance Code 2010, sections 10.1 and 10.2 (sections 11.1 and 11.2 of the 2008 Code).
[296] Annual Accounts Act (1995:1554), Chapter 6, section 6, paragraph 2, point 2 (as amended by SFS 2009:34). Previously listed companies were required to submit an annual report on the key aspects of the company's systems for internal controls and risk management regarding financial reports under the Corporate Governance Code 2008 (section 10.5).
[297] Swedish Corporate Governance Code 2010, section 7.4. This rule was already included in the 2008 Code (section 10.4) and has not been modified in the 2010 version.
[298] Annual Accounts Act (1995:1554), Chapter 6, sections 6-9.
[299] Annual Accounts Act (1995:1554), Chapter 6, section 8.
[300] Annual Accounts Act (1995:1554), Chapter 6, section 15a (as amended by SFS 2009:34).
[301] ABL, Chapter 9, section 31 (as amended by Act 2009:34).

not and whether the information under items 2 to 6 above is consistent with the rest of the annual report.[302]

Under the Corporate Governance Code 2010, listed companies are required to make the three most recent corporate governance reports available in the section of their web site devoted to corporate governance matter. This rule must be applied for the first time for financial years starting on or after 28 February 2009. For financial years started before companies were required to publish only the most recent corporate governance report.[303] (See Section 6.4.5 below.)

Parent companies must also prepare consolidated accounts ("koncernredovisning") for each financial year. Consolidated financial statements consist of: a group's balance sheet, one consolidated profit and loss account, notes, a directors' report, and a financial analysis.[304]

6.4.2 Deadlines to publish accounts and reports

Under the Finansinspektionen's "Regulations governing operations on trading venues (FFFS 2007:17)" (hereafter "FSA Regulations") once the board of directors has approved the annual financial statements, the issuer shall promptly publish a press release containing the financial results and the essential information of the coming annual report.[305]

Act (2007:528) on Securities Market regulates the publication of periodic financial information by issuers that have Sweden as home Member State and whose transferable securities are admitted to trading on a regulated market (henceforth in this section "issuers").[306]

Under Swedish law, issuers must publish annual and, where applicable, consolidated accounts as soon as possible and anyway not later than 4 months after the end of the company's financial year. Annual and consolidated accounts must be audited by the company's auditor.[307]

The annual report and audit report (as well as the consolidated account and consolidated audit report) must be submitted to the Swedish registration authority (Swedish Companies Registration Office) within one month after the GM approval of balance sheet and profit and loss account.

[302] Annual Accounts Act (1995:1554), Chapter 6, section 9 (as amended by SFS 2009:34).
[303] Swedish Corporate Governance Code 2010, section 10.3 (section 11.3 of the 2008 Code).
[304] Annual Account Act, Chapter 7, section 4.
[305] Finansinspektionen's "Regulations governing operations on trading venues (FFFS 2007:17)", Chapter 10, section 3a.
[306] Issuers with Sweden as home Member State are issuers whose registered office is based in Sweden.
[307] Act (2007:528) on Securities Market (Lag (2007:528) om värdepappersmarknaden), Chapter 16, sections 1 and 4.

Swedish companies must submit the annual report and, where applicable, the consolidated account for the previous financial year to company's auditors and general examiners ("lekmannarevisorerna") not later than six weeks before the AGM convened to approve the accounts.[308]

The auditor's report ("revisionsberättelsen") must be signed by the auditor and presented to the board of directors not later than three weeks prior to the AGM.[309] The auditor's report must be published together with annual and consolidated accounts.[310]

As for the content of the annual auditor's report, after giving information on the system of reporting standards applied by the company, the report must state, among other things: the system of standards applied by the auditor and whether the auditor's opinion on a specific matter on the report differs from the opinion of the board of directors or another auditor. The auditor must include in the report a statement on: whether the annual report has been prepared in accordance with the legislation on annual accounts in force; whether the annual report provides a true and fair view of the company's financial position and results; and whether the directors' report is consistent with the annual report. The report must also include other statements such as statements on: whether the GM must approve the balance sheet and profit and loss account presented by the board; whether the GM should decide to allocate the company's profits or losses in accordance with the proposal in the director's report; and whether the GM should grant discharge from liability to the members of the board and the CEO. The auditor is also required to report if any member of the board or the CEO has carried out any action or committed any oversight that may result in liability for damages. The same applies if the auditor has found that any member of the board or the CEO has acted in any other way that is in breach of the Companies Act, the relevant legislation on annual accounts or the company's articles of association.[311]

As discussed above (Section 3.3.1.3), the auditor presents its report to the annual general meeting.

Half year report

Issuers of shares must publish an interim report (delårsrapport) covering the first six months of the financial year (half-yearly financial report - "halvårsrapport") as soon as possible after the

[308] Annual Accounts Act (1995:1554), Chapter 8, sections 1-3.
[309] ABL, Chapter 9, section 28.
[310] Act (2007:528) on Securities Market, Chapter 16, section 4.
[311] ABL, Chapter 9, sections 29-33.

end of the relevant period, but at the latest two months thereafter.[312]

As for the audit of interim reports, under Swedish law, listed companies are not required to have their half year report and other interim reports audited. However, under the Corporate Governance Code, the board of directors must "ensure that the company's six- or nine-month report is reviewed by the auditor".[313] According to a review of 40 entities' financial reports, most entities chose to have their nine-months reports (Q3) reviewed by their auditors and a few chose their six-month reports (Q2).[314]

Interim management statements

Issuers of shares must also publish an interim management statement ("delårsredogörelse") during the first six-month period of the financial year and another statement during the second half of the financial year. The statements must be published in a period between ten weeks after the beginning and six weeks before the end of the six-month period. The statements must include information on material events and transactions that have taken place during the relevant period and a general description of the financial position and results of the issuer and its subsidiaries during the relevant period. The information must cover the period between the beginning of the six-month period and the date of publication of the statement.[315]

Quarterly reports

Issuers that publish quarterly reports ("kvartalsrapporten") are not required to publish interim management statements. Quarterly reports must be published as soon as possible and not later than two months after the report period.[316]

Issuers whose transferable securities are admitted to trading on a regulated market and whose home Member State is Sweden, must prepare annually a document which includes or make reference to all the information they have published or made available to the public during the previous twelve months. If the document refers to information in another document, it must specify where it is possible to obtain the referenced information. The document must be filed with the Swedish FSA

[312] Act (2007:528) on Securities Market, Chapter 16, section 5.
[313] Swedish Corporate Governance Code 2010, section 7.6. This rule was already included in the 2008 Code (section 10.4) and has not been modified in the 2010 version.
[314] See the "Transparency Directive Assessment Report", Prepared for the European Commission Internal Market and Services DG, Final Report, December 2009, available at http://ec.europa.eu/internal_market/securities/docs/transparency/report-application_en.pdf.
[315] Act (2007:528) on Securities Market, Chapter 16, section 6.
[316] Act (2007:528) on Securities Market, Chapter 16, section 7.

and made available to the public at the latest 20 working days after the publication of the annual financial statements.[317]

6.4.3 How to disclose accounts and reports

Under the ABL (Chapter 7, section 25) the board of directors is required to make accounting documents (financial statements) and the auditor's report or copies of such documents available for shareholders at the company for at least two weeks prior to the AGM. A copy of the documents must be sent immediately, free of charge and upon request, to any shareholder who provided the company with her mail address.[318] For companies whose shares are traded on a regulated market in Sweden, the above provisions also apply to the auditor's opinion regarding compliance with the draft guidelines for the remuneration of senior executives written by the board of directors.[319] As we have seen above (Section 3.3), the board is required to present remuneration guidelines to the AGM for approval.

As discussed in Section 5.1, in order to comply with the FSA's disclosure rules, periodic financial information must be disclosed (that is, distributed to the media). However, for annual, half-yearly, and quarterly reports, the distribution requirement is fulfilled if the information submitted to the media contains a reference to the website where the reports are available.

Listed companies are required to publish periodic financial information on their website. Companies listed on the NASDAQ OMX Stockholm must make their financial reports available on their website as soon as possible after the information has been disclosed. Financial reports must be available on the companies' website for at least 5 years.[320]

Under the Corporate Governance Code, not later than two weeks before the GM, the board is also required to publish on the company's website the results of the remuneration committee's evaluation of: application of the guidelines for executive remuneration most recently established by the previous annual general meeting on the company's website; current remuneration's structures and level; and programmes for variable remuneration.[321]

[317] Act (1991:980), Chapter 6, section 1b. Under Act (1991:980), Chapter 2, section 27, Sweden is the home Member State of an issuer whose registered office is in Sweden.
[318] ABL, Chapter 7, sections 25 and 62.
[319] ABL, Chapter 8, sections 54 and 51.
[320] NOS Rules, section 3.1.6.
[321] Swedish Corporate Governance Code 2010, sections 9.1 and 10.3.

It is common for Swedish listed companies to state in their AGM notice that: the annual report, the auditor's report, the statement by the auditor regarding compliance with the guidelines on compensation to senior executives approved by the previous AGM, and the complete proposals from the nomination committee and the board, will be available at the annual general meeting, at the company's office, and on the company's website. Companies also specify that the above mentioned documents will be sent free of charge to shareholders who so request and provide their address.

6.4.4 Electronic distribution of information relevant for the exercise of shareholder rights

Swedish listed companies are not required to distribute GM-related information directly to their shareholders, and they normally do not do so. However, as of July 2007, the GM of public companies whose shares are traded on a regulated market or an equivalent market outside of the European Economic Area (EEA), may adopt a resolution allowing the company to transmit such information directly to shareholders using electronic means.

In 2007, four new sections (Chapter 7, sections 64-67) were included in the ABL which allow, under certain conditions, public companies whose shares are traded on a regulated market or an equivalent market outside of the EEA, to provide information to shareholders using electronic means even when the law states that information must be provided in another way.[322]

A decision to use electronic means to inform shareholders must be approved by the general meeting and electronic means can be used only if the company has sufficient reliable procedure for the identification of shareholders.[323]

In addition, the company may inform a shareholder using electronic means only if the shareholder, after a request sent from the company by regular mail, has approved such a method of distribution. From the request it must be clear that future information may be given electronically, unless the shareholder explicitly opposes this. Shareholders, who have not opposed the electronic distribution of information within two weeks from the day in which the request was sent, are deemed to have accepted such a distribution method. A shareholder that has accepted information to be

[322] ABL, Chapter 7, section 64.
[323] ABL, Chapter 7, section 65.

given electronically may at any time withdraw her approval.[324] The above mentioned provisions will also apply to proxyholders.[325]

To date, none of our sample companies regularly identifies shareholders and distributes information to them using electronic means under sections 64-67 of the ABL. To our knowledge no GM of Swedish companies has yet approved the decision to use electronic means to inform shareholders.

6.4.5 Electronic dissemination of GM-related information to the public

As discussed in Section 5, listed companies must publish on their website all the information to be made public under the Swedish law, the FSA Regulations, and the NOS Rules.

The majority of the companies in our sample, published their annual report on their websites more than 4 weeks before the 2009 AGM. Two companies published the annual report about 2 weeks before the GM. They all published the annual report in English in addition to Swedish. They all also published the 2009 AGM notice and the full GM minutes (or a press release) in English on their website.

Under the new Corporate Governance Code (section 10.3), listed companies must have a specific section of their website devoted to corporate governance matters where the following information must be posted:

1. the three most recent corporate governance reports;
2. the part of the auditor's report (or the auditor's written statement) on the corporate governance report (see Section 6.4.1 above);
3. current articles of association;
4. updated information on the members of the board, the CEO, and the auditor;
5. description of the company's system of variable remuneration to directors and of each outstanding share and share-price related incentive schemes; and
6. any other information required by the board such as:
    a. time and venue of the GM;

[324] ABL, Chapter 7, section 66
[325] ABL, Chapter 7, section 67.

b. deadline to submit issues to be included in the GM notice;

c. GM minutes;

d. name of members of the nomination committee, owners that they represent, and information on members that leave the committee and new appointed members;

e. information on how shareholders may submit recommendation to the nomination committee;

f. proposals of the nomination committee;

g. statement of the nomination committee explaining its proposals regarding the board composition (see Section 6.2.3 above); and

h. information on candidates up for election or re-election to the board.

7 Criteria for participation and voting at the GM

In this section we discuss shareholder rights to participate and vote at the GM of Swedish listed companies. We focus on specific criteria shareholders must fulfill to exercise voting rights, either in person or by proxy.

7.1 Regulatory framework

7.1.1 Formal entitlement to exercise ownership rights

As discussed above, the account holder registered in a CSD account has, subject to the restrictions in the account, the right to dispose of (sell) the financial instruments credited to the account.[326] Thus, registration in the VPC system gives legal title to the owner of securities.

As a general rule, a shareholder may not exercise the rights attached to shares against the company until she is entered in the share register.[327] Any person who has been registered as a shareholder in a CSD account, shall be immediately registered in the share register.[328]

[326] Financial Instruments Account Act (SFS 1998:1479), Chapter 6, section 1.
[327] ABL, Chapter 4, section 37.
[328] ABL, Chapter 5, section 13.

7.1.2 Right to participate in and vote at the GM of listed companies

7.1.2.1 Record date registration

Under Swedish law, a shareholder of a CSD company is entitled to participate in and vote at a GM only if the shareholding is registered in the transcript or other reproduction ("en utskrift eller annan framställning") of the share register made available to shareholders at the GM. The reproduction of the share register must make reference to the conditions on the record date set by the company's articles of association. The transcript of the share register prepared as per the record date by Euroclear Sweden (ES) and provided to the company before the GM is the 'general meeting (GM) register of shareholders'. (See Section 11.1.1 below.)

A 'record date' ("avstämningsdagen") for voting can be defined as the date on which a shareholder must own shares in order to be allowed to exercise the right to participate in and vote at the general meeting. In other words, voting entitlements are set on the record date.[329]

The record date established by the ABL, which used to be 10 calendar days before the GM, starting from January 2006 is 5 business days ("fem vardagar") prior to the meeting. The articles of association may prescribe a later record date closer to the GM. Therefore, the transcript of the share register must make reference to the conditions five business days prior to the GM or the later date set in company's articles.[330]

In sum, each shareholder who is entered in the 'GM register of shareholders' prepared by ES as per the record date (five business days prior to the GM or later if so provided in the articles of association) has the right to participate in and vote at the GM of Swedish listed companies. The typical market practice for listed companies is to set the record date 5 business days prior to the GM. (See Table 7 below.)

7.1.2.2 Notice of attendance

Under Swedish law, the company's articles of association may prescribe that a shareholder may attend the general meeting only if she sends the company a notice of attendance by the date specified in the GM notice. This date may not be a Sunday, any other public holiday, a Saturday,

[329] For a definition of 'record date' see for example Myners (2004) (available at http://www.bba.org.uk/content/1/c4/33/91/164265.pdf) and JOINT WORKING GROUP ON GENERAL MEETINGS, Market Standards for General Meetings - Version subject to endorsement (30 October 2009), available at http://www.europeanissuers.eu.

[330] ABL, Chapter 7, sections 2 and 28.

Midsummer Eve, Christmas Eve or New Year's Eve and cannot be set earlier than 5 business days prior to the GM.[331]

In practice, it appears that Swedish listed companies always ask for this notice of attendance. The deadline to give the notice set by companies is normally 5 business days prior to the meeting. This means that Swedish listed companies normally set a common deadline (typically 5 business days prior to the GM) to have shares registered in the transcript of the share register (record date) and to give notice of attendance.

The Swedish law does not regulate how the notice of attendance must be given. Unless the company's articles of association or GM notice provide for something different, the notice can be given by shareholders electronically, by mail, by fax or by phone.

Swedish listed companies normally allow shareholders to provide notice of intention to attend the meeting by telephone, by fax, via the Internet (on a website specified by the company in the notice of meeting), or in writing (that is by mail). The notice normally must include information about the shareholder (such as name, address, phone, etc.).

Shareholders who want to participate in the GM in person or by proxy are always required to give the company a notice of attendance. The proxy form sent to the company is not valid as a notice of attendance.

> Market practice example:
>
> From Sandvik AB's proxy form for the 2010 AGM: "Please note that a proxy form that has been submitted to the company is not valid as a notification of participation. Special notification of the shareholder's participation must be made."

There is no legal requirement for the shareholder to state in the notice of attendance whether she will participate in person or through a proxyholder. However, companies usually require shareholders to provide this information in the notice. This request is most likely entirely for practical reasons (that is, to make the registration process at the meeting easier) and it has no legal implications.

Under Swedish law, shareholders or their proxies may be accompanied at the GM by not more than two assistants ("biträden") at the GM. The company's articles of association may prescribe that a shareholder may be accompanied by assistants only if she notifies the company of the number

[331] ABL, Chapter 7, section 2.

of assistants following the same rules established by the ABL to give the notice of attendance. Assistants can express their opinion at the GM.[332]

Swedish listed companies typically allow shareholders to bring a maximum of two assistants to the GM. All the companies in our sample give shareholders the right to be accompanied to the GM by a maximum of two assistants. In the GM notice, companies require shareholders to notify the company of the number of attending assistants (if any) either by including this information in the notice of attendance or anyway in the same manner prescribed to give notice of attendance. Some companies also ask for the assistant(s)' name(s).

In their GM notice, all the companies in our sample inform shareholders that the notice of attendance can be given by phone, mail, and via the company's website; some companies accept the notice also by fax. It is interesting to notice that all of our sample companies allow shareholders who are private individuals attending the meeting in person to give notice of attendance via the company's web site and this seems to be a common practice. However, the majority of our sample companies do not allow shareholders who are legal entities and/or shareholders (including individuals) who decide to vote by proxy to send the notice of attendance online. In fact, shareholders who are legal entities and/or shareholders who wish to be represented by a proxy must send a written notice of attendance to the company. Some companies require the notice to be accompanied by the POA.

As discussed above, shareholders (institutional and individual) who wish to be represented by a proxy must still give their notice of attendance. For institutional investors this is normally done through the custody chain. (See below Section 11 for more details.)

Many companies mail shareholders entrance cards ("inträdeskort") upon receiving the notice of attendance. This seems to be a practical procedure depending on how the meeting is organized. It appears to be common for large companies to send out admission cards and the majority of our sample companies do so. Companies normally clarify in the proxy form that if the address of the proxyholder is provided in the proxy form, the admission card will be sent to this address, if not it will be sent to the shareholder's address as registered with the CSD (Euroclear Sweden AB). Shareholders must present their admission cards at the entrance of the GM. If the admission card is not received in time before the GM, shareholders (or their proxies) can obtain it at the entrance

[332] ABL, Chapter 7, section 5.

of the GM.

Market practice example:

From the "Invitation to the Annual General Meeting 2010 of AB Volvo" to be held in Göteborg on April 14, 2010:

"**Notice to AB Volvo**

Notice of intention to participate in the Annual General Meeting may be given

- by telephone, +46 8 402 90 76
- by mail addressed to AB Volvo (publ), "AGM", P.O. Box 7541, SE-103 98 Stockholm, Sweden
- on AB Volvo's website; http://www.volvogroup.com

In providing such notice, the shareholder should state

- name
- personal registration number (corporate registration number)
- address and telephone number
- name and personal registration number of the proxy, if any
- name(s) of any accompanying assistant(s)

Shareholders who wish to participate in the Annual General Meeting, must submit notice prior to expiration of the notice period, no later than April 8, 2010. The notice of intention to participate in the Annual General Meeting should have reached AB Volvo preferably before 12.00 noon Swedish local time. If you wish to be accompanied by an assistant, notification to this effect must be provided as specified above."

7.1.2.3 Voting entitlements for owner-registered shares

As we have described in Chapter 4, shareholders of Swedish listed companies may decide to hold their shares in a direct/owner account with ES or through a securities intermediary in a nominee account. A person who is registered as a shareholder in a CSD account (that is, a direct-registered

shareholder), is immediately registered in the company's share register kept by the CSD.[333] This means that domestic and foreign shareholders who decide to open a direct account with ES have their name automatically registered in the company's share register and, on the record date set by the company, they will not need to identify themselves (that is, prove their ownership). If so required by the company's articles of association, direct-registered shareholders must only give a notice of attendance (notice of participation) on the deadline set by the company. However, direct-registered shareholders who have their shares on loan, will have to recall them before the record date in order to be entitled to vote. (See Section 7.2 below for more details.)

7.1.2.4 Voting entitlements for nominee-registered shares: the 're-registration' requirement

Shareholders can decide to hold shares in nominee accounts opened with ES by securities intermediaries. In this case, shares are registered in the company's share register in the name of the nominee.

Under Swedish law, the owner of nominee-registered shares who wants to participate in a GM, must be temporarily registered in the 'general meeting register of shareholders' prepared by ES as per the record date, upon request by the nominee. The registration of voting rights ("rösträttsregistrering") must take place at the latest on the record date. After the record date, the shareholder shall be removed from the share register.[334]

Therefore, the right to vote at the GM is retained only if the shareholder is entered in the company's share register kept by ES no later than the company's record date (normally 5 business days prior to the meeting.

In practice, if the shareholder wants to participate in and vote at the GM, she has to communicate her intention to the nominee; the nominee in turn must send a file to ES in which the intention of the shareholder to participate in the GM is made clear. This must happen at the latest on the record date set by the company. For shares held on nominee accounts, the file sent to ES is valid as a request to temporarily re-register the shares in the shareholder's name. The file must include all the relevant information about the investor(s). The re-registration is not a transaction among different accounts (omnibus-individual) in the VPC system: no individual account is temporarily

[333] ABL, Chapter 5, section 13.
[334] ABL, Chapter 5, section 15.

created; there is no transfer of shares and no changes at the CSD level. The re-registration is temporary and a 'shadow share register' is created.

To be sure that the registration takes place in time for the record date, the shareholder must send instructions through the custody chain in good time. Companies normally clarify in their GM notices that shareholders who have nominee-registered shares should request the bank or broker holding the shares in custody to effect the temporary owner-registration well ahead of the record date.

> Market practice examples:
>
> From the "Notice of Annual General Meeting of Shareholders in H&M Hennes & Mauritz AB, 2010" to be held in Stockholm on April 29, 2010:
>
> "Shareholders, whose shares are registered in the name of a nominee, must request to be temporarily entered into the share register as of Friday, April 23, 2010, in order to be entitled to participate in the Meeting. Such shareholder is requested to inform the nominee to that effect well before that day." (Emphasis added.)
>
> From the "Invitation to the Annual General Meeting 2010 of AB Volvo" to be held in Göteborg on April 14, 2010:
>
> "Shareholders who have trustee-registered shares should, several banking days prior to April 8, 2010, request temporary owner-registration, so-called voting-right registration, at the bank or broker holding the shares. Trustees normally charge a fee for this." (Emphasis added)

Notice how Volvo stresses that the trustees (custodians) normally charge a fee for the registration service. This fee is normally part of the entire custody fee paid by shareholders to their custodians. (See Section 12.1 below for more details on the cost of the registration procedure.)

In conclusion, in Sweden only shareholders registered in their own name in the 'GM register of shareholders' on the record date are allowed to participate in and vote at the GM. Domestic and foreign shareholders can decide to register either directly or through a nominee. If they are registered in their own name they do not need to be re-registered. If they hold shares through an intermediary, the intermediary is entered in the share register instead of the shareholder but it is not

allowed to exercise voting rights on behalf of its clients unless the clients ask for the re-registration of their shares ahead of the GM and give the intermediary a written and signed proxy.

Market practice example:

From the "Invitation to the Annual General Meeting 2010 of AB Volvo" to be held in Göteborg on April 14, 2010:

"**Right to participate in the Annual General Meeting**

Participation in AB Volvo's Annual General Meeting is limited to shareholders who are recorded as shareholders in the printout of the share register made on April 8, 2010 and who give notice of their intention to participate in the Annual General Meeting to AB Volvo no later than April 8, 2010.

Registration in the share register

AB Volvo's share register is maintained by Euroclear Sweden AB (formerly VPC AB). Only owner-registered shares are listed in the names of the shareholders in the share register. To be entitled to participate in the Annual General Meeting, owners of shares registered in the name of a trustee must have the shares registered in their own names. Shareholders who have trustee-registered shares should, several banking days prior to April 8, 2010, request temporary owner-registration, so-called voting-right registration, at the bank or broker holding the shares. Trustees normally charge a fee for this."

7.2 Trading of shares close to the GM

In this section we analyze what happens to the voting rights when shares are traded close to the GM date.

An investor who purchases shares must settle the transaction no later than the evening of the record date set by the company in order to be entitled to exercise the share voting rights. Since in Sweden the settlement cycle for the equity market is T+3 days (i.e., it takes three business days to settle a share trade on date T), shares must be bought at the latest three trading days prior to the record date for the buyer to be entitled to exercise the voting rights.

Since Swedish listed companies normally set the record date 5 business days before the GM,

the positions of the shareholders must be settled at the latest on the 5th day before the GM (in practice at the closing of business on the 5th day before the GM) for the shareholder to be entitled to voting rights for these shares. This means that shares must bought at the latest 8 trading days before the GM for the buyer to be able to vote the shares at the GM.

Sweden is an example of 'record date system' where the shareholder who sells the shares after the record date, keeps the right to participate in the GM and vote for the shares owned on the record date. A shareholder who buys shares after the record date will be able to participate in the GM and exercise the voting rights attached to the shares only if she receives a proxy from the seller. Of course, finding out who the seller is and obtaining a proxy is typically a costly process.

These rules are important to know also in relation to stock lending. In a typical stock lending agreement, the borrower of the shares gets the right to vote those shares. Therefore, a shareholder, who has lent the shares before the GM, must recall shares from loan in order to be able to vote at the GM. In order to have settled positions on the record date set by the company, shares must be recalled at the latest 3 trading days before the record date (or a total of 8 days before the GM).

7.3 Exercise of certain economic rights in CSD companies

In a CSD-registered company (CSD company), only shareholders or nominees who, on the record date, are registered in the share register and in the CSD register kept by the CSD for the company are authorized to exercise certain economic rights such as receive dividends, receive new shares in the case of bonus issue, receive payment in connection with a reduction of share capital for repayment to shareholders, etc.[335]

As for the participation at the GM of third parties, the ABL establishes that the GM of public companies may decide (by simple majority of votes cast) that a person who is not a shareholder shall be entitled to attend or otherwise follow the discussion at the GM. The articles of association may prescribe the same even though the GM has not approved the above mentioned resolution.[336]

[335] ABL, Chapter 4, sections 37 and 39.
[336] ABL, Chapter 7, sections 6 and 55.

8 How to vote at the GM

Shareholders of Swedish listed companies can decide to attend the meeting in person or appoint a proxy representative (or proxyholder) who attends the meeting and votes on behalf of the shareholder. If the shareholder decides to vote by proxy, she has to comply with certain documentation requirements.

In this section we describe the provisions that regulate the exercise of voting rights at the GM.

8.1 The proxy voting system

Shareholders of Swedish companies have an unfettered right to be represented at the GM and vote through a proxy representative (or proxyholder). In Section 8.1.1, we analyze the requirements that shareholders must comply with when they decide to appoint a proxyholder who will attend the meeting and vote on their behalf.

Under Swedish law, companies are allowed to collect proxies at their own expense and provide their shareholders with the option to vote at the GM through a proxy representative appointed by the company. In Section 8.1.2, we describe the procedure to be followed by companies to collect proxies at their expense.

8.1.1 Voting by a proxyholder appointed by the shareholder

8.1.1.1 Right to vote by proxy and who can be appointed

Shareholders of Swedish listed companies who are not present in person at the GM may exercise their rights at the meeting through a proxy representative ("ombud") with a written proxy ("fullmakt"[337]) signed and dated by the shareholder.[338] Under this rule, physical attendance (by the shareholder or her proxy representative) at the GM is required and voting in absentia (by mail or electronic means) is not allowed.

No limitations on the appointment of a proxy are allowed in the articles of association. Therefore, a proxy can be granted to any individual (including members of the boards and CEO) or legal person. A shareholder cannot appoint more than one proxy but there are no limits on the number of shareholders a single person (proxyholder) may represent (Skog, 2008). A proxy is valid

[337] In this report we use interchangeably the terms 'proxy' and 'power of attorney' (POA).
[338] Chapter 7, section 3.

for no more than one year from the date of issuance. This provision has been introduced to force shareholders to review at least once a year the proxies granted (Skog, 2008).

Section 54a, Chapter 7, of the ABL, introduced in 2007, regulates the distribution of proxy forms ("fullmaktsformulär") to shareholders. Public companies, whose shares are admitted to trading on a regulated market or an equivalent market outside of the European Economic Area, are required to provide shareholders with a proxy form before the GM. When the GM notice is sent to shareholders, the proxy form must be provided together with the notice. When the GM notice is instead given by other means, the proxy form must be provided to shareholders upon request after the announcement of the GM. The proxy form provided by the company may not contain the name of the proxy representative or indicate how the proxy representative may vote. In practice, this is an 'empty' proxy form to be filled in by the shareholder. This provision does not prevent listed companies from collecting proxies at their expenses but companies that collect proxies under the ABL must anyway provide shareholders with the proxy form pursuant to section 54a.[339] (See below Section 8.1.2 for more details.)

8.1.1.2 Method and deadline to appoint proxies and provide voting instructions

The proxy appointment - granting a representative the authority to vote - must be provided in writing. The proxy/POA must be signed and dated by the shareholder.

It is important to notice that under the Swedish Companies Act, any document which must be signed under the Act may, unless otherwise indicated, be signed using an advanced electronic signature according to the Qualified Electronic Signature Act (2000:832).[340] This means that shareholders are allowed to sign the proxy (that is, appoint the proxyholder) electronically. Does it also mean that shareholders are allowed to notify the proxy appointment to the company electronically?

We will discuss the interpretation of this ABL's provision later in the Report (Section 12.2). In this section we describe how Swedish listed companies interpreted the legal requirements regarding the appointment of proxy representatives and what the Swedish market practice in this respect is.

The typical market practice for Swedish companies is to require shareholders to send the POA in original by mail to the company at the address specified in the proxy form available online.

[339] ABL, Chapter 7, section 54a (introduced in 2007 Act (2007:373)).

[340] ABL, Chapter 1, section 13. This provision has been introduced in the new Companies Act (2005:551) and is in force since January 1, 2006.

Under Swedish law, the POA is not required to be notarized and no other supporting documents of authority are required. However, it is common practice among Swedish listed companies to require a notarized POA and supporting documentation that prove the authenticity of the signature when the shareholder is a legal entity. (See a sample of a standard POA in Table 12.)

If the proxy is issued by a legal entity, companies require that a certified copy of the certificate of registration or an equivalent certificate/proof of authority be submitted together with the POA. The certification of registration shows who can represent the company (i.e., in this case, who can sign documents on behalf of the company).

NBIM, for example, provides its custodian and proxy voting agent with its authorized signature list. The persons authorized to sign a POA have to deposit their signatures at the notary public. The signatures on the POA will then be checked by the notary public who will confirm them. All the companies in our sample make the POA (or proxy form) for the 2010 AGM available on their website in addition to indicating that the POA can be sent to shareholders upon request. In the 2009 GM notice, all companies except two state that the Proxy Form (or POA) is available on the companies' web site. After the 2009 GM, companies in our sample removed the proxy from their website. In 2008, many companies attached the proxy form to the notice of the meeting. Companies ask for the POA in original and, for legal entities, a certified copy of the certificate of registration or similar documents of authority. Some companies indicate that the POA can be presented at the GM but it seems to be most common to require shareholders to send the POA and the other authorizing documents by mail upfront the meeting. Companies set different deadlines.

For the 2010 AGM, only one company required the proxy documents to be presented ("insändas") to the company in good time prior to the GM; the same company clarifies on its website that the proxy representative has to present a POA in original, at the latest at the AGM. Among the rest of our sample companies, four companies required proxy documents to be sent to the company at the specified address well in advance of the GM without specifying an exact date. Four companies required the proxy documents to be sent or reach the company on the same deadline set by the company to receive the notice of attendance (that is, normally 5 days before the GM). One company set the deadline one business day before the meeting.

This seems to be a "soft" deadline set by companies in order to facilitate the registration at the meeting. In fact, most companies seem to accept a proxy representative showing up at the GM and

presenting POAs and other proxy authorization documents in original as long as the shareholder has given the notice of attendance.

Swedish companies may retain the original POA. Therefore, to prepare for multiple meetings, shareholders are normally required by their proxy voting agency or custodian/sub custodian to complete and provide multiple POAs.

Shareholders (especially institutional investors) normally give proxy authority to a Swedish sub-custodian and the POA (or multiple POAs) is valid for all the meetings of Swedish listed companies in which they own shares.

The requirement to provide a notarized POA and supporting documentation is burdensome and costly for investors and the formalism and technicalities involved in the process increase the possibilities to see the votes cast rejected.

An interesting example in this respect is what happened to NBIM during the 2007 proxy season: NBIM experienced some difficulties in voting shares of a Swedish listed company because the company at the beginning considered as outdated the signature of one of the fund's representative on the certificate of authority accompanying the POA. The company claimed that the supporting documentation (proving the authenticity of the signature) was dated 2006 and therefore outdated and invalid. Since the NBIM's representatives empowered to sign the POA had not been changed since 2006, the signature was actually valid. NBIM had to call the company to clarify the matter in order to have its votes accepted. NBIM was able to take care of the problem and solve it only because it had been made aware of the situation in time to address the problem. This, of course, may not always be the case.

In addition to imposing costs at the investor level, the POA process may substantially burden sub-custodians who receive POAs and supporting documents from their clients and must make sure all this material is delivered to the companies in time.

As discussed above, most Swedish listed companies require shareholders to send the proxy documentation by mail. None of our sample companies have made it possible for shareholders to appoint proxies electronically or to give electronic notification of appointment to the company. As for the content of the proxy, under the Swedish law, shareholders are not required to include voting instructions in the written proxy form. Swedish companies do not require shareholders voting by proxy to send voting instructions in advance of the GM or to include them in the written

proxy appointment. Therefore, in practice, shareholders are allowed to give instructions to their proxyholders until a decision is taken at the GM. The agreement between the proxyholder and the shareholder regulates the way to instruct the proxyholder on how to cast the votes at the GM. (See Section 11.1.4 for more details.) For institutional shareholders, proxy voting is typically regulated by the custody agreement that normally does not allow proxyholders to vote without instructions. (For the content of a standard Proxy form provided by Swedish listed companies see Table 12.)

8.1.1.3 Power of proxies

Under Swedish law, proxy representatives are granted the same rights to speak and ask questions during the general meeting as the represented shareholder.[341] Such rights can be limited in the agreement between the shareholder and the proxyholder.

Regarding the right of the proxy to vote on counterproposals from the floor, this is normally regulated in the agreement between the shareholder and the proxyholder. Most institutional shareholders do not give their proxy the right to do this.

Proxy representatives representing several shareholders may vote in different directions for the different shareholders.

8.1.2 Voting by a proxy representative appointed by the company

Under the previous Swedish Companies Act (1975:1385), as amended until Act (2004:1183), Swedish limited liability companies were not allowed to collect proxies at the company's expense.[342] Before this amendment, companies were allowed to solicit proxies and the board of directors used to do so using company funds. Since this practice gave the board "a significant advantage in comparison to shareholders who wish to collect proxy votes independently", the Swedish legislature introduced a general prohibition for companies to pay for proxy collection.[343]

Starting from January 1, 2006, Swedish companies have the option to collect proxy forms at the company's expense. As a general rule, the company is not allowed to pay the expenses for the collection of proxies. However, the articles of association may establish the right for the board of

[341] ABL, Chapter 7, section 3.
[342] The Act entered into force on January 1, 1977. It has been amended and supplemented by several subsequent Acts. It was last amended by Act (2004:1183) and repealed by the Act (2005:552) that introduced the new Companies Act (2005:551).
[343] See Skog (1999).

directors to collect proxies at the company's expense.[344]

The ABL regulates the procedure for the collection of proxies by the company. In particular, provided that the company's articles allow such a collection of proxies, the board of directors may, in connection with the GM notice, provide shareholders with a proxy form. The form must contain the submitted draft resolutions and two equivalent answers presented with the headlines 'yes' and 'no' for each of them. Moreover, the form must make clear that the shareholder may not instruct the proxy in any manner other than by selecting one of the alternative answers provided on the form and that the answer cannot be conditional; if the shareholder includes special instructions or conditions on the form, the proxy will be invalid.

The form shall be used to give the person mentioned in the form the power to represent the shareholder at the GM on the issues mentioned in the form. The company is responsible for appointing the person to whom the shareholder can send the proxy. The proxy may not be a member of the board of directors or the CEO of the company. The form shall also state the day by which the proxy form must be received by the proxy and the procedure by which the shareholder may revoke the proxy.[345]

Companies that decide to introduce this option will have to change their articles of association.

To our knowledge, a very few companies have introduced this proxy voting option in their articles of association making voting through a company appointed proxy possible. Nordea and TeliaSonera are among the companies that made voting through company appointed proxy possible providing shareholders a standardized proxy form which had to be filled out (including voting instructions) and sent by mail to the proxy representative.

> Market practice example:
>
> From the Articles of Association of Nordea Bank AB:
>
> "§ 11: The board of directors may collect proxies at the company's expense according to the procedure set out in Chapter 7 section 4 second paragraph of the Swedish Companies Act."

In their notice for the 2008 AGM, both Nordea and TeliaSonera included information on this

[344] Chapter 7, section 4, "Collection of proxy forms at the company's expense".
[345] Chapter 7, section 4, "Collection of proxy forms at the company's expense".

option and gave shareholders Internet access instructions. Both companies still have this option included in their articles of association but in the notices for the 2009 and 2010 AGMs they did not offer shareholders the right to vote by a proxy appointed at the company's expense.

Market practice example

From the 2008 GM notice of TeliaSonera ("Annual General Meeting in TeliaSonera AB (publ)") to be held in Stockholm on March 31, 2008:

"Special proxy voting

The Board offers shareholders a possibility to vote by proxy at the annual general meeting by using a proxy form, supplied by the Board, in which the shareholders may tick off the applicable boxes to indicate how they wish to vote on the different items on the agenda. (...)"

Both TeliaSonera and Nordea in their GM notice inform shareholders that the proxy form to vote through the company appointed representative is available on the company's website and can also be obtained from the company by telephone.

Table 13 shows the 'special' proxy form that TeliaSonera used to collect proxies at the company's expense for the 2008 AGM. This form is very similar to the Nordea's proxy form. Companies giving this option must specify this in their GM notice. On the special proxy form the shareholder must per agenda item tick one of the applicable boxes to indicate how they wish to vote. The shareholder can vote only 'yes' or 'no' on the different items or abstain from ticking off any of the alternatives. The proxy forms include the proposed resolutions in full text.

The companies appointed an attorney-at-law to act as the shareholders' representative. Shareholders were required to mail the proxy form to the appointed proxy at the address specified in the GM notice and on the form itself. The proxy form had to be in the proxy's possession not later than 5 business days before the GM. Shareholders could revoke the proxy by writing to the company appointed representative within the deadline set on the form (5 business days before the GM for Telia and 3 days before the GM for Nordea) or contact the company by phone before the same deadline.

Both companies specify in the form that a correct prepared proxy form stating personal identification number/corporate registration number will be regarded as a notice of attendance to the

company. Therefore, by mailing the proxy form to the appointed representative, a further notice of attendance is not required, which makes perfectly sense since this is a person appointed by the company. The board of directors' right to offer shareholders the option of using a company appointed proxy representative must be approved by the general meeting as an amendment to the company's articles of association. In 2009, to our knowledge, none of NBIM's portfolio companies included this as an agenda item for the general meeting. Also, as seen above, neither Nordea nor TeliaSonera offered their shareholders this option in their 2009 and 2010 AGMs.

8.2 Voting in absentia by mail or by direct electronic voting

The ABL does not regulate shareholder participation in the GM via telecommunications means.

As of today, voting in absentia by post, fax, phone or by direct electronic voting is not allowed in Sweden and so physical attendance is still required if a shareholders wishes to vote. If the shareholder decides not to attend the GM and vote by proxy, the proxy representative appointed either by the shareholder or by the company (in the case of collection of proxies at the company's expense) must always be present at the GM. Voting by the proxy representative appointed by the company is not direct shareholder voting in absentia but a special form of proxy voting by mail.

8.3 Following the meeting by electronic means

The ABL does not include any explicit right to follow or participate in the GM on distance via the Internet. However, Swedish listed companies are free to offer their shareholders live transmission of the GM (i.e., in video-conference) and allow shareholders to follow it on the Internet. Before the new Companies Act came into force on 1 January 2006 this was not possible at all.

To our knowledge, only a few Swedish listed companies (the biggest ones) provide shareholders with the opportunity to follow the AGM via the Internet but not to actively participate in it. Among our sample companies, for the 2009 AGM only TeliaSonera included in the GM notice information on the opportunity to follow the annual general meeting via an Internet connection and gave shareholders Internet access instructions. Shareholders wishing to use this option had to be listed as shareholders in the printout of the share register issued by Euroclear Sweden AB already on February 28, 2009 (31 days prior to the meeting date of April 1, 2009) and they had to notify the company of their intention to follow the meeting on distance no later than 5 business

days before the GM (that is, on the same deadline set to give notice of attendance). The company's instructions clarify that shareholders following the meeting via Internet are considered guests and are not able to vote, make proposals or otherwise express their opinion. Shareholders wanting to participate in the meeting through a representative and to personally follow the meeting via Internet were instructed to follow the notice procedure as a whole. The company provided shareholders with details of the connections and their personal passwords before the meeting.[346] The company's GM Minutes subsequently recorded that "a number of shareholders had decided to follow the AGM as guests via an Internet connection".[347]

For the AGM 2010, none of the companies in our sample offered shareholders the option to follow the GM via the Internet.

9 Functioning rules of the GM

9.1 Quorum and majority requirements for AGMs and EGMs

Under Swedish law, there is no quorum of shareholders required for the GM to be valid (constitutive quorum) and GMs are always held in first call. With regard to the majority of votes necessary to pass a resolution at the GM (deliberative quorum), as a general rule, in cases that do not relate to elections, resolutions at GMs (both AGMs and EGMs) are adopted by a simple majority (i.e., 50% plus one vote) of the votes cast. In the case of a tied vote, the chairman of the GM has a casting vote.[348]

While majority voting is generally the default rule for the election of directors in Europe, directors of Swedish limited liability companies must be elected by a plurality vote: the nominee who receives the highest number of votes cast is elected (that is, candidates do not need to obtain an absolute majority (50%+1) of the total outstanding votes to be elected). Under this mandatory plurality standard, in principle, a nominee needs only a single 'yes' vote in order to be elected: 'no' votes are not counted and when there are no alternative candidates, a nominee who receives a single 'yes' vote will be formally elected even if she receives at the same time millions of 'no' votes.

[346] See the notice of the 2009 AGM of TeliasSonera, available at http://www.teliasonera.com.

[347] See "Minutes of the Annual General Meeting of TeliaSonera AB (publ) (Corporate Reg. No. 556103-4249) held in Stockholm on April 1, 2009", available at http://www.teliasonera.com.

[348] ABL, Chapter 7, section 40.

This is similar to the plurality standard in the U.S..

While a low 'yes' count is, of course, an embarrassment to the nominated directors, there are no formal constraints on the number of 'yes' votes required to be elected. More importantly, there is no mechanism for shareholders to register objections to the nomination. Shareholders who "abstain" do so either because they object or because they do not care, and it is not possible to tell from the votes cast which of the two sentiments best describes the voting outcome.

In the event of a tied vote, the election is decided by drawing lots unless before the election the GM decides that a new vote must take place. The articles of association may prescribe different rules but cannot prescribe that a valid election requires more votes than under the plurality standard described above.[349] (See Section 9.5 below.)

With regard to resolutions to remove a shareholder-elected member of the board, the articles of association cannot establish provisions which require more votes than a simple majority to approve the resolution.[350]

The simple majority rule does not apply in specific cases prescribed by the ABL or the company's articles of association.[351] The ABL establishes qualified majority (or supermajority) requirements that apply to several key decisions and resolutions of a general meeting. For some resolutions, a supermajority is required both with regard to the number of votes and the number of shares. Among the resolutions that require 2/3 of both the votes cast and the shares represented at the GM are:

- certain amendments to the articles of association;[352]
- approval of merger plans;[353]
- reduction of the share capital;[354]
- repurchase of the company's own shares;[355]

[349] ABL, Chapter 7, section 41.
[350] ABL, Chapter 7, section 59.
[351] ABL, Chapter 7, sections 40 and 59.
[352] ABL, Chapter 7, section 42.
[353] ABL, Chapter 23, section 17.
[354] ABL, Chapter 20, section 5.
[355] ABL, Chapter 19, section 18.

- decision to deviate from shareholders' pre-emptive rights in the event of a new issue of shares.[356]

Certain resolutions are valid only if approved by a favorable vote of all the shareholders present or represented at the general meeting, who together must represent at least nine tenths of all shares in the company. Among such resolutions are:

- amendments to the articles that affect the legal relationship between share classes;
- amendments to the articles of association that affect shareholders' right in the company's profits or other assets.[357]

Resolutions regarding securities issued on a non-pro-rata basis must always be adopted by the GM and are valid only if supported by shareholders holding at least 9/10 (90%) of both the votes cast and the shares represented at the GM.[358] As discussed above (Section 3.3.5), this means that such a supermajority is required to approve all executive compensation programmes which involve new issuance of securities (shares, warrants, convertibles).

Finally, some resolutions require approval by 2/3 of votes cast and 9/10 (90%) of the share capital represented at the meeting, for example:

- amendments to the articles of association restricting the number of shares which a shareholder may vote at the GM.[359]

9.2 Opening of the GM

The GM of Swedish limited liability companies must be opened by either the chairman of the board of directors or by the person appointed by the board. If the articles of association prescribe who shall be the chairman of the GM, the GM shall be opened by this person.[360]

GMs of Swedish listed companies are normally opened by the chairman of the board of directors. Half of our sample companies establish in their articles of association that shareholders' meetings are opened by the chairman of the board or by the person that the board has appointed for this

[356] ABL, Chapter 13, section 2.
[357] ABL, Chapter 7, section 43.
[358] ABL, Chapter 16, sections 2 and 8.
[359] ABL, Chapter 7, section 44.
[360] ABL, Chapter 7, section 27.

purpose. The articles of the rest of the companies do not mention anything in this respect. The AGM 2009 of our sample companies was always opened by the chairman of the board of directors.

9.3 Role and power of the chairman of the meeting

Unless otherwise stated in the articles of association, the chairman of the GM must be appointed by the GM.[361] The chairman of the GM of Swedish listed companies is normally appointed by the GM. While the GM of smaller companies generally elects the chairman of the board as chairman of the GM, larger companies normally use an experienced lawyer for this task.

As we have seen above (Section 3.3.3), under the Corporate Governance Code, the company's nomination committee is to recommend a candidate to chair the annual general meeting. The recommendation is to be included in the notice of the shareholders' meeting and presented by the nomination committee at the meeting. It is common for the nomination committees of Swedish listed companies to propose an independent and experienced attorney-at-law as chairman of the GM. The 2009 AGM of all our sample companies elected as chairman of the meeting the person proposed by the nomination committee: only two companies elected the chairman of the board of directors as GM chairman; the rest of the company elected an attorney-at-law.

At the GM, the content of the company's share register must be made available to the shareholders. In particular, in a CSD company, a printout or other presentation of the entire share register must be made available.[362] Moreover, a voting register ("röstlängd") must be prepared at the GM. The list must include a list of shareholders, proxies, and assistants attending the meeting and state the number of shares and votes represented at the GM by each shareholder and proxyholder. When elected without a vote, the chairman of the meeting, must prepare the voting register. In other cases, the voting register is prepared by the person who opened the meeting. The voting register must be approved by the GM.[363]

9.4 Language of the GM

The Corporate Governance Code establishes that the shareholders' meeting is to be conducted in Swedish. However, if the ownership structure warrants it, and it is financially feasible, the company

[361] ABL, Chapter 7, section 30.
[362] ABL, Chapter 7, section 28.
[363] Chapter 7, section 29.

must offer simultaneous interpretation in other relevant languages.[364]

Five of our sample companies inform in their notice of the 2010 AGM that, for the convenience of non-Swedish speaking shareholders, the proceedings of the meeting will be simultaneously translated into English. Some of the largest listed companies offer their shareholders this service.

9.5 Voting at the GM

Voting at the general meetings of Swedish companies normally takes place by acclamation and is not confidential.

Under the ABL, voting ("omröstning") at the GM must take place if any of the shareholders requests it. Unless the GM decides (by simple majority) to have a secret ballot ("sluten omröstning"), voting on decisions other than elections shall be open ("öppet"). In the case of a tied vote, if the chairman of the meeting has a casting vote (i.e., in decisions to be approved by simple majority), the chairman must disclose her vote.[365]

Voting at elections must be open. While in private companies any person entitled to vote can request a ballot, in public companies voting with respect to elections shall take place by secret ballot only if so decided by the GM.[366] Director elections are almost always bundled into a single voting item.

As for the voting procedure, Swedish law does not regulate how resolutions must be adopted at the GM (for example by show of hands, by acclamation, etc.). In practice, shareholders at the GM of Swedish companies normally vote by acclamation. Vote by acclamation typically takes place as a voice vote during which shareholders and proxies present at the GM are invited to express verbally if they are in favor or oppose the proposed resolution under vote (in practice, saying out laud 'yes' or 'no'). However, shareholders and proxies present at the meeting may be required to express their approval or dissent also in other ways (for example, clapping or raising their hands).

Keeping in mind that in Swedish listed companies normally a few shareholders represent more than 50% of the share capital, the following describes how the acclamation process normally works. For each resolution on the agenda, the chairman of the GM asks the GM who is in favor of the proposal and then lets major shareholders (typically sitting in the first rows) express their opinion

[364] Swedish Corporate Governance Code 2010, section 1.5.
[365] ABL, chapter 7, sections 37, 38, and 40.
[366] ABL, chapter 7, sections 39 and 58.

first. If the chairman hears a 'no' (or more) coming from one of the first rows, then she will ask shareholders to vote again raising their hands. As soon as the majority required to pass the resolution is reached, the vote stops.[367]

The chairman of the meeting often knows in advance how major shareholders will vote. In this case, knowing that a specific resolution has the support of the required majority, the chairman will not even call a vote by acclamation and will just declare that the resolution has achieved the required majority and is therefore approved by the GM. Shareholders who are not satisfied with the voting process can always ask for a ballot.

It is worth mentioning that the proposals from the nomination committee may be accompanied by information regarding the ownership support for the proposals. According to a rule issued by the Swedish Industry and Commerce Stock Exchange Committee (NBK) and abolished a few years ago, companies were required to publish such information. Some companies kept publishing this information and still do even if it is not required anymore.

Volvo's Election Committee, for example, in a press release published before both the AGM 2008 and 2009, states that the proposal of the Election Committee is supported by shareholders representing more than 50% of the total votes outstanding in AB Volvo. In the press release published before the AGM 2010, the Volvo's Election Committee states that "The members of the Election Committee represent owners holding 50% of the total number of voting rights in the company."[368]

While proxies representing more than one shareholder are allowed to vote shares of different shareholders in different directions, split and partial voting at the shareholder (beneficial owner) level is not allowed in Sweden. This means that a shareholder willing to vote must vote for all the shares in the same account and must cast the same vote for the full holding. However, investors holding shares through nominee (omnibus) accounts may chose to re-register only part of the shares and in that way obtain partial voting. (See Section 12.2.10.)

[367]See Skog (1999). The author describes some of the procedures used at the GM of Swedish companies to avoid counting votes.

[368]Information available at http://www.volvogroup.com.

9.6 Shareholder right to ask questions related to items on the GM agenda

Shareholders of Swedish companies have a statutory right to ask questions related to items on the GM agenda. Directors and the CEO have a statutory duty to answer the questions at the GM.

In particular, under Swedish law, if so requested by any shareholder and if the board believes that this can be done without significant harm to the company, the board of directors and CEO must provide at the GM information on:

1. any conditions which may affect the assessment of an item on the agenda; and

2. any conditions which may affect the assessment of the company's financial position.

In public companies, information under point 2) must be provided only at GMs where the annual report or consolidated accounts are addressed.[369]

When the board or the CEO are in a position to provide answers only on the basis of information which is not available at the GM, such information shall be made available to the shareholders in writing at the company's registered office within two weeks after the GM and shall be sent to any shareholder who requested the information.[370]

If the board finds that the requested information cannot be provided to shareholders without substantial damage to the company, the shareholder who has requested the information must be immediately informed. In this case, the shareholder, within two weeks of the notification, has the right to ask the board to provide the information to the company's auditor. Information must be provided to the auditor within two weeks of the shareholder's request. Within two weeks of the receipt of the information, the auditor must submit a written opinion to the board. The auditor's opinion must state whether, in the auditor's opinion, the information should have led to any changes in the auditor's report (or the auditor's report for the group) or otherwise gives grounds for objections. If so, changes or objections must be included in the opinion. The board shall keep the auditor's opinion available to shareholders at the company's office and send a copy thereof to the shareholders who have requested the information.[371]

Under Swedish law, there is no limit placed on the shareholder right to ask questions both before and at the GM. However, the board and the CEO are required to provide answers at the

[369] ABL, Chapter 7, sections 32 and 57.
[370] ABL, Chapter 7, section 33.
[371] ABL, Chapter 7, sections 34 and 35.

GM, not before it. The ABL does not prevent the board or the CEO from answering questions before the GM. Unless an item on the GM agenda or a proposal from the board has been heavily debated among shareholders before the GM, it is uncommon for shareholders to ask questions (in writing) before the GM.

It is very common for shareholders to ask questions at the GM of Swedish listed companies. Swedish listed companies normally hold an 'information meeting' right before the official start of the GM during which shareholders have the possibility to ask questions and get answers from the company's management. The majority of the companies in our sample give shareholders this opportunity and state so at the beginning of their 2010 AGM notice.

> Market practice example
>
> From Nordea 2010 AGM notice:
>
> "(...) The premises will open at 11.00 and at 12.00 the executive management will hold an information meeting and will then answer questions from the shareholders. Meeting starts at 13. (...)"

Neither the ABL nor the companies' articles of association establish specific rules laying down procedures to be followed in order to permit an orderly and effective conduct of the GM (such as, rules for asking questions and taking the floor at the GM). The chairman of the GM has the power to control and regulate the debate, including limiting speaking time and refusing to allow people to take the floor if they are not strictly keeping to the items on the GM agenda.

In this respect, the 2005 Swedish Code of Corporate Governance established that "the chair of the shareholders' meeting is to see that the shareholders are given sufficient opportunity to exercise their statutory right to ask questions at the meeting as well as to comment on the items on the agenda, recommend changes and additions to the proposals presented, and submit new proposals in accordance with statutory provisions before the meeting comes to a decision." The rule has been removed by the 2008 version of the Code because it was considered "unnecessary regulation of details".[372]

[372] "Comparison between the revised Swedish Corporate Governance Code and the previous Code", May 2008, The Swedish Corporate Governance Board. Available at http://www.corporategovernanceboard.se/.

10 Post-GM information

10.1 GM Minutes and voting results

Under Swedish law, the chairman of the GM must ensure that minutes ("protokoll") are prepared at the GM. Minutes must include the date and place of the GM and any resolutions approved by the GM. When the resolution has been passed through a vote, the minutes must include the proposal presented and the voting outcome. The voting register (see above Section 9.3) must be included in the minutes or added as an annex.[373]

Even though shareholders (or their intermediaries) have no right to receive a confirmation of the votes cast (from the company or its registrar), they can always request a formal vote at the GM so that voting results are incorporated in the GM minutes. Shareholders represented by a proxy can always demand that the proxy holder makes such a request at the GM.

The person who keeps the minutes must sign them. If the chairman of the meeting is not the keeper of the minutes, the minutes shall be verified by the chairman as well as by another person appointed by the GM to verify the minutes. In this respect, the Corporate Governance Code establishes that "a shareholder or a representative of a shareholder, who is neither a member of the board nor an employee of the company is to be appointed to verify the minutes of the shareholders' meeting."[374] As discussed above, the appointment of one or two minutes' checkers is a mandatory item on the GM agenda of Swedish companies.[375]

As for the publication of GM minutes, GM minutes must be made available to shareholders at the company's registered office within two weeks after the GM and a copy of the minutes sent to shareholders who request so and provide their mail address.[376] As discussed in Section 5.1 above, under the NOS Rules, following the GM, listed companies must disclose (that is, send to media for publication) an announcement including resolutions adopted at the GM unless such resolutions are insignificant (that is, of technical nature). Adopted resolutions must be disclosed even though they are in accordance with previously disclosed resolutions. The announcement must also be published on the company's website as soon as possible after it has been disclosed and kept on the company's

[373] ABL, Chapter 7, section 48.
[374] Swedish Corporate Governance Code 2010, section 1.6.
[375] ABL, Chapter 7, section 48.
[376] ABL, Chapter 7, section 49.

website for at least three years.[377]

According to market practice, large Swedish listed companies publish the full GM minutes on their websites. However, the voting register including the list of shareholders present or represented by proxy at the general meeting as well as the numbers of shares and votes represented by them, is not published with the minutes (neither in Swedish nor in English). This market practice is in accordance with the Corporate Governance Code that requires companies to post on the company's website the minutes of the latest annual general meeting and any subsequent extraordinary shareholders' meetings, but states that it is not necessary to publish the register of voters from the meeting or any attachment containing such information. Further the Code requires the minutes to be translated from Swedish into any other language warranted by the ownership structure, provided that this is financially feasible.[378]

All the companies in our sample make decisions taken at the AGM public through a press release immediately following the closing of the meeting (typically the same day or the day after) as required by the NOS Rules. Eight of our ten sample companies make the full minutes for the 2009 AGM available on their websites in Swedish as well as English, but only the outcome of the agenda items (i.e., approved or not approved) is stated, not the voting results in percentages. One company publish the full 2009 GM minutes only in Swedish and only a press release with decisions taken at the meeting is published in English. One company does not publish the full minutes neither in Swedish nor in English and only a press release is available in English. Some companies give additional information under proposals where against votes were cast, like the name of the shareholders voting against. This information is not given in a systematic manner across the companies.

10.2 Shareholder right to challenge the GM voting outcome

When a resolution has not been properly approved by the GM or anyway has been approved in violation of the Companies Act, the relevant legislation on annual accounts or the company's articles of association, any shareholder, the board of directors, a member of the board of directors or the CEO, may bring legal action against the company to obtain the annulment or amendment of the

[377] NOS Rules, section 3.3.3.
[378] Swedish Corporate Governance Code 2010, section 1.7.

resolution. Such a legal action may also be brought by someone whom the board of directors has unduly refused to enter as a shareholder in the share register.[379]

Legal action against the company must be brought within three months from the date of the resolution otherwise the right is lost. However, legal action can be brought at a later time if:

- the resolution is such that it cannot be adopted even with the consent of all shareholders;
- the resolution must be adopted with the consent of some or all shareholders and such consent has not been given; or
- the notice of the GM has not been given or relevant parts of the provisions regulating the convocation of the GM have not been complied with.[380]

11 Voting chain and voting timeline for Swedish listed companies

In this section, we describe the voting chain through which foreign institutional shareholders of Swedish listed companies must pass in order to exercise their voting rights. We focus in particular on the different flows of GM-related information, proofs of ownership, and voting instructions. The Section ends with an overview of the voting timeline.

11.1 Voting chain for foreign institutional shareholders registered under a nominee account in the CSD system

As explained in Section 4, shareholders of Swedish listed companies can decide to hold shares directly (opening an account in their name with the CSD) or indirectly through financial intermediaries (in nominee accounts). Foreign institutional shareholders normally hold shares through financial intermediaries and, as a consequence, must go through these intermediaries in order to exercise voting rights. Figure 7 provides a stylized example of a voting chain through which a large foreign institutional shareholder must pass in order to exercise voting rights at the GM. The foreign shareholder appoints a global custodian who does not open an account with the local CSD (Euroclear Sweden) but instead uses a network of local custodians (Swedish custodian banks). Part

[379] ABL, Chapter 7, section 50.
[380] ABL, Chapter 7, section 51.

of the assets of the foreign institution is managed by an investment manager who is given the authority to exercise voting rights for these assets. As discussed in Section 4.2.2.2, big institutional shareholders normally appoint one or more investment managers that manage part of the shareholders' assets. In cases where the assets are managed directly by the shareholder, the shareholder personally makes voting decision and casts votes. The black thin solid arrows in Figure 7 highlight the custody chain for indirectly held shares described earlier in Figure 6.

The participants in the custody chain described in Section 4.2.2 and Figure 6 all play a role also in the voting chain described in Figure 7. As shown, GM-related information and voting instructions pass downstream and upstream through the chain of financial intermediaries. We analyze these information flows next.

11.1.1 Flow of GM-related information from companies to shareholders

We begin with the flow of GM-related information (GM notice and agenda) from companies to shareholders through the chain of intermediaries (custodians). The 'Voting material' arrows in Figure 7 indicate the movement of voting material (in particular GM notice and agenda).

As discussed in Section 6, only in a few cases established by the law (see Section 6.2.2), the GM notice must be sent to shareholders whose mail address is known to the company. Therefore, as a general rule, Swedish companies are not required and normally do not send GM notice and agenda directly to their shareholders.

Swedish law does not regulate the flow of GM-related information from companies to shareholders passing through the chain of intermediaries. Unlike other systems, the local CSD (Euroclear Sweden - ES) is not key to routing specific information (such as GM notice and agenda) from listed companies to intermediaries. In fact, Swedish companies are not required to send the GM notice to the CSD, the CSD is not required to inform its direct participants (custodians/nominees), and CSD participants are not required by Swedish law to pass GM-related information to their clients (shareholders or other intermediaries in the custody chain).[381]

[381] In the Italian share-voting system for example, the Italian CSD (Monte Titoli - MT) is key to routing specific information (such as GM notice and agenda) from listed companies to intermediaries. The flow of GM-related information from companies to intermediaries passing through MT is regulated by Italian law only for companies whose articles of association allow shareholders to exercise voting rights by mail. In this case, Italian companies are required to send the GM notice to the CSD, who informs its participants (custodians) who in turn notify their depositors.(Article 139 of the Consob Regulation N. 11971/1999.) By their contract with MT, Italian listed companies are required to pass to MT all important information related to corporate events. Thus, companies must inform MT

Even though companies are not required to send ES the GM notice, by their Affiliation Agreement with ES, issuers are required to inform the CSD when announcing a General Meeting or an issue that affects the Financial Instruments registered by ES.[382] ES is not required to send notifications of GMs received by CSD companies to CSD participants.

With specific regard to GMs, as discussed in Section 4.3, before each GM, issuers are required to order from ES a 'general meeting (GM) register of shareholders' ("Bolagsstämmoaktiebok"). (See the 'Orders GM register of shareholders' arrow in Figure 7.)

As soon as the board of directors has set the date of the GM and anyway not later than 28 calendar days before the GM, the issuer must place an order with ES for the 'GM register of shareholders'. In the case of an EGM, the order must be placed at the latest 14 calendar days prior to the GM. Orders can be placed via ES's Internet Based Service.[383]

Once ES has registered the order for the 'GM register of shareholders' and normally 20 calendar days before the GM, the 'voting rights routine' ("rösträttsrutinen") for nominee-registered shares is opened so that nominees can start registering shares of their underlying clients in the shareholders' name. The ES's "Rules for Issuers and Issuer Agents" stress the importance for issuers to order the 'GM register of shareholders' as early as possible in order to give nominees sufficient time to register their clients.(See Section 11.1.3 below)

ES compiles the 'GM register of shareholders' on the 5th weekday prior to the GM. As discussed in Section 8, the articles of association of Swedish CSD companies can set the record date for the GM ("avstämningsdagen för bolagsstämman") 5 weekdays before the GM or on a later date closer to the GM. In the latter case, under ES's "Rules for Issuers and Issuer Agents", the record date cannot be set later than the weekday preceding the GM. When the record date falls on a date that is not a banking day, ES will compile the 'GM register of shareholders' on the banking day immediately preceding that day.[384] Anyway, the register will be dated with the date of the record

of the convocation of the GM and promptly send MT the GM notice and agenda (directly or through the company's registrar). For more information on the Italian share-voting system see Eckbo, Paone, and Urheim (2009).

[382]See "Rules for Issuers and Issuer Agents, Version 2010:1" (section A 2.2). Under the Rules's definitions, an 'issuer' is a Swedish or non-Swedish issuer of Financial Instruments.

[383]ES's "Rules for Issuers and Issuer Agents" (section A.1)define 'Internet-based Service' as "ES's Internet-based Service portal for Issuers by means of which Issuers can place orders, receive electronic deliveries and make owner analysis using the ES Analys service. The service portal can be reached via ES's website."

[384]See ES's "Rules for Issuers and Issuer Agents, Version 2010:1", (section B 4.1). ES's "Rules for Issuers and Issuer Agents" define 'Weekday' as "a day that is not a public holiday according to the Public Holidays Act (1989:253)." 'Banking Day' is defined as "a day in Sweden that is not a Sunday or other public holiday, nor regarded as a public holiday where the payment of debt instruments is concerned (the latter currently covers Saturdays, Midsummer Eve,

date.

The first weekday after the record date ES delivers the 'GM register of shareholders' to the company electronically via ES's Internet-based Service. (See the 'GM register of shareholders' arrow in Figure 7) The 'GM register of shareholders' contains information (i.e., name, ID number, corporate number or other identification numbers, mail address, number of shares held and, if applicable, number of shares of different classes held) about shareholders who own shares in a direct/owner account with ES (whether or not they will participate in the GM) and shareholders holding nominee-registered shares who decided to vote and asked their intermediaries to temporarily register the shares in their name by the record date. The register will not include the names of shareholders holding nominee-registered shares who decide not to vote unless they are direct clients of the nominee/CSD participant. In fact, as discussed in Section 4.3, under Swedish law, nominees (that is, custodians affiliated to ES) are required to report only information regarding their direct clients, that is, the reporting must go only one layer down the chain. Since in a cross-border voting scenario, direct clients of nominees are typically other intermediaries (usually global custodians), the name of nominee-registered shareholders who decide not to vote at the GM will not appear on the 'GM register of shareholders' prepared by ES for the GM.

11.1.2 Flow of GM-related information from intermediaries to shareholders

As discussed above, in a cross-border context, the client of a CSD participant is typically another intermediary in the custody chain (e.g., a foreign global custodian). It is typical for the agreement between custodians and between custodians and shareholders to require custodians to pass GM-related information received (or procured) through the chain of intermediaries until it reaches the beneficial shareholder.

Unless companies use the interfaces provided by ES's BOSS system,[385] custodians do not receive the GM notice and agenda neither from the company nor from the CSD and they must use their own procurement network to get voting material.

The custody agreement between foreign institutional shareholders and their global custodians typically includes proxy voting. The custodian is then required to inform the client about general

Christmas Eve and New Year's Eve).

[385] ES offers Swedish companies a voting service called 'Boss'. For more information about specific services that companies can buy from ES see http://www.euroclear.eu/2985_SVE_ST.htm.

meetings, pass on all GM-related material it receives/procures and, based on instructions from the client, make sure votes are cast at the meeting. The global custodian in turn maintains relationships with local custodians in each market and opens custody accounts with them. In Sweden, like in most markets, local custodians are normally the last intermediaries in the custody chain. They are CSD participants and normally also account operators. Shareholders who do not appoint a global custodian operate through agreements with local custodians in each market.

In a cross-border context, it is normally the local custodian (a Swedish bank) that procures the GM notice and agenda for GMs of Swedish listed companies. Upon obtaining this information, they translate the notices into English and pass these on to their clients (typically global custodians) who in turn take care of the distribution to their clients/shareholders. Local custodians normally send the GM notice only to global custodians and do not take care of the further communications to shareholders (see the 'Voting material' arrows in Figure 7).

Once GM-related information is received, the global custodian sends it to either its clients (shareholders) and shareholders' investment managers, or to a proxy voting agency (PVA) appointed by the global custodian. However, large global custodians typically outsource the voting process to a proxy voting agency (examples of PVAs are RiskMetrics and Broadridge). In such cases, it is the voting agent that routes information directly to and from the client/shareholder (i.e., the voting agent receives GM-related information from the global custodian and makes the agenda/ballot available to the shareholder or the shareholder's investment manager). Not all shareholders that have given a mandate to an investment manager authorize the investment manager to vote on the shareholder's behalf giving them proxy authority. In such cases the global custodian, or the proxy voting agency when the global custodian has appointed an agent, sends all the voting material related to the assets managed by the investment manager to the shareholder. It could also be the case that the investment manager is authorized to vote only on instructions from the shareholder.

As shown in Figure 7, to get voting materials (i.e., GM notice and agenda and annual reports) proxy voting agencies have their own procurement network and use different means such as their local custodians' network, company web sites, data vendors, local newspapers, and other media. The PVAs may decide to purchase a share in the listed company in order to obtain timely information from the company.

11.1.3 Flow of proofs of ownership and notices of attendance from intermediaries to companies

Recall that to be entitled to attend the GM and vote, shareholders must be listed in the 'GM register of shareholders' on the record date. While shareholders holding shares in a direct/owner account with ES are automatically registered in the 'GM register of shareholders', shareholders holding nominee-registered shares must ask their intermediaries to temporarily register such shares in the 'GM register of shareholders' in their name. As discussed in Section 7.1.2.4, under request by shareholders, the nominee/CSD participant must send a file to ES in which the intention of the shareholders to participate in the GM is made clear. The file must include all the relevant information about the shareholder. In a cross-border scenario, the nominee is typically a Swedish custodian bank while the shareholder's direct intermediary is a global custodian bank. Therefore, the shareholder's registration request must pass through the chain of intermediaries to reach the upper-tier account provider (the local custodian bank appointed by the global custodian) and finally the CSD.

With regards to institutional shareholders, they generally send their voting instructions (either directly or via a proxy agent) to their custodian ahead of the record date. These instructions are interpreted as the request to temporarily re-register the shares in the 'GM register of shareholders'. Once received the instructions, the custodian not only knows the voting intentions of the shareholder but can then register the shares in the shareholder's name (called 'voting rights registration' - 'rösträttregistrering') within the record date.

As discussed above, ES opens the 'voting rights routine' 20 calendar days before the GM. For shareholders that do not trade their shares often, intermediaries may decide to register shares several days ahead of the record date. On the other hand, shares held by frequently trading shareholders (i.e, big institutional shareholders), are normally registered closer to the record date (normally at least two days before the record date).

As discussed in Section 7.2, shares can be traded after the record date. However, to our knowledge, during the registration period, shares are 'blocked' and not available for trading for approximately two days. ES does not impose any blocking of shares during the registration period. In practice, the blocking takes place at the custodian level for risk measure: custodians decide

to block the shares close to and until the registration date to be sure that the number of shares registered equals the number of shares held by the shareholder at the close of business on the record date.[386] Once the record date has passed, the temporary voting rights registration ceases to apply.[387]

Moreover, as typically required by the articles of association of Swedish listed companies, to be entitled to attend the GM, shareholders must send the company a notice of their intention to participate in the GM (notice of attendance). Companies typically require shareholders to send such notice 5 business days prior to the meeting. (See Section 7.1.2.2) Even in this case, the shareholders' voting instructions (sent directly to the global custodian or trough a proxy agent) are interpreted as the shareholder's request to send the company a notice of attendance. In a cross-border voting scenario, it is normally the nominee appointed by the global custodian that sends the company the notice of attendance. (See the 'Notice of attendance' arrow in Figure 7.)

11.1.4 Flow of proxy authority and voting instructions from shareholders to companies

Foreign institutional shareholders normally do not attend GMs of Swedish companies in person. They typically vote through a proxy representative that attends the GM on their behalf. The 'Proxy authority' arrows in Figure 7 show how the POA granted by the shareholder reaches the company through the chain of intermediaries.

As discussed in Section 8.1.1.2, foreign institutional shareholders normally grant a POA to a Swedish sub-custodian appointed by the global custodian. The 'Proxy authority' arrow between the shareholder and the local custodian in Figure 7 highlights this relationship. The POA is normally valid for all the meetings of Swedish listed companies of which the shareholder owns shares. Once received POA and supporting documents (directly from the shareholder or through the global custodian), the local custodian, if so required by the company, must send them by mail to the company ahead of the GM. (See the 'POA and supporting documents' arrow in Figure 7.)

As discussed is Section 8.1.1.2, Swedish companies normally require shareholders to send by

[386] See also 'Voting - an essential right sometimes difficult to exercise' by Hege Sjo, Hermes Management Ltd., in 'The Swedish Corporate Governance Board, Annual Report 2007', pages 33-36. The Report is available at http://www.corporategovernanceboard.se/.

[387] See ES's "Rules for Issuers and Issuer Agents, Version 2010:1", (section B 4.1).

mail an original POA signed by the shareholder and supporting documents prior to the GM. It is common to require shareholder to send the proxy documents 'in good time' or 'well ahead' of the GM. Some companies set instead a specific deadline: for the AGM 2010, 4 companies in our sample set the deadline 5 business days and one company 1 business days prior to the meeting. These are normally 'soft' deadlines and most companies grant access to the GM to a proxy representative presenting POA and other documents directly at the meeting.

The 'Voting instructions' arrows in Figure 7 show how voting instructions given by the shareholders move through the voting chain to reach the company. In order to vote their shares, foreign institutional shareholders normally give voting instructions using an electronic platform provided by a PVA (appointed by the global custodian). PVAs set a deadline (cut-off date) for shareholders to give voting instructions. The PVA then sends the voting instructions to the local custodian. In the case of an investment manager voting on behalf of the shareholder (either on instructions from the shareholder or by having authorization to make voting decisions), the investment manager has to send voting instructions to the PVA.[388]

The PVA's cut-off date depends on the deadline set by local custodians to receive voting instructions through the PVA's voting platform. Local custodians normally set the deadline 2 to 3 days prior to the record date. Within the same deadline local custodian must also receive holdings data (i.e., certification of holdings by the global custodian). (See Section 11.3 and Table 7 for more information on custodian and proxy voting agent deadlines as experienced by NBIM in 2009 and 2010.)

Recall from Section 8.2 that shareholders of Swedish listed companies are not allowed to vote in absentia (by mail, phone, or electronic means). Shareholders are allowed to vote by mail (see the 'Mail proxies' arrow in Figure 7) only when the company decides to collect proxies at its expense. This is very uncommon though. As discussed in Section 8.1.2, for the 2009 and 2010 GMs, none of the companies in our sample offered shareholders the option to vote by mailing proxy forms to a proxy representative appointed by the company.

Shareholders who cannot attend the meeting in person can vote by proxy but the proxyholder must be present at the GM. Because the proxyholder must be present at the GM, once the voting

[388]The global custodian can decide not to appoint a PVA. In this case, the investment manager appointed by the shareholder can appoint a PVA to process voting instructions on its behalf. However, this is not a very common scenario.

instructions reach the local custodian (either through the PVA or the global custodian), the local custodian normally sends a representative to attend the meeting. The local custodian's representative can be either an employee of the custodian or a third party such as a lawyer. This is the case in most markets. In some markets, shareholders (or their custodians or PVAs) can send votes to the company (or its registrar) electronically.

11.2 Voting timeline

The following summarizes the timeline of activities around the GM:

I: Timeline pre-GM:

- **within 6 months of the end of the financial year:** Swedish listed companies must hold an AGM where the board of directors presents the annual report and auditor's report. Market Practice (MP): for Swedish listed companies (hereafter 'companies') the financial year normally coincides with the calendar year and the majority of companies held their AGMs during the second half of April and the beginning of May.[389]

- **7 weeks - or later but in due time for the item to be included in the GM agenda:** Any shareholder can add an item on the GM agenda. MP: companies normally set the deadline to receive the written request by shareholders 7 weeks before the GM.

- **4 to 6 weeks:** The company publishes the notice (including time, place, and agenda) convening AGMs, any other ordinary GM, and EGMs (called to approve amendments to the articles of association). (See Section 6.2 for a detailed analysis of the GM notice's publication and content requirements.) MP: companies normally publish the notice convening AGMs 5 to 6 weeks prior to the GM.

- **2 to 6 weeks:** The company publishes the notice convening any other type of EGM.

- **28 calendar days at minimum:** Companies must order the 'GM register of shareholders' from Euroclear Sweden.

[389]The majority of information about market practice included in this section is based on our sample of 10 largest Swedish listed companies.

- **20 calendar days:** Euroclear Sweden opens the 'voting rights routine' and nominees can start registering nominee-registered shares in the shareholders' name ('voting rights registration').

- **2 weeks at minimum:** If an EGM is to be convened at the shareholder (minority shareholders who represent not less than 10% of the share capital) or auditor request, the publication of the GM notice must occur.

- **2 weeks at minimum and until the GM:** The company makes available at its registered office the following documents (or copies of them): accounting documents (i.e., the annual report), the auditor's report, and auditor's opinion regarding compliance with the guidelines on compensation to senior executives prepared by the board and approved by the previous AGM. Such information must also be disclosed and published on the company's website following the formalities described in Section 6.4.3. (See also Section 12.2.6 below.) When the GM has to address a specific matter such as bonus issue, issue of new shares, etc., within the same deadline, companies must make available at their registered office proposed resolutions and all the required supporting documents. Under the Corporate Governance Code 2010, companies must also publish on their website the results of the remuneration committee's evaluation of: application of the guidelines for executive remuneration most recently established by the previous annual general meeting, current remuneration's structures and level, and programmes for variable remuneration. MP: Companies normally publish the annual report (both in Swedish and English) on their website ahead of the 2-week deadline set by the law. The majority of the companies in our sample do so more than 4 weeks before the GM. (For more details see Table 6.)

- **9 to 10 business days (or about 14 calendar days) ahead of the GM:** Cut-off dates (deadline to give voting instructions on the proxy advisor system) that NBIM faces voting through its proxy voting agency. As discussed in Section 11.1.4, the cut-off date is normally set before the record date and a vote instruction will be interpreted as a request to register the shares in the shareholder's name in the 'GM register of shareholders' prepared by the CSD as per the record date.

- **8 trading days at minimum:** shareholders who want to vote must buy or recall from loan their shares so that they have settled positions by the close of business on the record date set by the company (typically 5 business days before the GM). (See Section 7.2.)

- **RECORD DATE - 5 weekdays (or less):** The articles of association of Swedish listed companies normally set the date by which a shareholder must be entered in the 'GM register of shareholders' prepared by Euroclear Sweden in order to be entitled to participate in the GM (record date) 5 business days before the GM date.

- **5 business days (or less):** The articles of association of Swedish listed companies normally set the deadline by which a shareholder must send the company a notice of intention to attend the GM (notice of attendance) in order to be allowed to participate in the GM 5 business days prior to the meeting.

- **1 weekday after the record date:** The first weekday after the record date ES delivers the 'GM register of shareholders' to the company electronically via ES's Internet-based Service.

- **before the GM:** As discussed in Section 11.1.3, Swedish companies normally require shareholders to send by mail an original POA signed by the shareholder and supporting documents prior to the GM. Some companies set a specific deadline (i.e., 5 business days or less prior to the meeting). Deadlines vary across companies and are normally 'soft' deadlines. In fact, most companies grant access to the GM to a proxy representative presenting POA and other documents directly at the meeting.(See Section 8.1.1.2 and Table 8 for more details.)

II: Timeline at GM and post-GM:

- **DAY 0: GM date:** When not sent before the GM, proxy representatives must present an original POA and supporting proxy documents at the GM. Large companies normally send out admission cards once received the notice of attendance (the majority of our sample companies do so). Companies normally clarify in the proxy form that if the address of the proxy representative is provided in the proxy form, the admission card will be sent to this address, if not it will be sent to the shareholder's address as registered with the CSD (Euroclear Sweden AB). Shareholders (or proxy representatives) must present their admission

cards at the entrance of the GM. If the entrance card is not received in time before the GM, shareholders (or their proxies) can obtain their cards at the entrance of the GM.

- **Timeline post-GM: + 2 weeks at the latest:** companies must make the GM minutes available to shareholders at the company's registered office. GM minutes must include date and place of the meeting and any resolutions approved by the GM. Only when resolutions are passed through a vote, the GM minutes must include the proposal presented and the voting outcome. The voting register must be included in the GM minutes or added as an annex. Copies of the minutes shall be sent to shareholders who so request and provide the company with their mail address. Companies are not required by Swedish law to publish GM minutes on their website. However, the Corporate Governance Code 2010 requires companies to publish GM minutes from the last AGM and any subsequent EGMs on the company's website. Moreover, after the GM, companies listed on the NASDAQ OMX Stockholm must disclose an announcement including resolutions adopted at the GM unless such resolutions are insignificant (that is, of technical nature). The announcement must also be published on the company's website as soon as possible after it has been disclosed. MP: Large companies publish the full GM minutes on their website in English. The voting register is not published with the GM minutes. Eight of our ten sample companies make the full minutes for the 2009 AGM available on their websites in Swedish as well as English, but only the outcome of the agenda items (i.e. approved or not approved) is stated, not the voting results in percentages. One company publish the full 2009 GM minutes only in Swedish and only a press release with decisions taken at the meeting is published in English. One company do not publish the full minutes neither in Swedish nor in English and only a press release is available in English. Only some companies give additional information with regard to proposal which received against vote (i.e., name of shareholders voting against).(For more details on GM minutes and voting results see Section 10.1 and Table 10.)

12 Share voting impediments in Sweden: discussion

12.1 Existing cross-border voting impediments

Impediments to cross-border voting at the GM of Swedish listed companies include the following:

- Physical attendance: Voting in absentia (that is, without being present at the GM either in person or by proxy) by mail or by electronic means is not permitted under the law and so physical attendance at the GM of Swedish listed companies is required if shareholders wish to vote. The proxy representative appointed either by the shareholder or by the company (in the case of collection of proxies at the company's expense) must always be present at the GM. Voting by the proxyholder appointed by the company is not direct shareholder voting in absentia but a special form of proxy voting by mail. Companies normally do not offer this form of mail voting to their shareholders. Moreover, to our knowledge, only very few Swedish listed companies provide shareholders with the opportunity to follow the AGM via the Internet. However, shareholders following the meeting via the Internet are considered guests and are not able to vote, make proposals or otherwise express their opinion.

- Proxy voting - Power of Attorney (POA) and supporting documents: Swedish listed companies normally require shareholders to the send the POA/proxy in original by mail to the company before the GM or to present it at the GM. To our knowledge, by 'POA in original' companies have meant, so far, a hardcopy version of the POA with a handwritten signature (or 'wet signature') by the shareholder. This means that companies normally do not allow shareholders to sign the POA electronically and do not accept notification of the proxy appointment electronically. Moreover, it is market practice for Swedish listed companies to require a notarized POA (that is, a POA authenticated by a notary public) and supporting documentation proving the authenticity of the signature when the shareholder is a legal entity. Since Swedish companies may retain the original POA, to prepare for multiple meetings, shareholders are normally required by their proxy voting agency or custodian/sub custodian to complete and provide multiple POAs. The cost of the POA system may discourage in particular smaller investors.

- Re-registration of shares: To be entitled to attend the GM and vote, shareholders holding

nominee-registered shares must ask their intermediaries to temporarily re-register such shares in the shareholders' name in the 'GM register of shareholders' provided to the company by Euroclear Sweden before the GM. According to the EU Impact Assessment of the Shareholder Rights Directive, costs related to GM voting in Sweden are increased by the need to register the securities at the CSD temporarily out of a nominee name and into the beneficial owners name. The re-registration requirement is normally considered by shareholders as one the main impediments to voting Swedish shares.[390] The UK pension fund Hermes estimates that the Scandinavian re-registration requirement represents as much as 4-10% of their annual voting cost.[391]

- Voting instruction deadline: Shareholders must give voting instructions to custodians and proxy voting agencies within a deadline prior to the GM. Deadlines of 9-10 business days are not unusual and may act as an impediment because they reduce the time for shareholders to prepare their opinions.

- Pre-GM information dissemination: Companies are required to publish certain GM-related information (e.g., annual report, directors' reports, auditors' reports) at least 15 days prior to the GM. For cross-border voters, who may be facing a complex voting-chain, fifteen days is a short period to digest the GM-related information.

- Right to add items to GM agenda: The deadline for shareholders to submit a matter to be included in the GM agenda is typically 7 weeks before the GM. According to market practice, companies normally publish the GM notice about 5-6 weeks before the meeting. In practice this means that shareholders will not have an opportunity to add a new item on the GM agenda or submit a counterproposal to existing items. This is because such rights cannot be exercised after the publication of the GM notice.

- Right to ask questions: Shareholders of Swedish companies have the right to ask questions before the GM but the company is required to answer such questions only at the meeting.

[390] European Commission, *Commission Staff Working Document - Annex to the* Proposal for a Directive of the European Parliament and of the Council on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC, *Impact Assessment* COM(2005) 685 final, 17 February 2006, page 13.

[391] See supra footnote 390.

- Lack of audit trail: Shareholders have no right to receive a confirmation by the company (directly or through the chain of intermediaries) how many votes have been received, accepted, and counted. This lack of audit trail is common across markets. However, it is a feature that is essential to an efficient voting system.

12.2 The EU Shareholder Rights Directive: impact on Swedish company law

In this section we describe key provisions of the EU Shareholder Rights Directive (SRD) and its impact on Swedish Company Law.[392] The main purpose of the SRD is to set minimum standards for the protection of shareholder rights in general and for cross-border voting in particular.[393] Throughout the section we also analyze the main recommendations in Skog (2008), hereafter referred to as "the Skog Report".[394]

The Skog Report proposes some amendments to rules in the Swedish Companies Act ("Aktiebolagslagen", ABL) and the Insurance Business Act ("Försäkringsrörelselagen", SFS 1982:713) regulating the general meeting. The proposals mainly relate to companies whose shares are traded on a regulated market or an equivalent market outside of the European Economic Area (henceforth "EEA"). Provisions regulating shareholder meetings are included in Chapter 7 of the ABL and Chapter 9 of the Insurance Business Act. According to Skog, Swedish law largely satisfies the SRD's requirements. However, some Swedish rules differ from the SRD's provisions and must be amended.[395] The review of the SRD with regard to Swedish law made in the Skog Report explicitly covers the Companies Act but the considerations made also apply to the Insurance Business Act. With regard to the Insurance Business Act, Skog clarifies that the government is considering to repeal the majority of company law rules contained in the Act. In fact, when it comes to company law, similarly to public limited companies which operate banking activities, limited liability

[392]Directive 2007/36/EC, 2007 O.J. (L 184/17), Directive of the European Parliament and of the Council on the exercise of certain rights of shareholders in listed companies, July 11, 2007, Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF.

[393]SRD, Recital 4. Also, the SRD expressly does not prevent Member States from implementing higher standards (Article 3).

[394]A provisional English translation of the title of the Skog Report is "Directive on shareholders' rights - proposal for implementing measures". The Report is available at http://www.sweden.gov.se/sb/d/9989/a/107463.

[395]The Confederation of Swedish Enterprises ("Svenskt Näringsliv"), in its comments to the Skog Report, shares the author's view that Swedish law to a large extent already meets the requirements of the SRD. The association also shares the view that changes to the Companies Act should be limited to companies that fall within the scope of the SRD, that is, public limited companies whose shares are traded on a regulated market or an equivalent market outside of the EEA. The comments of the Association ("remissvar") on the Skog Report are available at http://www.svensktnaringsliv.se/.

companies operating insurance business are essentially governed by the Companies Act.

As discussed above, the SRD is a minimum harmonization Directive and Member States are allowed to impose further obligations on companies or otherwise take further measures to facilitate the exercise by shareholders of the rights referred to in the Directive. In this respect, Skog highlights that the Companies Act already contains several rules giving shareholders more extensive rights than required by the SRD. The starting point of Skog is that, where the Swedish law grants shareholders more extensive rights than the SRD imposes, Swedish rules should be maintained. In formulating his proposals to implement the SRD, Skog must take into account the Government's objective to reduce corporate administrative costs (see Prop. 2006/07: 1, Utg.omr. 24).[396]

Below, and throughout Section 12, we summarize key aspects of the draft rules amending the Companies Act proposed in the Skog Report and discuss several of the issues. The discussion highlights our own response to the proposals and our recommendations concerning the implementation of the SRD in Sweden.

EU Member States had until August 3, 2009 to implement the Directive. As discussed above (Section 2.1), Sweden is still in the process of fully implementing the SRD.

In September 2009, the European Commissions sent Sweden a letter of formal notice stating that Sweden "by failing to timely implement and report on the implementation of the European Parliament and Council Directive 2007/36/EG of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, has violated the directive".[397]

In November 2009, the Swedish Government answered saying the following: "The Directive is partially implemented in Swedish law and the implementation has been notified to the Commission's enforcement database. The remaining provisions will be implemented through an amendment which is planned to come into force on 1 October 2010."[398]

In the absence of an implementation of the SRD at the national level, on March 18, 2010, the European Commission addressed reasoned opinions to nine EU Member States, including Sweden.[399] In the reasoned opinion addressed to Sweden, the Commission maintained the position

[396]See sections 1 and 2 in Skog (2008).

[397]The letter of formal notice represents the first stage in the pre-litigation procedure, during which the Commission requests a Member State to submit its observations on an identified problem regarding the application of Community law within a given time limit. See http://ec.europa.eu/community_law/infringements/infringements_en.htm.

[398]See http://www.regeringen.se/sb/d/12256/a/138474.

[399]See http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/305&format=HTML&aged=0&language=EN&guiLanguage=en. The other eight Member States are Belgium, Cyprus, Greece, Spain, France, Luxembourg,

expressed in the letter of formal notice. In May 2010, Sweden replied to the Commission stating that, as reported in November 2009, a large part of the Directive is already implemented in Swedish law. With regard to the remaining provisions to implement, the Swedish Government is currently preparing a proposal. The plan is to present a draft Bill to the Parliament at the beginning of October 2010. This means that the legislation implementing the Directive should enter into force by January 1, 2011.[400]

On June 24, the European Commission referred Sweden and other seven Member States to the Court of Justice for late implementation of the Shareholder Rights Directive.[401]

12.2.1 Equal treatment of shareholders

The SRD requires companies to ensure equal treatment of shareholders who are in the same position with regard to participation and exercise of voting rights at the GM.[402] A similar, more general requirement is imposed by Article 17 (paragraphs 1 and 2) of the Transparency Directive under which issuers of shares admitted to trading on a regulated market must ensure equal treatment for all holders of shares who are in the same position and grant them the facilities and information necessary to exercise their rights.

As discussed in Section 3, under Swedish law, the board of directors, any other representative of the company (including the CEO), and the GM in making their decisions must respect the so-called equality principle ("likhets-principen"). The board and CEO cannot make any decision or perform any acts and the GM cannot adopt any resolution likely to give an unfair advantage to a shareholder or another person at the expense of the company or other shareholders.

These so-called 'general clauses' or 'general abuse clauses' limit the exercise of power by the

the Netherlands, and Portugal. A reasoned opinion represents the second stage in the pre-litigation procedure. The purpose of the reasoned opinion is to set out the Commissions position on the infringement and to determine the subject matter of any action requesting the Member State to comply within a given time limit. On the basis of the letter of formal notice, the reasoned opinion must give a coherent and detailed statement of the reasons that have led the Commission to conclude that the Member State concerned has failed to fulfil one or more of its obligations under the Treaties or secondary legislation. The Commission has discretionary power in deciding whether or not to commence infringement proceedings and to refer a case to the Court of Justice. Referral by the Commission to the Court of Justice opens the litigation procedure. For more information on infringements of EU law, see http://ec.europa.eu/community_law/infringements/infringements_en.htm.

[400] http://www.regeringen.se/sb/d/12252/a/145938.

[401] The other Member States are Belgium, Cyprus, Greece, Spain, France, Luxembourg, and The Netherlands. See http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/815&format=HTML&aged=0&language=EN&guiLanguage=en.

[402] SRD, Article 4.

company's management as well as by majority shareholders and are included in the law of all the Nordic countries. As highlighted by Truyen (2010), under the laws of all the Nordic countries, a breach of the general abuse clause can result in the invalidation of a GM decision. While in Norway and Denmark for example the breach of the clause nullifies the decision, in Sweden, according to several scholars, a decision taken by the GM in breach of the clause is not nullified but open to challenge. As discussed in Section 10.2, shareholders have three months to start the proceedings claiming the invalidity of the decision.

Under the Swedish Corporate Governance Code, regardless of how they are appointed, the members of the nomination committee are required to respect the equal treatment of shareholder and promote the interest of all shareholders.

According to Skog, the equality principle is a fundamental principle of the Swedish Companies Act and the Swedish law is in compliance with Article 4 of the SRD.[403] We share Skog's view on this point.

12.2.2 Power to convene the GM

Under Swedish law, shareholders owning not less than one-tenth (10%) of the company's share capital have the right to demand in writing that an extraordinary general meeting be convened to address the matter specified in the request ("angivet ärende").[404] As discussed in Section 6.1, section 13, Chapter 7 of the ABL, must be interpreted as allowing companies to lower this threshold in their articles of association.

Calling a GM is a fundamental shareholder right. A high threshold for calling a GM is costly as it curbs shareholder incentives to actively monitor the firm. On the other hand, a low threshold increases the risk of "too many" meeting calls, which is also costly. Even though the SRD does not regulate the shareholder right to call a GM and no change in the Swedish law is therefore required, we recommend the Swedish legislature to lower the 10% threshold and grant the right to ask the board of directors to call an EGM to shareholders representing 5% of the share capital of a listed company or any lower percentage established by the company's articles of association. We believe a 5% threshold adequately trades off these costs and benefits. Moreover, the 5% is consistent with

[403] See section 2 (pages 52 and 53) in Skog (2008).
[404] ABL, Chapter 7, section 13.

similar thresholds in other context proposed by, e.g., the U.S. Security and Exchange Commission in its ongoing discussion of proxy voting reform. It is also important to note that other EU Members States (such as Italy and the UK) have lowered their 10% threshold to 5% during the implementation of the SRD.[405]

12.2.3 Convocation of the GM: time to give the GM notice

The SRD requires Member States to ensure that companies issue the convocation of the general meeting not later than on the 21st day before the day of the meeting. Member States may allow companies to call a GM other than the annual general meetings (AGM) at a shorter notice, but not later than 14 days before the GM date, provided that:

(a) the company offers the facility for shareholders to vote by electronic means accessible to all shareholders;

(b) the decision is taken at the GM by a majority of not less than two thirds of the votes attaching to the shares or the subscribed capital represented at the GM. The decision is valid only until the next company's AGM.[406]

Swedish listed companies must give the notice convening an AGM, any other additional ordinary GMs, and an EGM at which a proposal to amend the articles of association is to be addressed, not earlier than six weeks and not later than four weeks before the meeting. Notice of any other type of EGM must be given not earlier than six weeks and not later than two weeks before the meeting. Therefore, in order to be in compliance with the SRD, the Swedish legislature has to modify the minimum notice period of 2 weeks for the convocation of EGMs where no amendments to the articles have to be addressed and either bring it to at least 21 days before the meeting date or allow listed companies to establish a 14-day notice provided that conditions under a) and b)

[405]Italy: Article 2367 of the Civil Code as amended by Legislative Decree No. 27 of January 22, 2010 which came into force on March 20, 2010. UK: Section 303 of the Companies Act 2006 as amended by the Companies (Shareholders Rights) Regulations 2009 (Regulation 4) which came into force on August 3, 2009. Denmark: Section 89 of the new Danish Companies Act (Act No 470 of June 12, 2009) under which, shareholders holding a total of 5% of the share capital may submit a written request for an extraordinary general meeting. Under the German Stock Corporation Act (Aktiengesetz, Section 122(1)) a shareholders' meeting shall be called if shareholders, whose holding in aggregate equals or exceeds one-twentieth (5%) of the share capital (or a lower threshold established by the articles of association), demand such meeting in writing, stating the purpose and the reasons of such meeting; the demand shall be addressed to the management board.

[406]SRD, Article 5.

above are respected. In his Report, Skog proposes to bring the minimum notice period for EGMs where no proposal to amend the articles has to be dealt with, to 3 weeks (see proposed sections 20 and 55a, Chapter 7, of the ABL) for public companies whose shares are traded on a regulated market or an equivalent market outside of the EEA.

We share Skog's view not to allow companies to establish a 14-day term for EGMs as permitted by the SRD. However, we recommend the Swedish legislature to set a minimum notice period of 4 weeks for any GM (including EGMs where no amendments of the articles have to be considered). In fact, until the communication channel between companies and their shareholders becomes more efficient, we believe that a minimum notice period of 4 weeks is necessary to provide shareholders (domestic and foreign) with timely GM-related information (such as time, date, place of the GM and agenda).

No change is required with respect to the 4-week minimum notice period for the other GMs and we recommend the Swedish legislature not to change this 4-week term to a shorter term.

As discussed in Section 6.2.1, the notice convening the GM of Swedish listed companies with shares involved in a takeover bid must be published at least 15 days before the meeting day.[407] This provision is in compliance with the SRD (Article 5, paragraph 1) and the Takeover Bid Directive[408] (Article 9 (4)) and no change is required.

12.2.4 Convocation of the GM: ways to give GM notice

Under the SRD, companies are required to issue the convocation of the GM in a manner ensuring fast access to it and on a non-discriminatory basis. Member States must also require companies to use such media as may be reasonably relied upon for the effective dissemination of information to the public throughout the Community. Member States will not have to impose the above mentioned requirements on companies that are able to identify the names and addresses of their shareholders from a current register of shareholders and are under the obligation to send the convocation of the GM to each of their registered shareholders. In any case, companies cannot charge any specific cost for issuing the GM notice in the prescribed manner.[409]

[407] Lag (2006:451) om offentliga uppköpserbjudanden påa aktiemarknaden, Chapter 6, section 4.
[408] Directive 2004/25/EC.
[409] SRD, Article 5 (paragraph 2). Note that Article 5 (paragraph 2) of the SRD uses the same wording of Article 21 (paragraph 1) of the Transparency Directive (TD) regarding the access to regulated information (including the GM notice).

Under Swedish law, the articles of association regulate the way to give the notice convening the GM (GM notice). In some cases established by the law (see Section 6.2.2), the notice must be sent to shareholders whose mail address is known to the company. Public companies must also give the GM notice through an announcement in the Swedish Official Gazette and at least in one national daily newspaper indicated in the company's articles of association.

According to Skog, the SRD does not require any change with regard to the way of calling the GM and the requirement to give the GM notice by announcement in the Official Gazette is in compliance with the Directive. However, Skog proposes to modernize in some respects the rules governing the convocation of the GM through announcement in a national newspaper. Under Skog's proposal (see proposed sections 23, 56, and 56a), Swedish public companies whose shares are traded on a regulated market or an equivalent market outside of the EEA, besides giving the GM notice through advertisement in the Swedish Official Gazette as they do today, shall:

- publish the GM notice on the company's website;
- where appropriate, give the GM notice in the other manners prescribed in the articles of association;
- send the GM notice by post to every shareholder whose mail address is known to the company where an ordinary GM has to be held at a different time than prescribed in the articles of association;
- at the same time as the notice is given, inform through advertisement in at least one national daily newspaper indicated in the company's articles of association that the GM notice has been given. The newspaper ad shall include information on:
    1) company name and corporate identity number;
    2) type of general meeting to be held;
    3) time and venue of the general meeting;
    4) the conditions for shareholders to exercise their right to participate in the GM (under Section 2, Chapter 7, of the ABL) that is, deadline (record date) to register the shares in the company's share register kept by the CSD and, if so requested by the company's

articles, deadline to send the company a notice of intention to attend the GM (notice of attendance);

5) how shareholders should proceed to access the GM notice on the company's website, and

6) how shareholders should proceed to obtain the free mailing of the GM notice from the company.[410]

Where appropriate, the newspaper ad should also state that the meeting shall:

(a) address a matter regarding an alteration of the articles of association as referred to in sections 43-45;

(b) decide whether the company shall go into liquidation;

(c) review the liquidator's final report; or

(d) address the issue whether the liquidation of the company shall cease.[411]

In the cases under a) to c) above, Swedish listed companies are today required to send the GM notice by mail to every shareholder whose mail address is known to the company. Under the Skog Report's proposal, in these cases listed companies will only be required, where appropriate, to include information in the newspaper ad.

Therefore, under Skog's proposal, Swedish listed companies must still give the GM notice through advertisement in the Official Gazette and instead of publishing the full GM notice, listed companies are required only to advertise the GM notice on at least one daily national newspaper: the newspaper ad will inform shareholders that the notice has been given and provide the information listed above. The main purpose of the change is to reduce costs borne by listed companies to publish the entire GM notice in national newspapers. Today the publication of the full GM notice requires typically at least two newspaper pages and the costs of publication are high.[412]

We agree with the proposed changes but we believe the newspaper ad should also include the proposed agenda for the GM, that is, the list of resolutions/items to be addressed at the GM. Full

[410] See new proposed section 56a, Chapter 7, of the ABL in Skog (2008).
[411] See new proposed section 56a, Chapter 7, of the ABL in Skog (2008).
[412] The Confederation of Swedish Enterprise ("Svenskt Näringsliv"), in its comments to the Skog Report, supports Skog's proposal regarding the short newspaper advertisement. The comments of the Association ("remissvar") on the Skog Report are available at http://www.svensktnaringsliv.se/.

resolutions (main content of each proposal submitted and clear explanation of the matters to be addressed at the meeting) will have to be made available on the company's website.[413]

Moreover, we also recommend the Swedish legislature to require Swedish listed companies to include in the newspaper ad information about where and how the full unabridged text of draft resolutions (and, where no resolution to be adopted is proposed, comments for each item on the GM agenda) as well as all the documents to be submitted to the GM may be accessed on the company's website and obtained for free by the company either by regular mail or by electronic means.

We believe that, under request by shareholders, listed companies should be required to send GM-related material (such as GM notice, full resolutions, accounts, and reports) for free also by electronic means (i.e., email) even though the company's GM has not approved the distribution of information to shareholders by electronic means regulated by sections 64-67, Chapter 7 of the ABL. (See Section 6.4.4.) This will help companies to both reduce administrative costs related to communications with shareholders (i.e., printing and mailing costs) and at the same time to protect the environment.

In our opinion, the requirements to publish the full GM notice in the Swedish Official Gazette and to advertise it through a newspaper ad are both inadequate to ensure fast access to the notice convening the GM on a non-discriminatory basis throughout the Community as required by the SRD. Moreover, the Official Gazette as well as the daily national newspapers (financial and not) are unlikely to guarantee rapid and effective dissemination of information to the public both within and outside of the EU. In fact, information in the Swedish Official Gazette can be accessed for free on the Internet but is published in Swedish only. As for the national newspapers, they are written only in Swedish and neither the paper nor the electronic versions are available for free. Moreover, since companies are not required to publish GM notices in the same national newspaper, a shareholder investing in more than one Swedish listed company will have to read daily all the newspapers indicated by the different companies in their articles of association in order to be aware of a forthcoming GM.

[413] Of a similar advice Juridicum, Faculty of Law at Stockholm University, in its comment to the Skog Report. With specific regard to the publication of the GM notice, the Faculty Board accepts the proposed limitation of the content of the newspaper ad but believes that the ad should always include the GM agenda. For the rest, the Faculty Board agrees with the draft amendments proposed in the Skog Report. The comment was published on 2008-10-02 and is available at http://www.juridicum.su.se/jurweb/dokument/remisser/aktieagaresrattigheteranon.pdf.

As of today, Swedish law does not require listed companies to publish the GM notice on their website, unless it includes price sensitive information(that is, information regarding the company's operations and securities relevant for the assessment of the securities' market price). (See Section 5.1. above.) However, companies listed on the NASDAQ OMX Stockholm, under the listing agreement, must always publish on their website and disclose notices of GM of shareholders in a manner that ensures fast access to such information on a non-discriminatory basis; that is, all market participants must have access to the same information at the same time. As discussed in Section 6.2.2, in order to comply with this rule, in practice companies are required to use an established information distributor ("informationsdistributör") to disseminate the company's information.[414]

Finally, under the Swedish Corporate Governance Code 2010, information about time and venue of the GM must be posted on the corporate governance section of the company's website.

To comply with the SRD, the Swedish legislature will have to require Swedish listed companies to publish the full GM notice on their websites. Under Skog's proposal (new proposed section 56a, Chapter 7 of the ABL), Swedish listed companies will have to publish the GM notice on their website and clarify in the newspaper ad the manner through which shareholders can access the notice on the company's website and obtain the free mailing of the GM notice by the company.

It is important to notice that new section 23, Chapter 7 of the ABL, as proposed by Skog, establishes that sections 64-67, Chapter 7 of the ABL, apply with regard to the ways to give notice of the GM to shareholders. As discussed in Section 6.4.4, since July 2007, Swedish public companies whose shares are traded on a regulated market or an equivalent market outside of the EEA, have the right to provide information (including the GM notice) to shareholders by electronic means provided that the conditions stated in sections 65-67, Chapter 7 of the ABL, are respected. To date, no Swedish listed company provides information to shareholders by electronic means. Hopefully, the direct reference to sections 64-67 in section 23, Chapter 7 of ABL, will remind companies of this important right and in the future GMs of Swedish listed companies will approve the decision to use electronic means to inform shareholders.

[414]NOS Rules, sections 3.1.5 and 3.3.3.

12.2.5 Convocation of the GM: content and language of the GM notice

The SRD (Article 5, paragraph 3) regulates the content of the notice convening the GM which must include at least the following:

(a) Precise information about when and where the GM is to take place, and the proposed GM agenda.

(b) Clear and precise description of the procedures that shareholders must comply with in order to be able to participate and cast their vote at the GM (in particular, information regarding: the rights to put items on the agenda and table draft resolutions; the right to ask questions; the procedure for voting by proxy; and, where applicable, the procedure for voting by correspondence or by electronic means).

(c) The record date, where applicable, explaining that only those who are shareholders on that date shall have the right to participate and vote in the GM.

(d) Information about where and how the full, unabridged text of draft resolutions and comments for each item on the GM agenda as well as all the documents to be submitted to the GM may be obtained.

(e) The address of the web site on which all the information that companies are required to make available to their shareholders before the GM can be accessed.

Under Swedish law, listed companies are already required to include information under (a) in the notice convening the GM.[415] In the proposed agenda, the board of directors must also clearly describe and number the matters to be addressed at the GM, and indicate the main content of each proposal submitted unless the proposal involves a matter of minor importance for the company. As discussed in Section 6.2.3, the GM notice must also include details on the conditions for shareholders to exercise their right to participate in the GM (under Section 2, Chapter 7, of the ABL) that is, deadline (record date) to register the shares in the company's share register kept by the CSD and, if so requested by the company's articles, deadline to send the company a notice of intention to attend the GM (notice of attendance). Moreover, when the company offers shareholders the opportunity

[415] ABL, Chapter 7, section 24 (as amended by Act 2007:373).

to vote through a proxy form collected at the company's expense (under section 4, Chapter 7 of the ABL), the GM notice must also state the manner through which shareholders can obtain the proxy form. This means that Swedish companies are already required to include in the GM notice information under (c) above but only part of the information under (b).

Under amended section 24, Chapter 7 of the ABL, as proposed by Skog, Swedish companies whose shareholders shall be be entitled to exercise voting rights at the GM by a proxy form collected at the company's expense (under proposed section 4, second paragraph, Chapter 7 of the ABL), by mail voting (under proposed section 4, third paragraph, Chapter 7 of the ABL) or by electronic means, will be required to include in the GM also information about how shareholders should proceed to do so. In the GM notice, Swedish companies will also have to inform shareholders about their right to request information under section 32, Chapter 7 of the ABL. (See Section 12.2.9 below.)

Proposed section 24, Chapter 7 of the ABL, is not completely in compliance with article 5, paragraph 3 (b)(ii)and (d). In fact it does not require Swedish listed companies to include in the GM notice information about the procedure for voting by proxy (that is, by a proxyholder appointed by the shareholder), the forms to be used to vote by proxy, and the means by which the company is prepared to accept electronic notifications of the appointment of proxy holder. As discussed in Section 8.1.1.2, even though not required by law or governance rules, the typical market practice for large Swedish listed companies is to describe in the GM notice the procedure shareholders must follow to vote by a proxy representative and to state that the proxy form (or POA) is available on the company's website and will also be sent to those shareholders who so request.

Proposed new section 63, Chapter 7 of the ABL, will also require Swedish companies whose shares are traded on a regulated market or an equivalent market outside of the EEA to include in the GM notice information about the website where the company provides documents to be presented at the GM, proxy and, where applicable, postal voting forms.

12.2.6 Publication of GM-related information on the company's web site before the GM

As specified in Recital (6) of the SRD, "The Directive presupposes that all listed companies already have a web site" and requires the mandatory publication of specific GM-related information on the

company's web site. In particular, Member States are required to ensure that listed companies make available to their shareholders on their web site, for a continuous period beginning not later than on the 21st day before the day of the GM and including the meeting day, at least the following information:[416]

(a) The notice convening the meeting.

(b) The total number of shares and voting rights at the date of the convocation (including separate totals for each class of shares where the company issues two or more classes of shares).

(c) The documents to be submitted to the GM (such as, annual financial statements and other reports).

(d) A draft resolution or, where no resolution is proposed to be adopted, a comment from a competent body within the company, for each item on the proposed GM agenda.

(e) Draft resolutions tabled by shareholders (these must be added to the web site as soon as practicable after the company has received them).

(f) Where applicable, the form to be used to vote by proxy and by correspondence, unless those forms are sent directly to each shareholder. When these forms cannot be made available on the Internet for technical reasons, the company must indicate on its web site how shareholders may obtain the forms and send them by post to every shareholder who so requests free of charge.

As discussed above, Swedish law does not require listed companies to publish GM notices on their website, unless they include price sensitive information. However, companies listed on the NASDAQ OMX Stockholm, under the listing agreement, must always publish on their website notices of GM of shareholders. As we have seen above, amended section 24, Chapter 7 of the ABL, proposed in the Skog Report, will require companies to publish the GM notice on their website.

As for the other GM-related information and documents to be submitted to the GM (such as, accounts and reports), the board of directors of Swedish companies is required to make accounting documents and the auditor's report (or copies of such documents) available for shareholders at the

[416]SRD, Article 5, paragraph 4.

company at least two weeks prior to the AGM. Copies of the documents must be sent immediately and free of charge to shareholders who so request and provide the company with their mail addresses.[417]

As discussed in Section 5.1, all the information that has to be disclosed under the Swedish law and the NOS Rules (including periodic financial information and any other price sensitive information), must also be published on the website of Swedish listed companies. As for the deadline to publish information, under the Finansinspektionen's Regulations, such information must be promptly published on the company's website; information disclosed by companies listed on the NASDAQ OMX Stockholm must be published on the company's website as soon as possible after the information has been disclosed.

New section 56b, Chapter 7 of the ABL, as proposed by Skog, requires the board of directors of Swedish companies whose shares are traded on a regulated market or an equivalent market outside of the EEA, to make accounting documents and auditor's report, or copies of such documents available for shareholders at the company for at least three weeks immediately prior to the AGM. During the same time, the documents shall be available on the company's website. Copies of the documents shall be sent immediately and free of charge to shareholders who so request and provided the company with their mail addresses. Companies whose shares are traded on a regulated market in Sweden are required to follow the same provisions also for the publication of the auditor's opinion regarding compliance with the draft guidelines for the remuneration of senior executives written by the board of directors.[418] (See Section 6.4.3.)

The ABL contains several provisions regulating the provision of materials before the GM when the GM has to address specific matters such as bonus issues (Chapter 12, section 8), new issue of shares (Chapter 13, sections 3 to 9), issue of warrants (Chapter 14, section 11) or convertible instruments (Chapter 15, section 11), etc. In these cases, the board of directors must make the proposed resolutions and, where required, all the supporting documents, available for shareholders at the company for a period of not less than two weeks prior to the GM. Copies of the documents shall be sent free of charge to shareholders who so request and provide the company with their postal address. Skog proposes to amend all of these provisions and change the 2-week deadline to 3

[417] ABL, Chapter 7, section 25.
[418] See proposed sections 25 and 56b, Chapter 7 of the ABL.

weeks before the GM for companies whose shares are traded on a regulated market or an equivalent market outside of the EEA.[419]

We recommend the Swedish legislature to integrate proposed section 56b, Chapter 7 of the ABL, and require the board of directors of Swedish listed companies to publish on the company's website in general all the documents to be presented at the GM as well as the form to be used to vote by proxy and the form to be used to vote by correspondence, unless those forms are sent directly to each shareholder (that is, in the only cases in which the GM notice is sent by mail to every shareholder).[420]

As we will discuss below, we recommend the Swedish legislature to require companies to offer shareholders the possibility to vote by correspondence. When the forms to vote by proxy and correspondence cannot be made available on the Internet for technical reasons, the company must provide on its web site information on how shareholders may obtain the forms in hard copy and send the forms by post to every shareholder who so requests free of charge.

With regard to the form to vote by proxy, section 54a, Chapter 7 of the ABL, requires Swedish public companies whose shares are traded on a regulated market or an equivalent market outside of the EEA, to provide shareholder with a proxy form before the GM but companies are not required to make it available on their website. The form must be provided with the GM notice only when the notice is sent to shareholders (that is, under Skog's proposal, only when an ordinary GM has to be held at a different time than prescribed in the articles of association). When the notice is given by other means, the proxy form may be given under request by shareholders once the meeting has been announced. (See Section 12.2.10 below.)

As discussed in Section 8.1.1.2, even though not required by law or governance rules, according to market practice, large Swedish listed companies make the proxy form (or POA) regulated under section 54a, Chapter 7 of the ABL, available to shareholders on the company's website. Including these requirements in the same provision will help clarify the system. Section 54a, Chapter 7 of the ABL, should be revised accordingly.

[419] See the following ABL provisions as proposed in Skog (2008): Chapter 12, new section 14; Chapter 13, new section 39a; Chapter 14, new section 46a; Chapter 15, new section 41a; Chapter 18, new section 14; Chapter 19, section 25; Chapter 20, new section 34a; and Chapter 25, new section 52.

[420] Of the same advice the Confederation of Swedish Enterprise ("Svenskt Näringsliv"), in its comments to the Skog Report. The Association suggests the introduction of an ad hoc provision (new section 56c, Chapter 7 of the ABL) requiring companies to keep proxy and postal voting forms on their website. The comments of the Association ("remissvar") on the Skog Report are available at http://www.svensktnaringsliv.se/.

Moreover, even though the SRD requires a minimum publication period of 3 weeks prior to the GM, we recommend the Swedish legislature to amend proposed section 56b, Chapter 7 of the ABL, and require Swedish listed companies to make available at the company and publish on the company's website accounts and reports, all the documents to be presented to the GM, and the forms to be used to vote by proxy and by correspondence not later than the day of publication of the GM notice. Recall that Swedish companies are required to publish the GM notice not earlier than 6 weeks and not later than 4 weeks prior to the GM. Requiring companies to publish all the information relevant for the exercise of shareholder rights at the GM together with the GM notice, will give shareholders more time to study such information and make well informed voting decisions.

As discussed in Section 6.4.5, it is common for Swedish listed companies to publish the annual report on their websites more than 4 weeks before the GM; therefore the publication deadline that we propose should not be an issue. However, the term to present the annual report and, where applicable, the consolidated account for the previous year to company's auditors and general examiners established in the Annual Accounts Act (ABL, Chapter 8, section 2), should be revised accordingly.

As for information under (e) above, Swedish companies are already required to include in the GM notice shareholder proposals received by the company within the deadline set by the company (typically 7 weeks before the GM). Since proposed section 56a, Chapter 7 of the ABL, requires listed companies to publish the GM notice on the company's website, Sweden is in compliance with the SRD. (See Section 12.2.8 below.)

With regard to information under (b) above, Swedish companies whose shares are traded on a regulated market or an equivalent market outside of the EEA, are already required to include in the GM notice information about the total number of shares and voting rights. In the case of CSD companies, the information must relate to the situation as of record date. If this is not possible, the information must relate to the situation at the time of the convocation.[421] (See Section 6.2.3.) Proposed new section 63, Chapter 7 of the ABL, will require Swedish listed companies to include in the GM notice information on the total number of shares and voting rights and, where applicable, on the company's holding of own shares. The information must relate to the date of the convocation

[421] ABL, Chapter 7, section 63.

and companies which issue several classes of shares will have to include separate totals for each class of shares.

According to Skog, information on company's holding of treasury shares must also be provided because these shares are not eligible to vote at the meeting and therefore affect the voting power of a given shareholding.

12.2.7 Requirements for participation and voting in the GM: the record date system

Record date

The SRD abolishes share-blocking by requiring Member States to use a "record date" system. In a record date system, the right to participate and vote at the GM requires owning the shares on the record date. Moreover, in a record date system shareholders must have the right to sell or transfer shares between the record date and the GM, which eliminates share blocking.[422] If you sell the share after the record date but before the GM, you keep the GM participation and voting rights.

As discussed in Section 7, under Swedish law, each shareholder of a Swedish CSD company who is entered in the company's share register kept by the Swedish CSD (Euroclear Sweden) on the record date ("avstämningsdagen") set by the company's articles of association has the right to participate in and vote at the GM. Sweden is a 'record date system' where shareholders who sell shares between the record date and the GM keep the right to participate in the GM and vote for the shares owned on the record date. Only shares that are settled on the evening of the record date set by the company entitle the shareholder to exercise her voting rights. (See sectionn 7.2) The Swedish record date system is in compliance with Article 7 (paragraphs 1 and 2) of the SRD.

In setting a record date, the SRD requires Member States to ensure that a single record date applies to all companies. The record date must not be set more than 30 days before the GM and at least 8 days must elapse between the latest permissible date for the calling (convocation) of the GM and the record date (in calculating the 8 days those two dates shall not be included).[423]

The record date established by the ABL is 5 business days prior to the GM or a later date

[422] SRD, Article 7.
[423] SRD, Article 7, paragraph 3.

established by the articles of association.[424] Therefore, Swedish CSD companies can set the record date anytime between 5 business days before the GM and the GM itself. The typical market practice for listed companies is to set the record date 5 business days before the GM.

To comply with the SRD, the Swedish legislature will have to set a single, fixed record date that applies to all Swedish listed companies. Amended section 28, Chapter 7 of the ABL, as proposed by Skog, establishes a single record date of 5 business days ("fem vardagar") prior to the GM that will apply to all Swedish CSD companies (listed or not).

Even though the Swedish record date is in compliance with the SRD, we recommend the Swedish legislature to set the record date two business days prior to the GM. As discussed above, in a record date system, if you sell the share after the record date but before the GM, you keep the GM participation and voting rights although you no longer have the funds invested in the stock you sold (which leads to so-called "empty voting"). The closer the record date is to the GM date, the lower the potential for empty voting at the GM. The legislation should also make clear that a share-purchase must be settled by the record date in order to entitle the shareholder to vote. A record date set two business days prior to the GM significantly reduces the possibility of empty votes at the GM. Moreover, since in the present system foreign shareholders are normally required to give voting instructions a few days ahead of the record date, the closer the record date is to the GM date, the longer the time available to shareholders to study the GM-related material (as well as voting recommendations from their agents) and make informed voting decisions.

A two-day record date already exist in other markets (such us the UK).[425]

Notice of attendance

As discussed in Section 7.1.2.2, under Swedish law, the company's articles of association may prescribe that a shareholder may attend the general meeting only if she sends the company a notice of attendance by the date specified in the GM notice.[426] The typical market practice for Swedish

[424] ABL, Chapter 7, sections 2 and 28.

[425] Myners (2007) examines the record date choice in the UK. He argues that the existing UK record date of 48 hours before the GM should not be altered other than recording the 48-hour time period in terms of business days only. It is interesting to note that the Companies (Shareholders' Rights) Regulations 2009 (the Statutory instrument implementing the SRD in the UK) introduced new Section 360B(2) in the Companies Act 2006, requiring that a traded company determine the right to vote at a general meeting by reference to the register of members as at a time (determined by the company) that is not more than 48 hours before the time for the holding of the meeting. In calculating the 48 hours, no account is to be taken of any part of a day that is not a working day.

[426] ABL, Chapter 7, section 2.

listed companies is to ask for this notice of attendance 5 business days prior to the meeting. This means that Swedish listed companies normally set a common deadline (typically 5 business days prior to the GM) to register the shares in the company's share register (record date) and to give notice of attendance.

Shareholders willing to participate in the GM in person or through a proxy representative are always required to give the company a notice of attendance. The proxy form sent to the company is not valid as a notice of attendance.

The Swedish law does not regulate how the notice of attendance must be given. Unless the company's articles of association or GM notice provide for something different, the notice can be given by shareholders electronically, by mail, by fax or by phone. Swedish listed companies normally allow shareholders to provide notice of intention to attend the meeting by telephone, by fax, via the Internet (on a website specified by the company in the notice of meeting), or in writing (that is by mail). The notice normally must include information about the shareholder (such as name, address, phone, etc.).

In their GM notice, all the companies in our sample inform shareholders that the notice of attendance can be given by phone, mail, and via the company's website; some companies accept the notice also by fax. However, it is interesting to note that all of our sample companies allow shareholders who are private individuals attending the meeting in person to give notice of attendance via the company's web site and this seems to be a common practice. However, the majority of our sample companies do not allow shareholders who are legal entities and/or shareholders (including individuals) who decide to vote by proxy to give the notice of attendance electronically (i.e., through the company's website). In fact, shareholders who are legal entities and/or shareholders who wish to be represented by a proxy must send a written notice of attendance to the company. Some companies require the notice to be accompanied by the POA.

What happens if a shareholder, who is a legal entity or a shareholder (including individuals), who decides to vote by proxy does not send the notice of attendance as required by the company in the GM notice (that is, by mail)? If so required by the company's articles of association, any shareholder must notify the company of her intention to participate in the GM within the deadline set by the company. A shareholder who does not comply with this requirement, will not be allowed to participate and vote at the GM unless the GM, by unanimous vote, allows her to participate.

However, from a legal point of view, since the law does not regulate the way to give notice of attendance to the company, shareholders who give the notice to the company by any means (email, mail, fax, etc.) before the GM, must always be allowed to participate. If the company asks for the notice of attendance to be sent by mail and the shareholder sends it by email or fax, the company must allow the shareholder to participate in the GM otherwise the decisions made at the meeting itself will be void. Only if the company's articles of association specify how the notice of attendance must be given, the board can refuse to accept a notice not given in the prescribed way.

In implementing the SRD, the Swedish legislature should reconsider all the provisions that make the shareholder exercise of voting rights at the GM of Swedish listed companies unduly complicated and cumbersome (both time and money-wise). That said, in our opinion, the requirement for shareholder to give notice of attendance before the GM should be reconsidered.

What is the real value to the company of a notice of attendance? The notice of attendance does not represent a proof of ownership and does not entitle the shareholder to vote.[427] The notice typically includes only basic information about the shareholders (i.e., name, address, phone number) and can include information on the number of assistants that the shareholders decides to bring at the meeting. As discussed in Section 7.1.2.2, shareholders are anyway allowed to give the company information on the assistants attending the meeting in a separate notice. Even though not required by the law, companies often ask shareholders to state in the notice of attendance whether they will attend the GM in person or through a proxy representative. However, since companies require shareholders voting by proxy to send proxy forms (POAs) typically two days before the GM, companies are anyway able to understand which and how many shareholders will be present at the meeting in person or through a proxy representative.

Moreover, all the shareholders willing to vote at the GM, will have to be registered on the company's share register by the record date. Nominee-registered shareholders (mainly foreign shareholders) must be temporarily registered in the share register by the record date. The day after the record date the company receives the 'GM register of shareholders' prepared by the CSD and knows who registered the shares. Therefore, the only function of the notice is to facilitate the organization of the GM (size of the room where the meeting will be held, number of voting devices

[427] In Italy for example, an electronic 'notification for attendance' must be sent by the shareholder's intermediary to the company before the GM as a proof of ownership. For a detailed analysis of Italy's share voting system, see Eckbo, Paone, and Urheim (2009).

needed, etc.) by knowing the number of people who will be present at the GM.

In this respect, it is interesting to analyze the market practice developed in Finland with regard to the requirement to give notice of attendance for nominee-registered shareholders. Euroclear Finland, the Finnish CSD, on behalf of the Finnish Corporate Actions Market Practice Working Group, issued a document "Market Practice for Corporate Actions in Finland" that clarifies the different corporate action events to foreign investors operating in the Finnish market.[428]

Finland, like Sweden, is a record date system where only shareholders who are registered in the company's share register by the record date are allowed to participate in the GM and vote. As in Sweden, in order for nominee-registered shareholders to exercise voting rights at the GM, nominee-registered shares must be temporarily registered in the shareholder's name by the registration deadline set by the company which today must be after the record date. In fact, during the implementation of the SRD, the Finnish legislature changed the record date to 8 business days prior to the general meeting (it used to be 10 days). Moreover, while before the implementation of the SRD the request by the shareholder's intermediary to register the shares in the shareholder's name had to be sent at the latest on the record date, now it is sufficient that a request of temporary registration in the shareholders' register is delivered at the latest on the date indicated in the GM notice; this date must be after the record date of the general meeting.[429]

Under Finnish law, the company's articles of association may establish the shareholders' duty to give notice of attendance of a GM not earlier than 10 days before the GM. Shareholders of Finnish companies are normally required to give the company a notice of attendance before the GM by the deadline specified by the company in the GM notice. Under Part II, section 2.4 of the "Market Practice for Corporate Actions in Finland", " (...) The registration of a shareholder in the temporary shareholder register is considered to contain also the notification of attendance to the company. Thus there is no need for a separate notification of attendance by nominee registered shareholders."

If the Swedish legislature decides to keep in the ABL the requirement to send a notice of

[428]The document is the result of the work of several corporate action specialists form different participant organizations that form the Finnish Corporate Actions Market Practice Working Group. The "Market Practice for Corporate Actions in Finland", Revised in March 2010, are available at http://www.euroclear.eu/files/Market_Practice_for_Corporate_Actions__2010.pdf.

[429]Finnish Companies Act, Chapter 4, section 2, as amended by Act 585/2009. The SRD was implemented in Finland on August 3, 2009, through amendments to the Finnish Companies Act, Securities Market Act, and Insurance Companies Act.

attendance before the GM, Swedish market participants should probably consider the Finnish solution as on option to simplify the participation in GMs of Swedish companies by nominee-registered shareholders (mainly foreign investors).

As discussed in Section 12.2.1, under the SRD, companies must treat equally all shareholders that are in the same position with regard to participation and exercise of voting rights in the GM. The practice of some Swedish companies to allow only individual shareholders to give the notice of attendance electronically therefore does not seem to be in compliance with the SRD.

It is also worth mentioning that the 2005 version of the Code of Corporate Governance established that "shareholders are to be given the opportunity to register to attend the shareholders' meeting in several ways, among them registration by e-mail or on the company's web site."[430] This rule was removed by the 2008 version of the Code because considered unnecessary regulation of details. However, looking at the market practice and considering that Swedish listed companies normally do not allow shareholders who are legal entities (that is, all the institutional investors) as well as shareholders voting by proxy to register to attend the meeting via the company's website or by email, if the Swedish legislature decides not to address the issue, the Corporate Governance Board should consider including the rule again in the Code.

12.2.8 Right to put items on the agenda of the GM and to table draft resolutions

Under Article 6 of SRD, shareholders must be granted the right to put items on the GM agenda (provided that each item is accompanied by a justification or a draft resolution to be adopted at the GM) and the right to table draft resolutions included in the GM agenda. Member States can require shareholders to hold a minimum stake in the company in order to be allowed to exercise these rights. This minimum stake must not, however, exceed 5% of the share capital.

Swedish law already grants shareholders the right to include a matter in the business to be dealt with at a GM. Under the ABL, every shareholder (no matter the size of her shareholding) has the right to have a matter addressed at the GM.[431] For the matter to be included in the GM

[430] Swedish Code of Corporate Governance 2005, section 1.1.3.

[431] Also Norway and Denmark grant the right to put items on the GM agenda and to table draft resolutions to every shareholder. Other EU Member States normally require shareholders to hold a minimum stake in the company in order to be allowed to exercise these rights. Thresholds vary across countries: shareholders of Italian listed companies must represent (individually or jointly) at least 2.5% of the share capital (Article 2367 of the Civil Code as amended by Legislative Decree No. 27 of January 22, 2010 which came into force on March 20, 2010); shareholders of Belgian companies, must represent (individually or jointly) at least 5% of the issued capital (Belgian Companies

agenda, shareholders must submit a written request to the board of directors within the deadline set by the company (that is, either seven weeks before the GM or after this date but in due time for the matter to be included in the GM agenda).[432]

According to Skog, the word 'matter' ("ärende") in Section 16, Chapter 7 of the ABL, means "a relevant issue for the company that may become an item for decision at the GM". However, nothing prevents shareholders from submitting a notification to the board on matters (other than a proposal, resolution) which the owner wishes to be considered at the next meeting. According to Skog, Swedish law is therefore in compliance with Article 6 (paragraph 1) of the SRD.[433] Nevertheless, we believe the Swedish legislature should amend section 16, Chapter 7 of the ABL, in order to clarify that shareholders have the right to both table draft resolutions and put an item on the GM agenda.[434] Moreover, as required by the SRD, section 16 should also require shareholders exercising the right to put items on the agenda to accompany such item by a justification (explanation) or a draft resolution (proposal) to be adopted at the GM.

In order to be allowed to exercise these rights, shareholders should be required to prove the ownership of at least one voting share in the company. The new provisions should also clarify how shareholders have to identify themselves. In fact, Swedish law does not expressly regulate the criteria to exercise ownership rights besides voting (such as: the right to ask questions in writing before the meeting, to place new items on the GM agenda or table resolutions, and to inspect the shareholder book). As discussed in Section 7, shareholders of a Swedish CSD company are allowed to exercise voting rights at the GM only if they are entered in the company's share register prepared by the Swedish CSD (Euroclear Sweden) as per the record date set by the company's articles of

Code as amended by the Draft Bill adopted on March 5, 2010); members of UK listed companies representing (a) at least 5% of the total voting rights of all the members who have a right to vote at the meeting, or (b) at least 100 members who have a right to vote at the meeting and hold shares in the company on which there has been paid up an average sum, per member, of at least 100, have the right to require circulation of resolutions for AGMs and include other matters in business dealt with at AGMs (Companies Act 2006, section 338 and new section 338A introduced by the Companies (Shareholders' Rights) Regulations 2009); shareholders of German listed companies whose shares amount in aggregate to not less than one-twentieth of the share capital or represent an amount of the share capital corresponding to 500,000 euros, may demand that items are put on the agenda and published (German Stock Corporation Act, Section 122(2)).

[432] ABL, Chapter 7, section 16.

[433] See Skog (2008).

[434] It is interesting to notice that the Norwegian legislature, in amending section 5-11 of the Norwegian Public Limited Companies Act regulating the shareholder right to have matters dealt with by the GM, decided to integrate the provision and clarify that besides the right to have questions dealt with at the meeting, "A shareholder has also the right to put forward proposals for decision". (See section 5-11 of Act No. 45 of June 13, 1997 as amended by Act No. 77 of June 19, 2009.)

association. Owners of nominee-registered shares, whose shares are registered in the company's share register in the name of their nominees, must be temporarily entered in the share register in their name.

What must shareholders do to be allowed to add a new item on the GM agenda or table draft resolutions? Do they need to be registered in the company's share register? Must shareholders holding nominee-registered shares identify themselves? If so, do they need to be temporarily entered in the company's share register or the nominee must send the company a proof of ownership (i.e., a certificate of ownership)?

To our knowledge, today it is up to the board of directors to decide whether or not to require shareholders who are not entered in the company's share register to present a proof of ownership in order to be allowed to exercise ownership rights besides voting. In practice, when a shareholder decides to exercise, say, the right to add an item to the GM agenda and the board does not find her on the share register at the time the written request is received, the board can decide to ask the shareholder for a proof of ownership. This is not a legal requirement for the board to follow but it is market practice for boards to verify the shareholder's identity before allowing her to exercise ownership rights besides voting.

In order to clarify the system, we believe the law should clearly establish the requirements to exercise the right to add new items to the GM agenda and table draft resolutions as well as any other ownership rights besides voting. (See also Section 12.2.9 below.)

Shareholders of Swedish companies do not have the right to put an item on the GM agenda or table a draft resolution for items already included on the agenda once the GM notice has been published.[435] In fact, the board of directors of Swedish companies is not allowed to issue a second/revised GM notice (including the new agenda) after the deadline for the publication of GM notices established by the law (that is, for AGMs and, under our proposal, EGMs not later than 4 weeks before the GM). In order to be allowed to publish a new notice, the board should abolish the first one and give a totally new notice within 4 weeks before the GM date.

During the revision of the Swedish Companies Act that came into force on January 2006, the Swedish legislature considered the possibility to include in the Act a new rule requiring the board to publish a complementary GM notice (and agenda) in the case of a submission by shareholders of

[435] See Skog (1999).

new agenda items after the publication of the first notice. In the end, no such rule was introduced in the ABL. Therefore, it is impossible for shareholders to study the GM notice and proposed agenda and decide whether or not they wish to add a new item on the GM agenda or submit a counterproposal to existing items without having seen the agenda itself after the publication of the GM notice.

As discussed in section 6.3.1, shareholders of Swedish companies are always allowed to submit proposals and raise counterproposals related to items on the GM agenda at the GM. However, in the system prosed by Skog, shareholders who vote in absentia ahead of the meeting (by proxy and, if so provided in the articles of association, by mail and/or electronic means) are not able to make voting decisions taking into account proposals and counterproposals raised at the meeting.

We believe shareholders of Swedish listed companies should be given the opportunity to study the GM notice and proposed agenda and decide whether or not they wish to add a new item or submit a counterproposal to items already on the agenda. The Swedish legislature should include an ad hoc provision regulating the shareholder right to submit proposals related to items included on the GM agenda after the publication of the GM notice. In order for the shareholder proposals submitted after the publication of the GM notice to be effective, other shareholders must be made aware of them.

Should the Swedish legislature believe it is infeasible to require companies to publish a revised GM agenda, including proposals submitted after the publication of the first notice, it should anyway require Swedish listed companies to publish shareholder proposals and counterproposals related to items already included on the GM agenda on their Internet site as soon as practicable after having received them. The legislature should establish a deadline for shareholder to submit proposals and counterproposals to items on the agenda in order to have them published. The deadline should be set as close as possible to the record date (recall that we recommended above to set the record date two business days before the GM) but anyway enough in advance of the GM to give the company the time to publish submitted proposals on the website.[436]

The SRD allows Member States to require that the right to add agenda items be exercised in

[436]For example, under the German Stock Corporation Act (Aktiengesetz, Section 126(1)), shareholders of German listed companies have the right to submit counter motions (counterproposals) on a proposal made by the Executive Board and/or Supervisory Board on items of the GM agenda after the publication of the GM notice. Counter motions sent to the company (at the address specified in the GM notice) at least 14 days before the GM must be published on the company's website.

writing (that is, by submitting the request by postal services or by electronic means). Swedish law specifies that a request to have a matter addressed at the GM must be submitted to the board of directors in writing. According to Skog, "in writing" has to be interpreted as to allowing shareholders to submit requests also by electronic means (i.e., email or fax). As discussed in section 6.3, some Swedish listed companies require shareholders to send the written request by mail and do not provide any email address to use for this purpose. Therefore, in order to clarify the system, we recommend that the Swedish legislature integrates section 16, Chapter 7 of the ABL, and specifies that the right in question can be exercised by sending a written request to the board of directors either by mail (in hard copy form) or by electronic means (fax or email).

Under the SRD, shareholders have the right to add items to the agenda of the annual GM (AGM). However, Member States may restrict shareholder rights to add agenda items for meetings other than the AGM. Specifically, Member States may restrict the right to add agenda items provided that shareholders have the right to call (or require the company to call) general meetings other than the AGM.

In Sweden, shareholders representing at least 10% of the share capital have this right. Moreover, as noted above, section 16, Chapter 7 of the ABL, grants the right to add items to the agenda of a general meeting without specifying the type of meeting. "General meeting" here means any type of shareholder meeting–annual, ordinary not annual, or extraordinary. Swedish law protects the shareholder right to have a matter addressed at general meetings other than the AGM and, as clarified in the Skog Report, there is no need for change in this respect.

12.2.9 Right to ask questions related to items on the GM agenda

The SRD grants shareholders the right to ask questions related to items on the GM agenda and requires companies to answer these questions. Since the Directive does not specify that the right can be exercised only during the GM, we interpret this provision as allowing each shareholder to ask questions related to items on the GM agenda both before and during the GM. Rules on how and when questions are to be asked and answered are left to be determined by the EU Member States.[437] In particular, Member States may take, or allow companies to take, measures to ensure the identification of shareholders, the good order and preparation of the GM, and the protection of

[437] SRD, Recital 8.

companies' confidentiality and business interest. Member States may also provide that an answer must be deemed given if the relevant information is available on the company's web site in a question and answer format and allow companies to provide one overall answer to questions having the same content.[438]

As mentioned in Section 12.2.5 above, a statement will need to appear in the GM notice informing shareholders about the right to ask questions. (See SRD, Article 5, paragraph 3 and proposed section 24, Chapter 7 of the ABL.)

A: Right to ask questions related to items on the GM agenda before the GM

In our opinion, it is important to grant shareholders of listed companies the right to request information related to the business to be dealt with at the GM before the meeting takes place. This is particularly important for shareholders who cannot attend the meeting and must vote/give voting instructions in advance of the GM (especially foreign shareholders exercising distance voting). Such shareholders may need to ask questions to the company before the GM in order to gather more information about items and draft resolutions on the GM agenda and make informed voting decisions. For the same reason, questions received before the GM within a reasonable time for the company to formulate the answer should be answered as soon as possible.

Current practice in this respect varies across Member States. For example, before implementation of the SRD, the UK Companies Act 2006 did not regulate the shareholders' right to ask questions related to items on the GM agenda. New section 319A of the Companies Act 2006 (introduced by the Companies (Shareholders' Rights) Regulations 2009) establishes that "At a GM of a traded company, the company must cause to be answered any question relating to the business being dealt with at the meeting put by a member attending the meeting" subject to certain conditions. The new rule does not, however, require companies to answer questions relating to items on the GM agenda before the meeting.

In France, shareholders do have the right to submit questions. Specifically, under French law (Article L.225-108 and Article R.225-84 of the Commercial Code as modified by Decree N. 2009-295 of March 16, 2009), any shareholder is entitled to submit written questions, to which the board of directors or the management, as the case may be, are required to reply in the course of the

[438] SRD, Article 9.

meeting. The questions must be sent at the company's headquarters either by registered letter with acknowledgement of receipt addressed to the chairman of the board of directors (or of the management board) or by electronic means of communication to the address mentioned in the notice of the meeting (or notice of call), at the latest on the 4th business day prior to the general meeting date. Shareholders must attach to the written questions a certificate of book entry either in the accounts of registered shares held by the company or in the account of bearer shares held by the authorized intermediary.

In Italy, shareholders of listed companies have the right to ask questions both before and during the GM. Questions sent to the company before the GM must be answered at the latest at the meeting (New Article 127-ter of the Consolidated Law on Financial Intermediation introduced by Legislative Decree No. 27 of January 22, 2010 which came into force on March 20, 2010).

As explained above (Section 9.6), Swedish law regulates shareholder rights to ask questions related to items on the GM agenda. In particular, any shareholder has the right to ask information both before and during the GM on:

1. any conditions which may affect the assessment of an item on the agenda; and

2. any conditions which may affect the assessment of the company's financial position.

The board of directors and CEO have a statutory duty to answer questions and provide such information if they believe that this can be done without significant harm to the company. In public companies, information under point 2 above must be provided only at GMs where the annual report or consolidated accounts are addressed.[439] (For more details see Section 9.6.)

Even though Swedish law requires the board and CEO to answer such questions at the GM, in the case of questions asked before the GM, nothing prevents the board and CEO from providing answers before the meeting takes place.

According to Skog, Swedish law complies with Article 9 of the SRD and there is no need for change. However, in our opinion the Swedish legislature should integrate section 32, Chapter 7 of the ABL, and introduce a specific rule allowing shareholders to ask questions regarding the business to be dealt with at the GM before the meeting, and requiring companies to answer shareholder

[439] ABL, Chapter 7, sections 32 and 57.

questions except when the information requested is sensitive (i.e., business secrets) or confidential and may harm the interests of the company if made public.

In particular, in regulating the shareholder right to ask questions before the GM, we recommend the Swedish legislature to:

1) allow shareholders who identify themselves in the form required by the law, to ask questions regarding the business to be dealt with at the GM before the meeting;

2) clarify that questions must be sent in writing either by mail or by electronic means to the company at the mail and email addresses indicated in the GM notice; and

3) require companies to answer any written question before the GM only if these are received in sufficient time to allow for a response to be prepared. Otherwise, answers should be given directly at the GM to all the present shareholders and published on the company's web site in a question and answer format as soon as possible after the GM. The answer given a shareholder before the meeting must be made available to all shareholders on the company's website.

In order to be allowed to exercise this right, shareholders should be required to prove the ownership of at least one voting share in the company. The new provisions should also clarify how shareholders have to identify themselves. In fact, as discussed above (Section 12.2.8), Swedish law does not expressly regulate the criteria to exercise ownership rights besides voting (such as: the right to place new items on the GM agenda or table resolutions, to inspect the shareholder book, to present lists of nominees, and to ask questions before the meeting). In order to clarify the system, the law should clearly establish the requirements to exercise the right to ask questions in writing before the GM.

The new provision should allow the company to give one overall answer to questions with the same content. Moreover, the answer should be deemed to be given if the relevant information was already available on the company's web site in a question and answer format when the company received the written question. Instead, if the company posts the answer to a shareholder's question on its web site only after having received the written question from the shareholder, the shareholder must receive a written communication from the company which makes her aware of the availability of such answer on the company's web site.

Moreover, we recommend that the Swedish legislature considers the possibility of abolishing Section 57, Chapter 7 of the ABL extending the right of shareholders of listed companies to ask questions regarding the company's financial position also before and during GMs other than AGMs. In fact, we believe shareholders should always have the right to ask the board and CEO information on any conditions which may affect the assessment of the company's financial position.

It is important to note that the shareholder right to ask questions both before and at the GM has been included in the "ICGN Global Corporate Governance Principles: Revised (2009).[440] Under Principle 8.3.7 ("Shareholder questions"), "Shareholders should be provided with the right to ask questions of the board, management and the external auditor both before and at meetings of shareholders, including questions relating to the board, its governance and the external audit."

B: Right to ask questions related to items on the GM agenda during the GM

As discussed in Section 9.6, Swedish law does not regulate the functioning rules of the GM including the shareholders' right to intervene and ask questions related to items on the GM agenda. In fact, neither the ABL nor the companies' articles of association establish specific rules laying down procedures to be followed in order to permit an orderly and effective conduct of the GM (such as, rules for asking questions and taking the floor at the GM). The chairman of the GM has the power to control and regulate the debate, including limiting speaking time and refusing to allow people to take the floor if they are not strictly keeping to the items on the GM agenda.

As discussed above, Swedish law already grants any shareholder the right to ask questions related to items on the GM agenda at the GM. The board and CEO must answer the questions unless they believe this may cause harm to the company (such as, disclosure of confidential information).

Even in the case of questions asked during the GM, we believe Swedish law should expressly allow companies to give one overall answer to questions with the same content. Moreover, the answer should be deemed to have been given if the relevant information has been published on the company's web site in a question and answer format at least for a period of 8 or more days prior to the GM and during the GM.[441] The board of directors must answer each question asked unless

[440]The ICGN Global Corporate Governance Principles: Revised (2009), were published and launched at an ICGN Conference in Washington, DC (USA), in November 2009. The Principles are available at http://www.icgn.org.

[441]Under the German Stock Corporation Act (Aktiengesetz, Section 131(3), point 7, the management board may refuse to provide information, among other reasons, if the information is continuously available on the companys internet page seven or more days prior to the shareholders meeting as well as during the meeting.

the answer would involve the disclosure of confidential and sensitive information. The chairman of the meeting should be entitled to regulate the asking of questions and refrain from answering a question in order to ensure the preparation and the good order of the meeting.

Under Swedish law, when the board or the CEO may provide answers only on the basis of information which is not available at the GM, such information shall be made available to the shareholders in writing at the company's registered office within two weeks after the GM and shall be sent to any shareholder who requested the information.[442] We believe the Swedish legislature should amend section 33, Chapter 7 of the ABL, and establish that, in the case of complex questions that cannot be answered at the GM or questions that can be answered only on the basis of information which is not available at the GM, the company shall provide the shareholder who has asked the question with a prompt answer as soon as possible after the GM and anyway not later than two weeks after the GM. At the same time, the answer should also be published in the question and answer section of the company's website so that all the shareholders can have access to it.

12.2.10 Proxy voting

The SRD promotes the principle that good corporate governance requires effective proxy voting opportunities. Thus, the SRD introduces provisions aimed at removing limitations and constraints that make proxy voting cumbersome and costly. Moreover, the Directive allows Member States to introduce adequate measures against a possible abuse of proxy voting by the proxyholder.[443]

Right to vote by proxy

The SRD provides detailed rules concerning shareholder rights to vote by proxy and the formalities around proxy-holder appointment and company notification. Below, we highlight changes that the Swedish legislature is required to make to be in compliance with these SRD rules. We expose both the SRD's rules[444] and the Swedish regulatory framework[445] for proxy voting. (See also Section 8.1.)

Under the SRD, shareholders have the right to appoint a natural or legal person as a proxy-

[442] ABL, Chapter 7, section 33.
[443] See SRD, Recital 10.
[444] SRD, Articles 10 and 11.
[445] ABL: Chapter 7, sections 3, 4, and 54a; Chapter 1, section 13.

holder. The proxyholder is an agent who attends the GM and votes on the shareholder's behalf. To be in compliance, Member States must abolish legal rules restricting the appointment of a proxyholder. Also, the proxyholder must be granted the same right to speak and ask questions during the GM as the represented shareholder. (SRD, Article 10, paragraph 1)

Under Swedish law, shareholders of Swedish companies have an unfettered right to be represented at the GM and vote through a proxy representative with a written proxy (POA), dated and signed by the shareholder. Proxy representatives are granted the same rights to speak and to ask questions at the GM as the represented shareholder.[446]

As discussed in Section 8.1.1.1, no limitations on the appointment of a proxy are allowed in the articles of association and proxy authority can be granted to any individual (including members of the board and CEO) or legal person.[447]

Member States are allowed to establish the period of validity of a proxy and limit the appointment of a proxyholder to a single meeting, or to a number of meetings that may be held during a specified period. Member States may also limit the number of persons whom a shareholder may appoint as proxyholder in relation to each GM.[448] No limit can be established on the number of shareholders the same proxyholder may represent and proxyholders holding proxies from more than one shareholder must be enabled to vote in a different way for different shareholders.[449]

Swedish law limits the time of validity of a proxy to one year from the date of issuance. As highlighted in the Skog Report, this provision has been introduced in order to force shareholder to review, at least once a year, the proxies granted.[450]

Shareholders of Swedish companies are allowed to appoint at most one proxy representative but there are no limits on the number of shareholders a single person (proxyholder) may represent.[451] A proxyholder representing several shareholders may vote in different directions for the different shareholders (that is, split voting at the proxyholder level is allowed).

We share Skog's view about the opportunity to keep a provision limiting to one the number of persons whom a shareholder may appoint as proxyholder at each GM. We believe this provision

[446] ABL, Chapter 7, section 3.
[447] See Skog (2008), page 78.
[448] SRD, Article 10, paragraph 2.
[449] SRD, Article 10, paragraph 5.
[450] ABL, Chapter 7, section 3.
[451] See Skog (2008), page 78.

makes management of the GM proceedings easier, facilitating the reconciliation of proxy appointments and entitlements to vote. However, to be in compliance with Article 10 (paragraph 2) of the SRD, Sweden will have to introduce a provision allowing shareholders of listed companies holding shares in more than one securities account to appoint a proxyholder for each account. The new first paragraph of section 54a, Chapter 7 of the ABL, as proposed by Skog, allows shareholders of a public limited liability company whose shares are traded on a regulated market or an equivalent market outside of the EEA, who hold shares in more than one nominee account to appoint a proxyholder for each nominee-registered holding.

As discussed in Section 9.5, split and partial voting at the shareholder (beneficial owner) level are not allowed in Sweden. In the Report, Skog notes that, even though there is no specific prohibition regarding split voting (that is, voting for a portion of the shares in a certain way and for the rest of the shares in a different way) in the ABL, it may be argued that such a prohibition applies as a general principle. However, according to Skog, it is unclear that such a prohibition applies also to the case where the shareholder uses several proxy representatives. In practice, foreign shareholders, whose shares are kept with different nominees (that is, held in several nominee accounts), are sometime represented by several proxy representatives. Without knowing about each other, these proxy representative may end up voting in different ways for shares owned by the same shareholder. This issue is important.

Besides the limits mentioned above, under the SRD (Article 10, paragraph 3), Member States cannot restrict or allow companies to restrict shareholders from exercising their rights through proxyholders for any purpose other than to address potential conflicts of interest between the proxyholder and the shareholder. In order to ensure that the proxyholder does not pursue any interest other than that of the shareholder, Member States may impose only the following requirements:[452]

(a) Prescribe that the proxyholder disclose certain specified facts which may be relevant for the shareholders in assessing any risk that the proxyholder might pursue any interest other than the interest of the shareholder.

(b) Restrict or exclude the exercise of shareholder rights through proxyholders without specific voting instructions for each resolution in respect of which the proxyholder is to vote on behalf

[452]SRD, Article 10(3).

of the shareholder.

(c) Restrict or exclude the transfer of the proxy to another person, but this shall not prevent a proxyholder who is a legal person from exercising the powers conferred upon it through any member of its administrative or management body or any of its employees.

In our opinion, in implementing the SRD, the Swedish legislature should consider identifying potential conflicts of interest between the shareholder and the proxyholder and imposing the requirements sub (a), (b), and (c).

Recital 10 of the SRD clarifies that, in order to avoid any possible abuse of proxy voting, proxyholders should be bound to observe any instructions they may have received by shareholders. Following this principle, the Directive establishes an obligation for proxyholders to cast votes in accordance with the instructions issued by the appointing shareholder. According to Skog, the principle that the proxy representative shall act in accordance with the shareholder's instructions follows from general proxy rules. However, we recommend that the Swedish legislature gives this principle legal basis and introduces it into Swedish law.[453] As highlighted by Skog, the SRD does not require shareholders to give instructions. As discussed in Section 8.1.1.2, the content of a proxy is up to the agreement between the shareholder and the proxy holder: shareholders of Swedish companies are not required to include voting instructions in the proxy form (POA) and are allowed to grant a blank proxy (that is, without instructions) to the proxyholder.

Member States may require proxyholders to keep a record of the voting instructions received from the appointing shareholder for a defined minimum period and to confirm upon request that the voting instructions have been executed.[454] We recommend the Swedish legislature to include both these requirements in the ABL.

Appointment of proxyholder and notification to the company

The SRD requires Member States to permit shareholders to appoint a proxyholder by electronic

[453]It is interesting to note that the British legislature in implementing Article 10 (paragraph 1) of the SRD, decided to give legal basis to the obligation of proxy representatives to vote in accordance with instructions (see new section 324A of the Companies Act 2006 introduced by the Companies (Shareholders' Rights) Regulations 2009). According to the Institute of Chartered Secretaries & Administrators (ICSA), companies are not "in a position to check and ensure that a proxy votes in accordance with the instructions given by the appointing member. If it later transpires that a proxy did not vote in accordance with such instructions, this fact would not invalidate the results of the meeting."(See ICSA Guidance on the Implementation of the Shareholder Rights Directive, available at http://www.icsa.org.uk.)

[454]SRD, Article 10(4).

means. Member States must also permit companies to accept the notification of the appointment by electronic means and ensure that each company offers its shareholders at least one effective method of notification by electronic means. Proxyholders must be appointed and the appointment notified to the company, only in writing. Other than this formal requirement, the appointment of a proxy, the notification of appointment to the company, and the issuance of voting instructions (if any) to the proxyholder, can be made subject only to proportionate requirements that are necessary to ensure the identification of the shareholders and the proxyholders or to verify the content of voting instructions.[455]

"In writing" must be interpreted as by written electronic means (such as, email or fax). Therefore, the SRD requires companies to offer some type of electronic proxy voting system to their shareholders (Zetzsche, 2008).

As discussed in Section 8.1.1.1, Swedish companies whose shares are traded on a regulated market or an equivalent market outside of the EEA, must provide shareholders with a proxy form for the GM. Companies must provide an 'empty' proxy form: it cannot contain the name of the proxy representative or indicate how the proxy representative may vote.[456]

Proxy representative must be appointed in writing. The proxy (or Power of Attorney - POA) must be dated and signed by the shareholder.[457] As highlighted in Section 8.1.1.2, under the ABL (Chapter 1, section 13), unless otherwise stated, any document that must be signed under the Swedish Companies Act, may be signed using an advanced electronic signature under the Qualified Electronic Signature Act (SFS 2000:832).

According to Skog, the requirement for a signature on the 'written proxy' established in section 3, Chapter 7 of the ABL, can be met through the use of an advanced electronic signature. Therefore, since under Swedish law it is already possible to appoint a proxyholder electronically, Sweden complies with the SRD with regard to the appointment of representatives at the GM and no change is required (Skog, 2008).

However, even though section 13, Chapter 1 of the ABL was introduced in the new Companies Act (2005:551) and is in force since January 1, 2006, we have not found evidence that Swedish companies allow shareholders to sign the proxy form through an advanced electronic signature and

[455]SRD, Article 11.
[456]ABL, Chapter 7, section 54a.
[457]ABL, Chapter 7, section 3.

appoint proxy representatives electronically. As discussed in Section 8.1.1.2, the typical market practice for Swedish listed companies is to require shareholders to send the POA in original by mail to the company at the address specified in the proxy form available online (and at the company). To our knowledge, by 'POA in original' companies have meant, so far, a hardcopy version of the POA with a handwritten signature (or 'wet signature') by the shareholder. Therefore, no shareholder has sent companies (or presented directly at the GM) a POA signed electronically. Would Swedish companies, under the present system, accept a POA signed electronically as an 'original' POA? More generally, can a document signed electronically be considered 'original'? If the lack of acceptance of electronic signatures is pervasive, than the present system is not in compliance with the SRD.

Moreover, according to market practice, Swedish listed companies require a notarized POA (that is, a POA authenticated by a notary public) and supporting documentation proving the authenticity of the signature when the shareholder is a legal entity. We question whether the requirement of a notarized POA is in compliance with Article 11 of the SRD.

Looking at the Swedish market practice, we conclude that Swedish companies probably did not interpret the Swedish ABL rules on the appointment of proxies as establishing a legal requirement for companies to permit shareholders to appoint proxyholders electronically. As discussed in Section 12.1, the requirement of original POA with wet signatures or notarized (and accompanied by supporting documentation), is burdensome and costly for shareholders and is often seen as one of the main barriers to vote Swedish shares. The Swedish legislature should clarify the system and expressly require Swedish listed companies to allow shareholders to appoint proxies electronically. Companies should not be allowed to require POA with wet signature or notarized.

Swedish law does not regulate the notification of proxy appointments to the company. As discussed in Section 8.1.1.2, some Swedish listed companies indicate that the POA can be presented at the GM but it seems to be most common to require shareholders to send the POA and other authorizing documents by mail before the meeting. Companies set different deadlines to do so. These are 'soft' deadlines and, provided that shareholders have sent a notice of attendance, proxy holders presenting a POA directly at the meeting are normally allowed to participate in and vote at the GM. We recommend that the Swedish legislature requires listed companies to accept the notification of appointment by written electronic means and offer their shareholders at least one effective method to do so. The same rules must apply for the revocation of proxies.

It is interesting to analyze how some of the other EU Member States have interpreted and implemented Article 11 of the SRD.

In implementing the SRD, the Italian legislature introduced a new provision that regulates the notification of proxy appointment to the company establishing that the proxyholder can deliver or send, also in electronic form, a copy of the proxy instead of the original. In doing so, the proxyholder must attest, under her own responsibility, the conformity of the copy to the original proxy and the identity of the represented shareholder. The proxyholder must keep the original proxy and a record of the received voting instructions for one year after the end of the GM. The Ministry of Justice, in agreement with Consob (the Italian securities regulator), is required to establish in a Regulation, how shareholders can appoint proxies electronically. Companies are required to specify in their articles of association at least one method of electronic notification of proxy appointment that shareholders have the right to use.[458]

Besides requiring companies to allow shareholders to appoint proxy representatives electronically and offer shareholders at least one method of electronic notification of proxy appointment, we believe Sweden should also consider simplifying the practice regarding proxies issued by nominee-registered shareholders. In doing so, Sweden could consider the system developed in Finland as a possible solution.

Before describing the Finnish market practice with regard to proxy voting, it is important to briefly recall rules and market practice on how nominee-registered shareholders exercise their voting rights in Swedish companies today. As discussed in Section 4.2, foreign shareholders normally hold shares of Swedish listed companies through financial intermediaries in nominee accounts. These shares are registered in the company's share register kept by the Swedish CSD (Euroclear Sweden) in the name of the nominee and therefore called nominee-registered shares. Foreign shareholders normally do not attend the GM in person but vote through a proxy representative. As described in Figure 7, in the most common scenario, foreign institutional shareholders normally give a POA to a Swedish (local) custodian that is valid for all the meetings of Swedish listed companies in which they own shares. Because the proxyholder must be present at the GM, once the voting instructions reach the local custodian, the local custodian normally send a representative to attend the meeting.

[458] See new Article 135-novies (paragraph 5) of the Consolidated law on Financial Intermediation as introduced by Legislative Decree No. 27 of January 22, 2010, which came into force on March 20, 2010.

We have recalled above the cumbersome and costly process shareholders who are legal entities have to pass through in order to get a notarized POA and supporting authorizing documents.

Considering the long chain of intermediaries through which foreign shareholders must pass in order to vote cross-border, Finland has developed a market practice which simplifies proxy voting for foreign shareholders. Previously, shareholders were as in Sweden required to present a POA in writing through the chain of intermediaries. However, market participants decided to jointly interpret the Finnish law so that any re-registration of shares, notification, and voting instruction received through the chain of intermediaries (that is, the custody chain) is considered sufficient. Moreover, in practice, no written POA is needed as long as the custody client guarantees that there is an authorization in place from the beneficial owner of the shares. It is enough that the Finnish custodian's representative attending the meeting presents a POA signed by the custodian together with the shareholder's instructions on how to vote. Voting instructions will reach the local custodian passing through the chain of intermediaries or, if appointed by the global custodian, the proxy voting agency.

However, as explained in the "Market Practice for Corporate Actions in Finland" published by the Finnish CSD (Euroclear Finland) only shareholders represented by a Finnish custodian can benefit of this simplified practice. In this case, the custodial client's (or appointed agent's) instructions to participate and vote are considered sufficient to grant the Finnish custodian the authority to represent the beneficial owner at the meeting. The custodial client "is responsible for forwarding participation and voting orders only on behalf of such shareholders for which it can provide further reliable evidence on authorization, if so demanded by the Finnish custodian."[459] No physical POA must be separately submitted. If the shareholder wants to appoint a representative other than the Finnish custodian, a POA is normally required. "If a third party is authorized to act on behalf of the beneficial owner, a consistent chain of POA is required. The full chain of POAs is to be presented upon request. In addition, evidence of authorized signatures is required.(...)".[460] Thus, in the latter case, the Finnish proxy voting system for foreign shareholders is as cumbersome and costly as the Swedish one.

[459]See Part II, section 2.3 of the "Market Practice for Corporate Actions in Finland", Revised in March 2010, Issued by Euroclear Finland Ltd on behalf of the Finnish Corporate Actions Market Practice Working Group.

[460]See Part II, section 2.3 of the "Market Practice for Corporate Actions in Finland", Revised in March 2010, Issued by Euroclear Finland Ltd on behalf of the Finnish Corporate Actions Market Practice Working Group.

The Confederation of Swedish Enterprises ("Svenskt Näringsliv"), in its comments to the Skog Report, suggests to simplify the management of proxies for nominee-registered shares before the GM in order to save time and costs for companies, managers, and indirectly, shareholders. According to the Association, current rules on how shareholders may exercise their voting rights for nominee-registered shares are today administratively burdensome since the company must examine and approve the entire proxy chain. Therefore, the association recommends to investigate the matter and in doing so consider the Finnish system as a possible solution. However, if Sweden chooses to introduce a system like the Finnish one, a fundamental assumption should be that the nominee will be responsible for the validity of the entire chain of POAs. In other words, the company should be able to rely on the POA issued by the nominee and on the authority of the nominee to represent the shareholder.[461]

Collection of proxies

Swedish law regulates the collection of proxies at the company's expense. As a general rule, Swedish companies are not allowed to pay the expenses for the collection of proxies. However, the articles of association may establish the right for the board of directors to collect proxies at the company's expense. In Section 8.1.2 we described the detailed procedure for the collection of proxies by the company regulated by the ABL. In summary, shareholders are offered the possibility to vote ahead of the meeting though a proxy form that has to be sent by mail to a proxy representative appointed by company. The proxy representative cannot be a member of the board of directors or a CEO of the company. Companies normally appoint a lawyer. The proxy form must include the proposed resolutions and for each of them the possibility to vote only 'yes' or 'no'. Shareholders can vote 'yes' or 'no' on the different items or abstain from ticking off any of the alternatives. Any special instructions included on the form will make it invalid.[462]

Very few companies have introduced this proxy voting option in their articles of association. (For more details on market practice see Section 8.1.2)

Skog proposes to amend section 4, Chapter 7 of the ABL. Under the first paragraph of amended section 4, "Proxies may not be collected by the company." The rewording of the first paragraph

[461] The comments of the Association ("remissvar") on the Skog Report are available at http://www.svensktnaringsliv.se/.

[462] ABL, Chapter 7, section 4.

(i.e., the elimination of the reference to 'costs') aims at emphasizing that the prohibition applies regardless of whether anyone other than the company would bear the cost of the collection of proxies.[463]

Under proposed section 4, notwithstanding the general prohibition in the first paragraph, the articles of association may provide that the board of directors before a general meeting may decide that the shareholders shall be able to give a proxy to a representative appointed by the company or that shareholders will always be able to submit such a proxy. This means that the articles of association may establish that the company may or must collect proxies; if the articles permit the collection of proxies, than the Board has the right to establish, before each GM, if the option has to be used. When the option is used, the board has to appoint a proxy representative. In order to comply with the SRD's requirement to eliminate any limits on who can be appointed as a proxyholder, Skog proposes to abolish the current prohibition for companies collecting proxies to appoint as a proxyholder a member of the board or the CEO.

Under Article 15 of the SRD, Member States are required to comply with all the provisions of the SRD at the latest by August 3, 2009. However, Member States (like Sweden) whose laws or regulations do not permit the appointment as a proxyholder of a member of the administrative, management, or supervisory body of the company or a controlling shareholder or controlled entity, are allowed to bring into force laws, regulations, and administrative provisions necessary to be in compliance with Article 10 of the SRD at the latest by August 3, 2012. We share Skog's view on the need for Sweden to eliminate limits on who can be appointed as a proxyholder at the earliest possible without taking advantage of the longer implementation period allowed by the Directive.

In our opinion, in amending the provision regulating collection of proxies by the company, the Swedish legislature should also regulate potential conflict of interest between the company appointed proxy and represented shareholders and ensure adequate transparency and disclosure.

Skog proposes to abolish the current detailed regulation of the procedure to collect proxies at the company's expense described above. According to Skog, the articles of association may include detailed rules on the procedure to collect proxies. For example, the articles could contain a rule under which, shareholders who decide to vote through the proxy representative appointed by the company are not required to send the company the notice of attendance before the GM.

[463] See Skog (2008), page 91.

As we discussed in Section 8.1.2, both the companies in our sample which have introduced this option in their articles of association offered shareholders the possibility to vote through a proxy representative appointed by the company at the 2008 AGM. Both companies specified in the special proxy form used to collect proxies at the company's expense that a correct proxy form stating personal identification number or corporate registration number would have been regarded as a notice of attendance to the company. If the articles contain no specific rule, then the board will have to determine the procedure to follow in collecting proxies.[464]

In our opinion, Swedish legislature should require companies which offer shareholders the right to vote through a proxy collected by the company to also accept the proxy form as a notice of attendance. Shareholders voting through a proxy representative appointed by the company should not be required to send the company a notice of attendance before the GM.

12.2.11 Participation in the GM by electronic means: electronic meetings and direct electronic voting

Under the SRD, Member States must permit (not require) companies to offer their shareholders to participate in the GM by electronic means. In particular, companies must be allowed to offer their shareholders any or all of the following forms of participation in the GM by electronic means:

a) real time transmission of the GM;

b) real time two-way communication allowing shareholders to address the GM from a remote location;

c) a mechanism for casting vote either before or during the GM without the need to appoint a proxyholder who is physically present at the GM.[465]

While under option (a) shareholders are only allowed to follow the meeting from a remote location without taking an active part in it, under option (b), shareholders can actively participate in the GM (i.e., speak, ask questions, and vote) from a remote location (for example via video-conference or conference call). Option (c) provides shareholders with the right to vote in absentia

[464] See Skog (2008), page 92.
[465] SRD, Article 8.

by electronic means either in advance or during the GM (that is, taking part in the ballot in real-time).

The ABL does not include any explicit right to participate or follow the GM on distance via the Internet. Section 15, Chapter 7 of the ABL, regulates the location of the GM: the general rule is that the GM must be held where the company maintains its registered office. However, the articles of association may establish that the meeting must or may be held in another specified location in Sweden. Under extraordinary circumstances, the GM may be held in a location different from the two mentioned above.

This rule has been interpreted has permitting companies to offer their shareholders the possibility to participate in the meeting remotely (by one or more other places, within or outside the country) by means of modern communication technology. Therefore, Swedish companies are allowed to offer their shareholders live transmission of the GM (i.e., in video-conference) allowing shareholders to follow the meeting on the Internet. The rule does not seem to allow companies to hold virtual shareholder meetings.

According to Skog, the ABL is in compliance with the SRD requirement to allow listed companies to offer their shareholders the opportunity to participate in the GM by electronic means.[466]

As discussed in Section 8.3, only few companies (normally the biggest listed companies) provide shareholders with the opportunity to follow the GM via the Internet. Shareholders on the Internet are not allowed to actively participate in the GM (i.e., speak and ask questions) and vote.

In our opinion, in order to clarify the system, the Swedish legislature should introduce an ad hoc provision requiring listed companies to offer their shareholders any or all of the forms of participation in the GM by electronic means under a) to c) above. The new rule should also specify that the participation in the GM by electronic means can be made subject only to the requirements that are necessary to ensure the identification of shareholders and the security of the electronic communications, and only to the extent that they are proportionate to those objectives.[467] Today, current technology permits companies to offer shareholders direct electronic voting –e.g., through

[466]The Swedish Shareholders' Association (Sveriges Aktiesparares Riksfrbund - Aktiespararna) in its comment to the Skog Report shares Skog's conclusion that the ABL (Chapter 7, section 15) meets the requirements of Article 8 of the SRD. The comments of the Association on the Skog Report are available at http://www.aktiespararna.se/.

[467]New section 360A of the UK Companies Act 2006 introduced by Companies (Shareholders' Rights) Regulations 2009, clarifies that companies can hold and conduct a meeting "in such a way that persons who are not present together at the same place may by electronic means attend and speak and vote at it".

a company web site through which shareholders may cast votes electronically without appointing a proxyholder who is physically present at the meeting.[468]

It is worth mentioning that the 2005 version of the Code of Corporate Governance established that "at each shareholders' meeting, the company is to provide shareholders with the option of following or participating in the meeting from another location in the country or abroad with the help of modern communications technology if it is warranted by the ownership structure and financially feasible."[469] This rule was removed in the 2008 version of the Code under the view that companies may have sufficient incentives to provide this service voluntarily. However, since Swedish listed companies normally do not allow shareholders to follow the meeting on the Internet, this view seems incorrect. Therefore, if the Swedish legislature decides not to address the issue, we recommend that the Corporate Governance Board considers including the rule again in the Code.

12.2.12 Voting by correspondence

The SRD requires Member States to permit companies to offer their shareholders the possibility of voting by correspondence. Voting by correspondence may be made subject only to such requirements that are necessary to ensure the identification of shareholders and proportionate to achieving this objective.[470] "Possibility to vote by correspondence" has to be interpreted here as the right to vote by correspondence either by post or electronically.

Swedish law does not allow listed companies to offer their shareholders the possibility to vote by post in advance of the GM. As discussed in Section 8.1.2, in the case of a collection of proxies at the company's expense, shareholders who decide to vote through the proxy representative appointed by the company must send the 'special' proxy form to the proxy representative by mail. However, voting by the proxy appointed by the company is not direct shareholder voting in absentia but a special form of proxy voting by mail.

To bring Sweden in compliance with Article 12 of the SRD, Skog proposes to introduce in section 4, Chapter 7 of the ABL, a provision allowing the company's articles of association to establish that the board of directors before a GM may decide that the shareholders can exercise their rights to vote by post or that shareholders will always be able to exercise their right to vote by post.

[468] For the definition of "Electronic Direct Voting" see also Zetzsche (2008).
[469] Swedish Code of Corporate Governance 2005, section 1.1.3 ("Distance participation").
[470] SRD, Article 12.

Therefore, the articles can establish whether the company may or must provide shareholders with the option to vote by post before the meeting. The new proposed provision does not include any rules on how voting by mail should take place. According to Skog, companies should be left free to design the postal voting system in the manner that best fits the company's conditions. Therefore, as in the case of collection of proxies (see Section 12.2.10 above), the articles of association may include detailed rules on how voting by correspondence should take place. For example, the articles could establish whether the shareholders shall be able to vote by traditional mail or email and the deadline by which the shareholders' vote must reach the company. As highlighted by Skog, unlike in the case of a collection of proxies by the company, in this case shareholders will have to send the votes directly to the company.[471]

In our opinion, Swedish listed companies should be required to offer their shareholders the right to vote in absentia by correspondence either electronically or by post. In regulating voting by correspondence electronically, the Swedish legislature will have to introduce the requirements that are necessary to ensure the identification of shareholders through electronic means.

As we have seen in Section 12.2.6, the SRD requires companies which allow shareholders to vote by correspondence to publish on their web site the form to be used to vote by correspondence, unless this form is sent directly to each shareholder. The form must be published at least 21 days before the GM. We recommend the Swedish legislature to require Swedish listed companies to publish the form to vote by correspondence on their web site together with the GM notice. The form to vote by correspondence should also be sent to any shareholder who so requests and who provides the company with her mail or email address; it should be clarified that companies have to send the form free of charge.

We recommend the Swedish legislature to create a standard form to vote by correspondence. Having a standard form for voting by correspondence used by all the Swedish companies listed in Sweden will make it easier for shareholders to exercise their voting rights.

In order to allow the audit trail of the voting process, in the case of votes cast by correspondence (either electronically or by mail), companies should be required to acknowledge the reception of such votes.

Some market participants (see for example the comment on the Skog Report of the Confedera-

[471] See Skog (2008), page 92.

tion of Swedish Enterprises) have no objections to the changes regarding postal voting proposed by Skog but believe that, before introducing postal voting in the Swedish system, a question should be addressed: how is it possible to combine postal voting with the possibility to amend original proposals by the board at the GM? If the original resolution is amended during the meeting, how votes cast by mail before the meeting should be counted?

The issue of permitting modification of proposed resolutions at the GM arises each time shareholders decide to cast their votes in advance of the GM (either by correspondence or by electronic means). Moreover, this issue arises when shareholders decide to vote by proxy (without a proxyholder being present at the meeting) and to give voting instructions ahead of the meeting. In these cases, shareholders know that they will not be able to modify their votes/voting instructions in response to events at the GM (i.e., proposals or counterproposal related to items on the GM agenda)

It is interesting to look at how some EU Members States have addressed this issue. During the implementation of the SRD in the UK, a new section (322A) has been introduced in the Companies Act 2006 under which "A companys articles may contain provision to the effect that on a vote on a resolution on a poll taken at a meeting, the votes may include votes cast in advance." If so provided in the articles, companies can offer shareholders the possibility to vote in advance of the meeting by post or by electronic means. In the UK for example, it is market practice for companies to distinguish, in their articles of association, between "substantive" and "procedural" resolutions (Nolan, 2006). "Substantive" resolutions can only be voted on at a meeting if the text of the resolution was set out exactly in the GM notice convening the meeting. Such resolutions cannot be amended during the meeting (amendments are allowed only to correct grammatical or clerical errors). "Procedural" resolutions (such as, a resolution to correct grammatical or clerical errors in a substantive resolution, a resolution to adjourn a General Meeting or a resolution on the choice chairman of a General Meeting) can always be modified at the GM.

Would this solution be feasible for Sweden? GMs of Swedish companies have always been considered as a place where shareholders meet and discuss with the board the company's affairs. Every shareholder has the right to raise proposals and counterproposals related to items on the GM agenda at the meeting. Therefore, it would constitute a real change to qualify resolutions as "substantial" in the sense of not allowing shareholders to propose changes to these at the meeting.

Shareholders who vote in absentia ahead of the meeting, know that proposals and counterproposals can be raised at the meeting but decide anyway to cast their vote. The only way to allow these shareholders to update their vote is to offer them the opportunity to participate (speak and vote) in the GM via the Internet (that is, real time two-way communication allowing shareholders to address the GM from a remote location).

In our opinion, the Swedish legislature, in regulating advance voting by correspondence or electronic means, should adopt clear rules aimed at ensuring that the results of the voting reflect the real intentions of the shareholders in all circumstances. In particular, these rules should address situations where new circumstances occur or are revealed after a shareholder has cast her vote by correspondence or by electronic means.[472] Shareholders should be allowed to cast their votes in advance, but also to change a voting direction until the start of the meeting as well as show up at the meeting and to vote in person, overriding a proxy appointment and instuctions/votes cast in advance.

12.2.13 Voting results

Article 14 of the SRD requires companies to establish for each resolution voted upon at the GM at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favor of and against each resolution and, where applicable, the number of abstentions. Member States may provide or allow companies to provide that if no shareholder requests a full account of the voting, it shall be sufficient to establish the voting results only to the extent needed to ensure the required majority is reached for each resolution.

As discussed in Section 9.5, voting at the general meetings of Swedish companies normally takes place by acclamation and is not confidential. In fact, as highlighted in the Skog Report, the Companies Act assumes that resolutions at the GM are adopted by acclamation. Under the ABL, voting ("omröstning") at the GM must take place if any of the shareholders requests it.

Under Swedish law, listed companies are required to include in the GM minutes date and place of the GM as well as any resolutions approved by the GM. When a resolution has been adopted through a vote, the minutes must include the proposal presented and the voting outcome. The

[472] See SRD, Recital 9.

voting register must be included in the minutes or added as an annex.[473]

According to Skog, Swedish law is in compliance with Article 14 (paragraph 1) of the SRD and there is no need for change.

In our opinion, requiring listed companies to disclose detailed results of the votes on each resolution, will significantly enhance the transparency of GMs held by Swedish companies. Therefore, where a poll is taken at a general meeting of Swedish listed companies, companies should be required to provide in the GM minutes a full account of the voting. In particular, companies should establish for each resolution the text of the resolution, the number of shares for which votes have been validly cast, the proportion of the companys share capital represented by those votes, the total number of votes cast in favor, against, and, where applicable, the number of abstentions. Companies should be required to do so even though no shareholder requests a full account of the voting. Therefore, we recommend the Swedish legislature to amend section 48, Chapter 7 of the ABL, accordingly.

We also believe that the creation of a standardized format for disclosure of voting results, would provide improved transparency of the outcome of votes at the GM of Swedish companies.

The SRD requires companies to publish voting results on their web site within a period of time which shall not exceed 15 days after the GM.

Under Swedish law, companies are required to make the GM minutes available to shareholders at the company's registered office within two weeks after the GM. Copies of the minutes shall be sent to shareholders who request so and provide their mail address. Swedish law does not require listed companies to publish their GM minutes on the company's website.[474] However, as discussed in Section 10.1, the Corporate Governance Code requires Swedish listed companies to publish the minutes from the last AGM and any subsequent EGMs on the company's website. More specifically, GM minutes must be published on the corporate governance section of the company's website. The code does not require listed companies to publish on the website the voting register from the meeting or any attachment including such information.[475] Moreover, companies listed on the NASDAQ OMX Stockholm, following the GM, are required to disclose (that is, sent to media for publication) an announcement including resolutions adopted at the GM unless such resolutions

[473] ABL, Chapter 7, section 48.
[474] ABL, Chapter 7, section 49.
[475] Swedish Corporate Governance Code 2010, sections 1.7 and 10.3.

are insignificant (that is, of technical nature). Adopted resolutions must be disclosed even though they are in accordance with perviously disclosed resolutions. The announcement must also be published on the company's website as soon as possible after it has been disclosed and kept on the company's website for at least three years.[476] (See Section 10.1 and Table 10 for more details on market practice of Swedish listed companies regarding publication of GM minutes and voting results.)

To bring Sweden in compliance with Article 9 (paragraph 2) of the SRD, Skog proposes to introduce a new section 68 in Chapter 7 of the ABL requiring public companies whose shares are traded on regulated market or an equivalent market outside of the EEA, to make the GM minutes available on the company's website at the latest two weeks after the GM.[477]

Moreover, even though the SRD does not establish anything with regard to the period of time GM minutes must be available on the company's website, new section 68, as proposed by Skog, will require companies to keep GM minutes available on the website for at least three years. This amendment will align Swedish law with the listing requirements set by the NASDAQ OMX Stochkolm and NGM.[478]

We agree with the proposed changes but recommend the Swedish legislature to require Swedish listed companies to make the GM minutes available (both at the company's office and on the company's website) as soon as reasonably practicable and anyway within 15 days after the GM. With specific regard to voting results, we believe that the results of a poll must be made available to shareholders immediately when ready. The use of the existing information technology makes it possible to show the results of a poll right after the vote takes place during the GM.[479] Therefore,

[476]NOS Rules, section 3.3.3.

[477]See proposed sections 49 and 68, Chapter 7 of the ABL in Skog (2008).

[478]See Skog (2008), page 88.

[479]In this respect, it is interesting to note that the Italian legislature, in implementing Article 9 of the SRD, decided to require Italian listed companies to publish on the company's website within 5 days from the GM date a summary report regarding results of polls including the number of shares represented at the GM, the number of shares for which votes have been cast, the percentage of share capital represented by those shares, for each resolution the number of votes cast in favor and against and the number of abstentions. (Article 125-quater of the Consolidated Law on Financial Intermediation introduced by Legislative Decree No. 27 of January 22, 2010, which came into force on March 20, 2010.) Section 341 of the UK Companies Act 2006 as amended by the Companies (Shareholders' Rights) Regulations 2009, requires UK traded companies to publish the results of a poll on the company's website by "(a) the end of 16 days beginning with the day of the meeting, or (b) if later, the end of the first working day after the day on which the result of the poll is declared." However, according to the Institute of Chartered Secretaries & Administrators (ICSA), in accordance with Section 353 of the Act (which already provides that the information must be made available as soon as reasonably practicable and be kept available for two years) and good practice, "the requirement to make the information available as soon as reasonably practicable will mean poll results should be published much earlier than the 16-day deadline." (See ICSA Guidance on the Implementation of the Shareholder

we recommend the Swedish legislature to include in the ABL an ad hoc provision requiring listed companies to make voting results available on the company's website as soon as practicable and anyway not later than 5 days after the GM.

12.3 Concluding remarks: Towards "straight through processing"

As pointed out in the introduction to this report, it is useful to benchmark the efficiency of a given voting system against the alternative of "straight through processing" (automatization of the entire voting process from start to finish). A straight through processing system is in our judgement the most efficient voting system especially for cross-border voting.

An important basis for a straight through processing system is the existence of a centralized share registry (the Central Securities Depository or CSD). While virtually all modern capital markets operate through a CSD today, as we have seen in this report, the role of the CSD in the voting chain can be improved even in a system as centralized as the Swedish. Since the CSD keeps the official shareholder register, it is in a position to provide companies instant access to up to date information on the shareholder base. Therefore, a centralized registration system should eliminate the need for other and more costly shareholder identification processes. However, Sweden implements a system where one needs to re-register shareownership in order to qualify for voting.

As discussed in Section 4, Sweden is a centralized registration system where shareholders are allowed to open a direct account with the local CSD (Euroclear Sweden, ES). ES does not charge any cost to shareholders for the opening of the first VPC account.

As discussed in Sections 4 and 11 and shown in Figure 7, foreign shareholders (especially institutional) normally hold their shares through a chain of financial intermediaries in nominee accounts. A consequence of such indirect holding, is the need for shareholders to identify themselves in order to be entitled to exercise voting rights at the GM of Swedish companies. To do so, shareholders' intermediaries are required to provide companies with proof of shareownership (that is, comply with the re-registration requirement discussed in Section 7 above). Such re-registration could have been avoided if the shareholder had opened a direct CSD account. In fact, shareholders who hold shares in direct accounts do not need to identify themselves (that is, re-register their shares) before the GM.

Rights Directive, available at http://www.icsa.org.uk.)

An important but unresolved question is why foreign institutional investors choose not to take full advantage of the Swedish CSD direct account system. The answer lies in the perceived relative costs of holding shares in nominee accounts versus direct accounts. Information on these costs is difficult to obtain as they are often buried in other more aggregate costs charged by intermediaries. It is important for the future debate over the efficiency of cross-border voting systems to have these costs properly identified and single out for comparison across systems.

We believe the transposition of the SRD represents a unique opportunity for Sweden to make voting at the GM of Swedish listed companies a low-cost and effective straight trough process. We strongly urge the Swedish legislature to use the SRD adaptation process to move towards straight through processing. To do so, Sweden should exploit all the available technological capabilities and listed companies should be persuaded to adopt efficient voting practices.

An example of a currently available technology is the use of direct electronic voting platform, offered by individual companies rather than by middlemen; this will substantially economize on voting costs. Swedish listed companies should start granting this service to their shareholders in order to attract more foreign capital and be competitive on the European market. The objective is to create an efficient system where it is possible for shareholders to have a vote audit trail and end-to-end confirmation of votes.

If the Swedish legislature decides not to address some of the issues discussed in Section 12.2, we recommend that the Corporate Governance Board considers including in the Code new rules aimed at making voting at the GM of Swedish listed companies a more efficient and effective process. Moreover, as it happened in the Finnish market, Swedish market participants could agree on market practice solutions aimed at removing barrier to voting Swedish shares and simplifying the participation in GMs by nominee-registered shareholders (especially foreign investors).

13 Market practice of large Swedish listed companies

In this section we provide summary information, in table format, on the market practices referenced throughout the report for our sample of ten Swedish listed companies. The companies are: Atlas Copco, Ericsson, H&M, Nordea, Sandvik, Skandinaviska Enskilda Banken (SEB), Svenska Handelsbanken, Swedbank, TeliaSonera and Volvo. These companies are among the largest in

Sweden.

Market practice information for the years 2009 and 2008 is collected from (1) the companies' websites and (2) releases in the Swedish Electronic Gazette (Post-och Inrikes Tidningar). Most companies publish information in English in addition to in Swedish and we were able to find nearly all the information searched for in English for all the sample companies.

The report summarizes the following type of information:

- Articles of association, all in English version.
- Notice of the annual general meeting 2009. All 2009 notices in English version (only the press release for Swedbank).
- Press release and minutes from the annual general meeting 2009. For one company, we were only able to find the press release with the results and not the full minutes for 2009. All except one firm provide the full minutes from the 2009 AGM in English in addition to Swedish.
- Information on meeting dates for 2010 and deadlines for submitting shareholder proposals. Not all companies had posted this information when we collected the data.
- Proxy form. For the AGM 2009, all the companies made the forms available on their websites, but some companies removed them after the meeting so we have not been able to collect them for all the companies. The forms for 2008 have been collected since they then were attached to the notice of the general meeting.
- Notice of Attendance form. For the AGM 2009, all companies made the forms available on their websites, but removed them after the deadline so we have not been able to collect them for all the sample companies. The forms for 2008 have been collected.
- Corporate Governance Reports for 2008.
- Most recent information on ownership structure(taken from the companies' websites).

The market practice information is organized in tables 3-10 attached to this report. The tables also include references to laws and regulations. Each table covers the following topics:

- Table 3: Corporate governance structure, board committees, and director independence (general discussion in Section 3)

- Table 4: Share classes and ownership structure (Section 3)
- Table 5: Calling a General Meeting (Section 6)
- Table 6: Shareholders' rights and dissemination of GM-related information (Section 6)
- Table 7: Criteria for participation and voting at the GM (Section 7)
- Table 8: Ways to vote at the general meeting (Section 8)
- Table 9: Functioning rules of the general meeting (Section 9)
- Table 10: Disclosure of GM minutes and voting results (Section 10)

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Table 1

Sweden's Regulatory Framework: Company Law, Stock Exchange Listing Rules, Central Securities Depository (CSD) Regulations, Code of Corporate Governance and other self-regulatory provisions

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1. COMPANY and SECURITIES LAW

Swedish Companies Act (SFS 2005:551) [Aktiebolag - hereafter ABL][480] The ABL (as amended and integrated by several subsequent acts) regulates the Swedish private and public limited liability companies. It came into force on January 1, 2006 and replaced Companies Act (SFS 1975:1385). It has been last amended by Act (SFS 2010:834).

Annual Accounts Act (SFS 1995:1554)[481]
The Act (as amended and integrated by several subsequent acts) regulates the content and publication of annual accounts, consolidated accounts, and interim reports of limited liability companies.

Financial Instruments Accounts Act (SFS 1998:1479)
The Act regulates the Swedish book-entry system and the role of the Central Securities Depository and other financial intermediaries (such as account operators and nominees). It came into force in 1996 and has been last amended by Act (SFS 2009:356).

Securities Market Act (SFS 2007:528)[482]
The Act regulates the disclosure of periodic financial information as well as other price sensitive information.

Regulation (2007: 572) on Securities Market

Regulation (2007:375) on Financial Instruments Trading

Financial Instruments Trading Act (SFS 980:1991)
It came into force in 1981 and has been last amended by Act (2009:352).

Act on Public Takeover Bids in the Stock Market (SFS 2006:451)
The Act came into force in July 2006 and implemented the EU Directive on Takeover Bids. It has been last amended in 2007 by Act (SFS 2007:568).

Act on Qualified Electronic Signatures (SFS 2000:832)
The aim of the Act is to facilitate the use of electronic signatures through provisions regarding secure signature creation devices, qualified certificates for electronic signatures, and the issuance of such certificates. It came into force in November 2000.

[480] Available at: http://62.95.69.15/.
[481] It came into force in 1996 and has been last amended by Act (SFS 2010:848.)
[482] It has been last amended by Act (SFS 2010:844).

Finansinspektionen's Regulations governing operations on trading venues (FFFS 2007:17)
The regulations were issued by the Swedish Financial Supervisory Authority (Finansinspektionen) on July 6, 2007 and, among other things, contain detailed provisions regarding information requirements for issuers of transferable securities and notification and disclosure of information related to shareholdings.

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2. STOCK EXCHANGE LISTING RULES

NASDAQ OMX Stockholm's Rule Book for Issuers[483]
The most up to date version of the Rule Book for Issuers came into force on July 1, 2010.

NASDAQ OMX Stockholm's Take Over Rules[484]
The most up to date version of the Take Over Rules came into force on October 1, 2009.

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3. CENTRAL SECURITIES DEPOSITORY (CSD) REGULATIONS

"General Terms and Conditions, Account Operations and Clearing" of Euroclear Sweden, 2009-02-07[485]
The General Terms and Conditions have been approved by the board of directors of Euroclear Sweden AB. The most up to date version came into force on February 7, 2009.

"Rules for Issuers and Issuer Agents, Version 2010:1" of Euroclear Sweden[486]
The "Rules for Issuers and Issuer Agents" have been approved by Euroclear Sweden AB. The most up to date version came into force on May 1, 2010.

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4. THE CODE OF CORPORATE GOVERNANCE and other self-regulatory provisions

The Swedish Corporate Governance Code, July 2008[487]
The Code (Revised Code 2008) has been issued by the Corporate Governance Board and replaces the Corporate Governance Code introduced in July 2005.

The Swedish Corporate Governance Code, February 2010[488]
In the Revised Code 2010, the Corporate Governance Board modified the Swedish Corporate Governance Code 2008 including new rules on director remuneration and independence as well as changes to the rules concerning audit committees. The code came into force on February 1, 2010.

Statements of the Swedish Securities Council[489]
Under the NASDAQ OMX Stockholm's listing rules, listed companies must adhere to the statements made by the Securities Council.

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[483] Available at http://www.nasdaqomx.com (last accessed on July 2010).
[484] Available at http://www.nasdaqomx.com (last accessed on July 2010).
[485] Available at http://www.ncsd.eu/552_ENG_ST.htm.
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[489] Available at: http://www.aktiemarknadsnamnden.se/in-english__50.

Table 2
Shareownership structure of Swedish listed companies as of December 2009

Types of shareholders	**% of stock exchange capitalization held**
Households (Hushll)	13.9%
Public Sector (Offentlig Sektor)	8.2%
Non-Financial enterprises (Icke-finansiella fretag)	9.6%
Financial enterprises (Finansiella fretag)	28.6%
Non-profit organizations (Ickevinstdrivandeorganisationer)	4.3%
Foreign Owners (UtlandetForeign)	35.4%

Source: "Ownership of shares in companies quoted on Swedish exchanges, December 2009", Statistics Sweden[490]

[490] Available at: http://www.scb.se/Statistik/FM/FM0201/2009M12/FM0201_2009M12_SM_FM20SM1001.pdf.

Table 3
Corporate governance structure, board committees, and director independence

Recap (Section 3): Swedish companies are governed by a unitary board and the directors are appointed by the shareholder meeting. The board must consist of no fewer than three members. Our sample companies have on average 9 shareholder-elected members on the board. According to the Swedish Companies Act, directors are elected for one year, but the company's articles of association may establish a longer term of office up to four years. Directors of Swedish companies normally seek re-election on an annual basis.

According to the Swedish Companies Act, the positions of chairman and CEO must be separated in a public company but the chairman does not need to be independent. Under the Corporate Governance Code (CG Code), only one member of the board may at the same time be a member of the executive management of the company or a subsidiary. This is normally the CEO, many companies do however have no member of the executive management on the board. More than half of the shareholder-elected members of the board must be independent of the company and its executive management and at least two of these directors must also be independent of the company's major shareholders (defined as controlling, directly or indirectly, at least 10% of capital or voting rights).

Under certain circumstances, employees of Swedish companies have the right to appoint representatives to serve on the board of directors. For listed companies, more than half of the board members must be elected by the GM.

Since July 2009, Swedish law requires listed companies to have an audit committee. No member of the committee can be an employee and at least one member must be independent and have accounting and/or auditing competence. Under CG Code, the committee must have at least three members; the majority of the members must be independent of the company and its management and at least one these independent members must also be independent of major shareholders (defined as controlling, directly or indirectly, at least 10% of capital or voting rights).

The CG Code also requires the establishment of a remuneration committee. The committee may be chaired by the chairman of the board. The other members of the committee appointed by the GM must be independent of the company and its management.

According to the Companies Act, a company must have at least one auditor who will be appointed by the shareholders' meeting. The auditor's mandate period is normally four years.

Table abbreviations: AoA- Articles of Associations; BoD - Board of Directors; GM - General Meeting; AGM-Annual General Meeting, EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY- Financial Year.

	Board of Directors' Committees	**Nomination committee Not a BoD committee**	**Board of Directors: Size, Tenure and Director Independence**	**Auditors**
Sample				
Atlas Copco	1) Audit 2) Remuneration	Chairman of BoD and representatives of the 4 largest shareholders.	In AoA: In addition to the members who, by law, must be appointed by a body other than the GM, BoD to consist of between 6 and 12 members as decided by the GM. In addition up to 4 deputy members can be elected. Directors elected for 1 year. **On website:** BoD has 9 members elected by the GM + 2 employee representatives.	In AoA: Company shall have one or two auditors and a corresponding number of deputies, or one or two registered auditing companies.

Table 3 continued from previous page

	Board of Directors' Committees	**Nomination committee Not a BoD committee**	**Board of Directors: Size, Tenure and Director Independence**	**Auditors**
Sample				
Ericsson	1) Audit 2) Finance and 3) Remuneration	Chairman of BoD and representatives of the 4 largest shareholders.	In AoA: BoD to consist of between 5 and 12 members as decided by the GM. In addition up to 6 deputy members can be elected. Does not mention tenure. **On website:** BoD has 10 members elected by the GM + 3 employee representatives and 3 deputies for these members.	In AoA: Company shall have no less than one and no more than three auditors being registered public accounting firms. BoD entitled to appoint one or more special auditors in the cases established by the law.
H&M	1) Audit	Chairman of BoD and representatives of the 4 largest shareholders.	In AoA: BoD to consist of between 3 and 12 members as decided by the GM. In addition, the same number of deputy members can be elected. Does not mention tenure. **On website:** BoD has 7 members elected by the GM + 2 employee representatives and 2 deputies for these members.	In AoA: Company shall have one or two auditors and an equivalent number of deputies or one or two registered auditing companies.
Nordea	1) Audit 2) Credit and 3) Remuneration	Chairman of BoD and representatives of the 4 largest shareholders.	In AoA: BoD to consist of between 6 and 15 members as decided by the GM. Does not mention deputies. Directors elected for 1 year. **On website:** BoD has 10 members elected by the GM + 3 employee representatives and 1 deputy of these.	In AoA: One or two auditors must be elected by the GM. Auditors elected for 4 years, and then potentially for 3 years.
Sandvik	1) Audit and 2) Remuneration	Chairman of BoD and representatives of the 4 largest shareholders.	In AoA: BoD to consist of between 5 and 8 members as decided by the GM. In addition up to 5 deputy members can be elected. Does not mention tenure. **On website:** BoD has 8 members elected by the GM + 2 employee representatives and 2 deputies for these members.	In AoA: No fewer than two and no more than three Auditors and the same number of Deputy Auditors shall be appointed at the Annual General Meeting. An auditor, without a deputy, may also be appointed at the GM if a registered audit company is appointed at the GM.
SEB	1) Audit & Compliance 2) Risk & Credit and 3) Remuneration & HR	Chairman of BoD and representatives of the 4 largest shareholders.	In AoA: In addition to the members who, by law, must be appointed by a body other than the GM, BoD to consist of between 6 and 12 members as decided by the GM without deputy directors. Does not mention tenure. **On website:** BoD has 10 members elected by the GM + 2 employee representatives and 2 deputies for these members.	In AoA: In addition to the auditors who may be appointed by a body other than the GM, a minimum of one and maximum of two auditors and at the most an equal number of deputies shall be elected. Also a registered auditing firm may be appointed as auditor.

Table 3 continued from previous page

	Board of Directors' Committees	**Nomination committee Not a BoD committee**	**Board of Directors: Size, Tenure and Director Independence**	**Auditors**
Sample				
Svenska Handelsbanken (SHB)	1) Audit 2) Credit and 3) Remuneration	Chairman of BoD and representatives of the 4 largest shareholders.	In AoA: In addition to the members who, by law, must be appointed by a body other than the GM, BoD to consist of between 8 and 15 members as decided by the GM. Does not mention deputies or tenure. **On website:** BoD has 12 members elected by the GM + no employee representatives. 2 of the BoD members are representatives of the Bank's profit-sharing foundation, Oktogonen, but elected by the GM.	In AoA: In addition to the auditors who, by law, may be appointed by a body other than the GM, company shall have one or two auditors and the corresponding number of deputies or one or two official firms of auditors.
Swedbank	1) Audit 2) Credit and 3) Remuneration	Chairman of BoD and representatives of the 4 largest shareholders.	In AoA: In addition to the members who, by law, must be appointed by a body other than the GM, the BoD to consist of between 7 and 11 members as decided by the GM. Does not mention deputies or tenure. **On website:** BoD has 8 members elected by the GM + 1 employee representative and 1 deputy for this member.	In AoA: Company shall have at least one and no more than two auditors and with no more than an equal number of deputies. Auditors, and alternates if appointed, shall be authorised public accountants. Registered firms of auditors may also be appointed.
TeliaSonera	1) Audit and 2) Remuneration	Chairman of BoD and representatives of the 4 largest shareholders.	In AoA: In addition to the members who, by law, must be appointed by a body other than the GM, the BoD to consist of between 4 and 9 members as decided by the GM. In addition, up to 3 deputy members can be elected. Does not mention tenure. **On website:** BoD has 8 members elected by the GM + 1 employee representative and 1 deputy for this member.	In AoA: GM shall appoint a minimum of 2 and a maximum of 3 auditors and no more than the same number of deputies. The GM can also appoint only one auditor, if the auditor in question is a registered auditor company. BoD entitled to appoint one or more special auditors given certain circumstances as given by law.
Volvo	1) Audit and 2) Remuneration	Chairman of BoD and representatives of the 4 largest shareholders.	In AoA: Apart from specially appointed members and deputies, the BoD to consist of between 6 and 12 members as decided by the GM. In addition the same number of deputy members can be elected. Does not mention tenure. **On website:** BoD has 8 members elected by the GM + 3 employee representatives and 2 deputies for these members.	In AoA: Company shall appoint a minimum of 2 and a maximum of 3 auditors and a minimum of two and a maximum of three deputy auditors or a registered firm of auditors. BoD entitled to appoint one or more special auditors in the cases established by law.

Table 4
Share classes and ownership structure

Recap (Section 3): Swedish companies can issue ordinary shares with different voting rights, but cannot issue non-voting shares. A majority of listed Swedish companies still maintain dual-class capital structures consisting of Series A and Series B shares with unequal voting rights. The widespread use of multiple voting rights shares and pyramid structures means that large ownership as measured by market capital does not necessarily translate into voting power. The articles of association of a company may provide that each shareholder may only vote for a certain number of shares (voting cap), but in practice, such restrictions on voting rights are very rare. (Among the 20 largest companies, 16 have unequal voting rights). The 'Report on the Proportionality Principle in the European Union' (available at http://ec.europa.eu/internal_market/company/docs/shareholders/study/final_report_en.pdf) shows that among the 20 largest Swedish companies, 16 had unequal voting rights when data for the report was collected.

Table abbreviations: AoA- Articles of Associations; BoD - Board of Directors; GM - General Meeting; AGM - Annual General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY- Financial Year; VR- Voting Rights, Cap - Capital

	Classes of shares	**Multiple voting rights and limitations on voting rights**	**Ownership structure (as of end 2008 or newer if available on company website)**	**Other control enhancing structures** Part of pyramid structure Shareholder agreements
Sample				
Atlas Copco	Ordinary A and B	Multiple voting rights Ratio 1:10	Swedish 58% Cap/55% VR: Large groups 17% Cap/22% VR, Large Institutions: 16% Cap/12% VR, Others 25% Cap/21% VR Foreign 42% Cap/45% VR 10 largest shareholders > 36% VR	Part of pyramid (the Wallenberg sphere)
Ericsson	Ordinary A, B, and C	Multiple voting rights Ratio 1:10:1000	Swedish 46% Cap: Investor 19% VR, Industrivärden 13% VR Foreign 54% Cap 10 largest shareholders > 49% VR	Part of pyramid (the Wallenberg sphere and the SHB sphere)
H&M	Ordinary A and B	Multiple voting rights Ratio 1:10	Family controlled 42% Cap/72% VR 10 largest shareholders > 59% Cap/80% VR	Not part of pyramid Family controlled by 42% Cap/72% VR
Nordea	Ordinary A and C	No	Swedish/Finnish/Danish 81%: Swedish State 20%, Institutions 50%, Individuals 11% Foreign:19% 10 largest shareholders > 53%	Not part of pyramid Swedish State controls 20%
Sandvik	Only one class	No	Swedish 65%: Industrivärden 12%, Other Institutions 42%, Individuals 11% Foreign 35% 10 largest shareholders > 40%	Part of pyramid (the SHB sphere)

Table 4 continued from previous page

	Classes of shares	**Multiple voting rights and limitations on voting rights**	**Ownership structure (as of end 2008 or newer if available on company website)**	**Other control enhancing structures** Part of pyramid structure Shareholder agreements
Sample				
SEB	Ordinary A and C	Multiple voting rights Ratio 1:10	Swedish 83% Cap/VR: Large groups 30% Cap/VR, Institutions 38% Cap/VR, Individuals 15% Cap/VR Foreign 17% 10 largest shareholders > 50% Cap/VR	Part of pyramid (the Wallenberg sphere)
Svenska Handels-banken (SHB)	Ordinary A and B	Multiple voting rights Ratio 1:10 Voting cap 10%	Swedish 70% Cap: Large groups 21% VR Foreign 30% Cap 10 largest shareholders > 38% VR	Part of pyramid (the SHB sphere)
Swedbank	Ordinary and Prefer-ence	No	Swedish 75%: Large Institutions 61%, Individuals 15% Foreign 25% 10 largest shareholders > 38%	Not part of pyramid
TeliaSonera	Only one class	No	Swedish/Finnish 84%: Swedish State 37%, Finnish State 14%, Institutions 27%, Individuals 6% Foreign 16% 10 largest shareholders > 65%	Not part of pyramid Swedish and Finnish States control 51%
Volvo	Ordinary A and B	Multiple voting rights Ratio 1:10	Swedish 51% Cap: Industrivärden 4% Cap/8% VR, Other institutions 35%, Individuals 12%, Foreign 49% Cap: Renault 22% Cap/21% VR 10 largest shareholders > 45% Cap/60% VR	Part of pyramid (the SHB sphere)

Table 5
Calling a General Meeting

Recap (Section 6): General meetings must be held within 6 months after the end of the financial year.

Swedish law distinguishes between Annual general meetings (AGM) and Extraordinary general meetings (EGM) with different rules with regard to the notification date.

The notice of the meeting that we have collected from the companies' websites sometimes is not dated (normally only month and year are indicated), so we had to search for the publication date in the version of the GM notice published in the Swedish Official Gazette. Swedish companies are required to mention in their articles of association the daily newspaper(s) in which the notice will be published.

Table abbreviations: AoA- Articles of Associations; BoD - Board of Directors; GM - General Meeting; AGM - Annual General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY- Financial Year.

	Meeting date	**Power to convene a GM**	**GM Notice (Notification date)**	**GM Notice (Publication)**
Laws and regulations	AGM within 6 months after the end of financial year. Shareholder requested EGM within 2 weeks of receipt of the request.	Ordinary GMs: Board of Directors - EGMs: Board of Directors, company's auditor, and shareholders representing at least 10% of share capital. The AoA may require shareholders to hold every year one or more additional ordinary GMs.	AGMs and other ordinary GMs: 6-4 weeks. EGM (called to approve amendments to the articles of association): 6-4 weeks. EGM (any other type): 6-2 weeks. EGM requested by shareholders: GM notice must be published within 2 weeks of request from shareholders.	The Swedish Official Gazette and at least one daily national newspaper as requested in AoA. In specific situations established by the law must be sent to all shareholders whose address is known. May be sent electronically, conditional on advance approval of the GM. CG Code: Post on company website.
Market practice	Most meetings in April-May	EGM not commonly requested by shareholders. Mandatory additional meetings rarely prescribed in AoA.	5-6 weeks common among large companies.	Two newspapers and on company website. Common to publish also in English.
Company Sample				
Atlas Copco	27.04.09	No requirement in AoA	26.03.09 (4.5 weeks)	The Swedish Official Gazette and Dagens Nyheter. Also in English.
Ericsson	22.04.09	No requirement in AoA	14.03.09 (5.5 weeks)	The Swedish Official Gazette, Dagens Nyheter and Svenska Dagbladet. Also in English.
H&M	03.05.09	No requirement in AoA	30.03.09 (5 weeks)	The Swedish Official Gazette, Dagens Nyheter and Svenska Dagbladet. Also in English.

Table 5 continued from previous page

	Meeting date	**Power to convene a GM**	**GM Notice (Notification date)**	**GM Notice (Publication)**
Company Sample				
Nordea	02.04.09	No requirement in AoA	22.02.09 (5.5 weeks)	The Swedish Official Gazette and Dagens Nyheter. Also in English.
Sandvik	28.04.09	No requirement in AoA	23.03.09 (5 weeks)	The Swedish Official Gazette, Svenska Dagbladet, and one newspaper in Sandviken or Gävle. Also in English.
SEB	06.03.09	No requirement in AoA	06.02.09 (4 weeks)	The Swedish Official Gazette, Dagens Nyheter and Svenska Dagbladet. Also in English.
Svenska Handels-banken (SHB)	29.04.09	No requirement in AoA	20.03.09 (5.5 weeks)	The Swedish Official Gazette, Dagens Nyheter and Svenska Dagbladet. Also in English.
Swedbank	24.04.09	No requirement in AoA	26.03.09 (4 weeks)	The Swedish Official Gazette, Dagens Nyheter, Svenska Dagbladet and at least one other newspaper. Also in English.
TeliaSonera	01.04.09	No requirement in AoA	19.02.09 (6 weeks)	The Swedish Official Gazette, Dagens Nyheter and Svenska Dagbladet. Also in English.
Volvo	01.04.09	No requirement in AoA	27.02.09 (5 weeks)	The Swedish Official Gazette, Dagens Nyheter , one newspaper in Malmø and one in Gothenburg. Also in English.

Table 6
Shareholders' rights and dissemination of GM-related information

Recap (Section 6): Under the Swedish law, shareholders may ask questions to the board of directors and the CEO on circumstances which may affect matters on the agenda before and during the general meeting. The board and the CEO are required to answer at the GM.

Any shareholder of a Swedish company may submit new items for the agenda before the general meeting. Any shareholder may during the general meeting put forward proposals and counterproposals regarding items already on the agenda (see Table 9).

Table abbreviations: AoA- Articles of Associations; BoD - Board of Directors; GM - General Meeting; AGM - Annual General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY- Financial Year.

	Shareholder right to put items on the GM agenda	**Annual report/GM related information** When before the GM
Laws and regulations	Any shareholder can put a new item on the GM agenda. Must be in writing at least one week prior to the earliest date on which notice of meeting may be issued (i.e., 7 weeks before the GM) or in due time to be included in the GM notice. CG Code: Company should provide information on website on how and when to file items to be included in the GM agenda.	Annual and consolidated accounts to be published as soon as possible and anyway no later than 4 months after the end of the financial year; they must be made available for shareholders at the company's office at least 2 weeks before the AGM. To be sent to shareholders on request at no cost. May be sent electronically if approved by GM. CG Code: Should be translated if ownership structure warrants this.
Market practice	Swedish companies normally provide information on the deadline to submit new agenda items on their website. Deadline normally 7 weeks before the meeting (i.e., 1-2 weeks before the notice of the meeting is sent out). Shareholder proposals increased in the last few years, but still not very common to submit proposals for the agenda.	Large companies normally publish the full annual report on their website ahead of the 2-week deadline set by the law (typically more than 4 weeks before the GM). The annual report is normally published in English in addition to Swedish. The annual results and a simple version of the annual report are normally published earlier.
Sample		
Atlas Copco	In Notice 2009: No shareholder proposals included. Website: Not able to find info on deadline for 2010 meeting at the time of data collection	26.03.09 (4.5 weeks). Also in English.
Ericsson	In Notice 2009: One shareholder proposal included on the cancellation of A shares. Website: For the 2010 meeting on 13.04.10 request to be sent by 23.02.10 (7 weeks)	12.03.09 (5.5 weeks). Also in English.
H&M	In Notice 2009: No shareholder proposals included. Website: For the 2010 meeting on 29.04.10 request to be sent by 11.03.10 (7 weeks)	29.01.09 (5 weeks). Also in English.
Nordea	In Notice 2009: One shareholder proposal included on the allocation of funds to a special purpose. Website: For the 2010 meeting on 25.03.10 request to be sent by 04.02.10 (7 weeks)	10.02.09 (7 weeks). Also in English.
Sandvik	In Notice 2009: No shareholder proposals included. Website: For the 2010 meeting on 04.05.10 request to be sent by 09.03.10 (8 weeks)	02.04.09 (4 weeks). Also in English.

Table 6 continued from previous page

	Shareholder right to put items on the GM agenda	**Annual report/GM related information** When before the GM
Sample		
SEB	In Notice 2009: No shareholder proposals included. Website: For the 2010 meeting on 23.03.10 request to be sent by 02.02.10 (7 weeks)	20.02.09 (2.5 weeks). Also in English.
Svenska Handels-banken (SHB)	In Notice 2009: One shareholder proposal included on the allocation of funds to a special purpose. Website: For the 2010 meeting on 25.04.10 request to be sent by 08.03.10 (7 weeks)	27.03.09 (5 weeks). Also in English.
Swedbank	In Notice 2009: Two shareholder proposals included, one on the allocation of funds to a special purpose and one on taking down the signpost "Swedbank Arena" at a football arena. Website: Shareholders wishing to have an issue discussed at the Meeting must submit a written request to that effect to the BoD. Any such requests must reach the BoD no later than seven weeks before the Meeting. Not able to find info on deadline for 2010 meeting at the time of data collection.	27.03.09 (4 weeks). Also in English.
TeliaSonera	In Notice 2009: No shareholder proposals included. Website: For the 2010 meeting on 07.04.10 request to be sent by 11.02.10 (8 weeks)	18.03.09 (2 weeks). Also in English.
Volvo	In Notice 2009: No shareholder proposals included. Website: A shareholder is entitled to have a matter dealt with at a general meeting provided the BoD has received the request at least one week before the earliest date that the notice convening the meeting may be issued. The request shall also be dealt with if it is received later, but can still be included in the notice convening the meeting. Not able to find info on deadline for 2010 meeting at the time of data collection.	10.03.09 (3.5 weeks). Also in English.

Table 7
Criteria for participation and voting at the GM

Recap (Section 7): In order to be entitled to participate in the GM of Swedish listed companies, shareholder must be entered in the 'GM register of shareholders' prepared by Euroclear Sweden as per the record date (normally 5 business days before the GM date). Shareholders holding nominee-registered shares must ask their intermediaries to temporarily register their shares in the shareholders' name in the 'GM register of shareholders'. There is no deadline for re-registration, but the shareholder must make sure that the shares are re-registered before the record date.

Sweden is a 'record date system' where voting rights on shares sold after record date will be kept by the seller. Only shares that are settled on the evening of the record date set by the company entitle the shareholder to exercise her voting rights.

Notice of attendance can be given by mail, phone, by fax or online. Shareholders must state name, date of birth, address, phone number and number of attending assistants, if any. If the shareholder wants to vote by proxy, the shareholder must still give notice of attendance and not all companies currently allow online notice registration. Most companies limit the number of assistants to two.

In the third column, we have included information on custodian and proxy voting agent deadlines as experienced by NBIM in 2009: "Cut-Off Date" indicates the deadline for NBIM to cast its votes on the proxy advisor system. This date is normally set before the deadline for re-registration and a vote instruction will be interpreted as a request to re-register nominee-registered shares in the shareholder's name. The day count in parenthesis indicated the number of weekdays (wd) (i.e., not including Saturdays and Sundays) from the Cut-Off Date to and including the meeting date. In the cases when a meeting falls on a Saturday or Sunday, this day is included in the count.

Table abbreviations: AoA - Articles of Associations; BoD - Board of Directors; GM - General Meeting; AGM - Annual General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY - Financial Year.

	Record date **Re-registration**	**Notice of attendance** **Admission cards**	**Relevant deadlines for NBIM/Cut-Off Date for voting**
Laws and regulations	Record Date: No earlier than 5 business days before the GM. A record date closer to the GM may be prescribed in AoA. No blocking. Voting entitlement based on settled shares. Voting rights on shares sold after record date will be kept by seller. Re-registration: Temporary re-registration of nominee-registered shares into shareholder's name by record date.	Notice of attendance: Not mandatory, but AoA may prescribe. Date to be specified in the notice of the GM and may not be set earlier than 5 business days before the GM. Notice must also be given if voting by proxy representative. Admission cards: Not mandatory, but common.	
Market practice	Record Date: 5 business days before meeting date Re-registration: A few days before record date to ensure re-registered in time. Normally the nominee sends a file to ES after receiving voting instructions, from the shareholder, i.e. the market deadline for voting must be set earlier than the re-registration deadline.	Notice of attendance: Very common, normally 5 business days before the meeting. Notice to be given by mail, fax, phone and online (for individual investors). Normally the nominee sends a file to ES when the shareholders submit voting instructions, i.e., the market deadline for voting must be set earlier than the notice of attendance deadline. Admission cards: Commonly mailed to the shareholders when receiving notice of attendance.	Swedish custodians seem to set cut-off dates for voting ahead of record date. A submission of votes from the shareholder leads to an action of re-registration of shares held on nominee accounts.

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	Record date **Re-registration**	**Notice of attendance** **Admission cards**	**Relevant deadlines for NBIM/Cut-Off Date for voting**
Sample			
Atlas Copco	Record Date: 21.04.09 (5 wd) Re-registration by record date	Notice of attendance: 21.04.09 (5wd) **In AoA:** Not earlier than 5 wd, by 04.00 pm. Admission cards issued.	Meeting: 27.04.09 Cut Off: 15.04.09 (9 wd)
Ericsson	Record Date: 16.04.09 (5 wd) Re-registration by record date	Notice of attendance:16.04.09 (5 wd) **In AoA:** Not earlier than 5 wd, by 04.00 pm Admission cards issued	Meeting: 22.04.09 Cut Off: 10.04.09 (9 wd)
H&M	Record Date: 27.04.09 (5 wd) Re-registration by record date	Notice of attendance:27.04.09 (5 wd) **In AoA:** Not earlier than 5 wd, by 12.00 noon Admission cards issued	Meeting: 03.05.09 Cut Off: 21.04.09 (10 wd)
Nordea	Record Date: 27.03.09 (5 wd) Re-registration by record date	Notice of attendance:27.03.09 (5 wd) **In AoA:** Not earlier than 5 wd, by 14.00 pm Admission cards not mentioned	Meeting: 02.04.09 Cut Off: 23.03.09 (9 wd)
Sandvik	Record Date: 22.04.09 (5 wd) Re-registration by record date	Notice of attendance: 22.04.09 (5 wd) **In AoA:** Not earlier than 5 wd, by 03.00 pm Admission cards not mentioned	Meeting: 28.04.09 Cut Off: 16.04.09 (9 wd)
SEB	Record Date: 27.02.09 (5 wd) Re-registration by record date	Notice of attendance:02.03.09 (5 wd) **In AoA:** Not earlier than 5 wd, by 01.00 pm Admission cards issued	Meeting: 06.03.09 Cut Off: 23.02.09 (10 wd)
Svenska Handels-banken (SHB)	Record Date: 23.04.09 (5 wd) Re-registration by record date	Notice of attendance: 23.04.09 (5 wd) **In AoA:** Not earlier than 5 wd, by 03.00 pm Admission cards issued	Meeting: 29.04.09 Cut Off: 17.04.09 (9 wd)
Swedbank	Record Date: 17.04.09 (6wd) The actually record date is 18.04.09, but this is a Saturday. Re-registration by record date	Notice of attendance: 17.04.09 (6 wd) **In AoA:** Not earlier than 5 wd, by 03.00 pm Admission cards issued	Meeting: 24.04.09 Cut Off: 13.04.09 (10 wd)
Telia Sonera	Record Date: 26.03.09 (5 wd) Re-registration by record date	Notice of attendance: 26.03.09 (5 wd) **In AoA:** Not earlier than 5 wd, by 04.00 pm Admission cards not mentioned	Meeting: 01.04.09 Cut Off: 20.03.09 (9 wd)
Volvo	Record Date: 26.03.09 (5 wd) Re-registration by record date	Notice of attendance: 26.03.09 (5 wd) **In AoA:** Not earlier than 5 wd, by 12.00 noon Admission cards not mentioned	Meeting: 01.04.09 Cut Off: 20.03.09 (9 wd)

Table 8
Ways to vote at the general meeting

Recap (Section 8): Shareholders can either attend the meeting in person or have a proxy representative (or proxyholder) attending the meeting on their behalf. Very few companies collect proxies at their own expense and provide their shareholders with the option to vote at the GM through a proxy representative appointed by the company.

Shareholders cannot vote by mail or electronic means (that is, voting in absentia is not allowed).

Companies make proxy forms/Power of Attorneys (POAs) and notice of attendance forms available on their websites, but most companies remove them after the deadline. Proxy form was previously normally attached to the GM notice. The typical market practice for Swedish companies is to require shareholders to send the POA in original by mail to the company before the meeting. When the shareholder is a legal entity, companies typically require a notarized POA and supporting documentation that prove the authenticity of the signature.

To our knowledge, very few companies provide shareholders with the opportunity to follow the GM via the Internet. Shareholders following the meeting on distance are not able to vote, make proposals, or express their opinion during the GM. Among our sample companies, for the 2009 AGM, only TeliaSonera offered shareholders the opportunity to follow the GM via an Internet connection. For the AGM 2010, none of the companies in our sample offered shareholders this option.

Table abbreviations: AoA - Articles of Associations; BoD - Board of Directors; GM - General Meeting; AGM - Annual General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY - Financial Year.

	Proxy Voting Representative appointed by the company	**Proxy Voting** Representative appointed by the shareholder	**Proxy Voting** Deadline for sending required documentation
Laws and regulations	Proxy form collected at the company's expense if allowed by the AoA (i.e., approved by the GM). Specified in the GM notice who will act as company appointed proxy representative. Cannot be board member or company executive. Vote instructions must be given on proxy form.	Anyone can act as shareholder appointed proxy representative. No limit on how many shareholders a proxy representative may represent. The proxyholder can vote in different directions for the different shareholders. Split voting is not allowed at the beneficial owner level, i.e., all the shares of the same shareholder must be voted in the same direction.	Company appointed: The proxy form/POA must be mailed back to the company appointed proxy representative Shareholder appointed: Proxy form/POA must be written, signed, and dated by the shareholder. It is valid for one year. Institutional shareholders: A notarized proxy form/POA (can be a global one, i.e., covering all the shareholder's Swedish holdings) must be accompanied by documentary evidence to prove that the signatory is authorized and eligible to sign the POA.
Market practice	Not common, very few companies have introduced it in their articles. The proxy representative is normally an independent attorney-at-law. Proxy form must be mailed to the proxy representative within a given deadline.	Proxy form was previously normally attached to the GM notice, but from 2009 it seems to be available only online and it will be sent to the shareholder upon request. Vote instructions given depending on agreement between shareholder and proxy representative. Normally institutional investors do not allow the proxyholder to speak or vote on counterproposals from the floor during the course of the GM.	Common to ask for sending POA in original together with certificates of registration in advance to facilitate the registration at the meeting, normally 2-4 days in advance. Some companies allow shareholders to present POA in original at the meeting. Company may retain the original. Institutional shareholders: Deadline to give voting instructions to the proxyholder normally set before the re-registration deadline since it also acts as instruction to re-register shares, send notice of attendance, and vote on behalf of the shareholder.

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	Proxy Voting Representative appointed by the company	**Proxy Voting** Representative appointed by the shareholder	**Proxy Voting** Deadline for sending required documentation
Sample			
Atlas Copco	No in AoA	In 2009 AGM Notice: Form available on website. Will be sent to shareholders upon request.	AGM 2009 deadline: information removed from website at the time of data collection. AGM 2008 deadline: 18.04.08 (5 wd)
Ericsson	No in AoA	In 2009 AGM Notice: Form available on website.	AGM 2009 deadline : 21.04.09 (1 wd)
H&M	No in AoA	In 2009 AGM Notice: Form available on website.	AGM 2009 deadline: information removed from website at the time of data collection. AGM 2008 deadline: 02.05.08 (5 wd)
Nordea	Yes in AoA	In 2009 AGM Notice: Form available on website. Will be sent to shareholders upon request.	In Notice: Should be sent to company prior to meeting.
Sandvik	No in AoA	In 2009 AGM Notice: Form available on website.	In Notice: Should be sent to company prior to meeting.
SEB	No in AoA	In 2009 AGM Notice: Form available on website and at the company's head office.	AGM 2009 deadline: 02.03.09 (3 wd)
Svenska Handelsbanken (SHB)	No	In 2009 AGM notice: Form not included in the notice and no information on where it is available.	In Notice: Should be sent to company prior to the AGM.
Swedbank	No in AoA	In 2009 AGM Notice: Form available on website.	AGM 2009 deadline: 20.04.09 (4 wd)
Telia Sonera	Yes in AoA	In 2009 AGM Notice: Form available on website.	AGM 2009 deadline: 27.03.09 (3 wd)
Volvo	No in AoA	In 2009 AGM Notice: Form not included in the notice and no information on where it is is available.	AGM 2009 deadline: information removed from website at the time of data collection. AGM 2008 deadline: 03.04.08 (5 wd)

Table 9
Functioning rules of the general meeting

Recap (section 9): There is no quorum of shareholders required for the GM to be valid and GMs are always held in first call. As a general rule, resolutions that do not relate to elections are adopted by simple majority of the votes cast, unless otherwise prescribed by the Companies Act or the company's AoA. None of our sample companies establishes supermajority requirements in addition to the ones required by law. When the vote is tied, the chairman of the meeting has a casting vote.

The ABL establishes qualified majority (or supermajority) requirements that apply to several key decisions and resolutions of a general meeting. For some resolutions, a supermajority is required both with regard to the number of votes and the number of shares. Among the resolutions that require 2/3 of both the votes cast and the shares represented at the GM are:

- certain amendments to the articles of association
- reduction of the share capital
- repurchase of the company's own shares
- approval of merger plans
- decision to deviate from shareholders' pre-emptive rights in the event of a new issue of shares.

There are also some types of resolutions requiring approval by all shareholders represented at the meeting who together must represent at least 9/10 of all shares in the company:

- amendments of the articles that affect the legal relationship between share classes
- amendments to the articles of association that affect shareholders' rights in the company's profits or other assets.

Some resolutions require approval by 2/3 of votes cast and 9/10 of the share capital represented, for example:

- amendments to the articles of association restricting the number of shares which a shareholder may vote at the GM.

The Code of Corporate Governance establishes that the shareholders' meeting is to be conducted in Swedish. However, the company is to consider whether the proceedings are to be simultaneously translated in whole or in part into any other relevant language as warranted by the ownership structure and if financially feasible. Five of our sample companies, inform in their notice of the 2010 GM that the meeting will be simultaneously translated into English.

Table abbreviations: AoA - Articles of Associations; BoD - Board of Directors; GM - General Meeting; AGM - Annual General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY - Financial Year.

	Role and powers of the Chairman of the meeting	**Shareholders' right to ask questions and post counterproposals**	**Voting at the GM**
Laws and regulations	Opening of the GM: The meeting is opened by the chairman of the BoD or by the person appointed by the BoD. If the articles prescribe who shall be the chairman of the meeting, the GM shall be opened by this person.	Questions: At the GM, any shareholder may ask questions to the BoD and the CEO on circumstances which may affect matters on the agenda. The board and the CEO must answer unless the BoD decides that answering may harm the company. Counterproposals: Shareholders may raise proposals and counterproposals related to items already on the agenda at the GM.	Voting at the GM normally takes place by acclamation and is not confidential. Poll must be taken if requested by a shareholder.

Table 9 continued from previous page

	Role and powers of the Chairman of the meeting	**Shareholders' right to ask questions and raise counterproposals**	**Voting at the GM**
Laws and regulations *(continued)*	Chairman of GM: Unless otherwise stated in AoA, is elected by the GM. The nomination committee proposes who should act as chairman. Chairman prepares the voting register to be approved by the GM. In matters that do not relate to elections, in the event of a tied vote, the chairman has a casting vote. Chairman has the power to control/regulate the debate at the GM.		Voting on other items than elections shall be held through open voting, unless GM decides for a secret ballot.
Market practice	Common that the chairman of the BoD opens the meeting. For smaller companies the chairman of the BoD is generally the chairman of the meeting, while larger companies use an experienced lawyer or another experienced professional.	Common to ask questions at the meeting. Proposals/counterproposals not uncommon.	Normally by acclamation as a voice vote: shareholders and proxies present are invited to express verbally if they are in favor or against the resolution.
Sample			
Atlas Copco	**In AoA:** Opened by Chairman of BoD or a person appointed by her. Chairman elected by the GM **In Minutes:** Chairman of the BoD elected as chairman of the meeting as proposed by the nomination committee.	**In Minutes 2009:** No counterproposals mentioned	**In AoA:** Not mentioned
Ericsson	**In AoA:** Not mentioned **In Minutes:** Chairman of the BoD elected as chairman of the meeting as proposed by the nomination committee.	**In Minutes 2009:** No counterproposals mentioned	**In AoA:** Not mentioned
H&M	**In AoA:** Opened by Chairman of BoD or a person appointed by her. Chairman elected by the GM **In Minutes:** Chairman of the meeting elected as proposed by the nomination committee (not being the Chairman of the BoD).	**In Minutes 2009:** No counterproposals mentioned	**In AoA:** Not mentioned
Nordea	**In AoA:** Not mentioned **In Minutes:** Chairman of the meeting elected as proposed by the nomination committee. (not being the Chairman of the BoD).	**In Minutes 2009:** Two counterproposals mentioned; one on a minor change in the wording regarding the decision on remuneration of the auditors and another on including in the mandate of the nomination committee to work for balance between the genders when searching for candidates for the BoD.	**In AoA:** At the GM matters are decided by open vote, unless the general meeting decides on a closed ballot.
Sandvik	**In AoA:** Not mentioned	Minutes 2009 not available on website.	**In AoA:** Not mentioned
SEB	**In AoA:** Opened by Chairman of BoD or a person appointed by her. Chairman elected by the GM **In Minutes:** Chairman of the BoD elected as chairman of the meeting as proposed by the nomination committee.	**In Minutes 2009:** One counterproposal on remuneration mentioned.	**In AoA:** Not mentioned

Table 9 continued from previous page

	Role and powers of the Chairman of the meeting	**Shareholders' right to ask questions and raise counterproposals**	**Voting at the GM**
Sample			
Svenska Handels-banken (SHB)	**In AoA:** Opened by Chairman of BoD. Chairman elected by the GM **In Minutes:** Chairman of the meeting elected Chairman of the meeting elected as proposed by the nomination committee (not being the Chairman of the BoD).	**In Minutes 2009:** No counterproposals mentioned.	**In AoA:** Not mentioned
Swedbank	**In AoA:** Opened by Chairman of BoD or a person appointed by her. **In Minutes:** Chairman of the meeting elected as proposed by the nomination committee (not being the Chairman of the BoD).	**In Minutes 2009:** One counterproposal on the size of the BoD mentioned. Mention that questions had been submitted by shareholders prior to the meeting.	**In AoA:** Not mentioned
TeliaSonera	**In AoA:** Not mentioned **In Minutes:** Chairman of the meeting elected as proposed by the nomination committee (not being the Chairman of the BoD).	**In Minutes 2009:** No counterproposals mentioned	**In AoA:** Not mentioned
Volvo	**In AoA:** Not mentioned **In Minutes:** Chairman of the meeting elected as proposed by the nomination committee (not being the Chairman of the BoD).	**In Minutes 2009:** Two counterproposals on remuneration mentioned.	**In AoA:** Not mentioned

Table 10
Disclosure of GM minutes and voting results

Recap (Section 10): GM minutes must be made available to shareholders at the company's registered office within two weeks after the GM and a copy of the minutes sent to shareholders who so request and provide their mail address. According to market practice, large Swedish listed companies publish the full GM minutes on their websites. However, the voting register including the list of shareholders present or represented by proxy at the general meeting as well as the numbers of shares and votes represented by them, is not published with the minutes (neither in Swedish nor in English). Swedish companies do not normally publish the attendance rate which is also the case for the companies in our sample. We have calculated the attendance rate for some companies which give information on total number of voting rights in the GM notice and information on voted represented at the meeting in the minutes. Not all companies give this information.

Table abbreviations: AoA - Articles of Associations; BoD - Board of Directors; GM - General Meeting; AGM - Annual General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY - Financial Year.

	Voting results and minutes of 2009 AGM	**Attendance rate**
Laws and regulations	The protocol including the voting register and the results must be made available to shareholders within two weeks after the GM. The voting register is not published. Outcome can be challenged within 3 months. **CG Code:** Should be posted on company website, but not necessary to report the voting register (i.e., who represented votes at the meeting). Should be translated if warranted by the ownership structure.	Companies must state the number of shares and voting rights in the GM Notice.
Market practice	Large companies publish the minutes and the outcome on the website. Not that common to publish the actual % results or the attendance rate. Vote results with % for/against calculated, but most of the times not published.	Attendance rate normally not disclosed in the Minutes of the meeting, but the number of shares and votes represented are often given.
Sample		
Atlas Copco	Full minutes available on website. Only outcome, not results in percentages. Under each proposal where against votes were cast the number of shares and name of the shareholders are stated.	Voting rights represented given in the Minutes: 419 381 019 Total Voting rights given in the Notice: 866 898 157 Calculated attendance rate: 48%
Ericsson	Full minutes available on website. Only outcome, not results in percentages unless for the agenda items where remote where used.	Voting rights represented not given in the minutes of the 2009 meeting, but was given for the 2008 meeting. Calculated attendance rate for the 2008 AGM is 58%
H&M	Full minutes available on website. Only outcome, not results in percentages. Under each proposal where against votes were cast the name of the shareholders are stated and it is referred to a disclosed attachment for the number of shares.	Voting rights represented not given in the Minutes
Nordea	Full minutes available on website (only Swedish; a press release with decisions from the AGM available in English). Only outcome, not results in percentages. Under each proposal where against votes were cast there is a reference to a non-disclosed attachment for the number of shares.	Voting rights represented not given in the Minutes
Sandvik	Full minutes not available on website (neither in Swedish nor English, only a press release available in English). Only outcome, not results in percentages.	Voting rights represented not given in the Minutes

Table 10 continued from previous page

	Voting results and minutes of 2009 AGM	**Attendance rate**
Sample		
SEB	Full minutes available on website. Only outcome, not results in percentages. Under each proposal where against votes were cast it is referred to the name of the shareholders, but not the number of votes they represented.	Attendance rate given in the Minutes: 60%
Svenska Handels-banken (SHB)	Full minutes available on website. Only outcome, not results in percentages. Under each proposal where against votes were cast it is referred to the name of the shareholders, but not the number of votes they represented.	Voting rights represented given in the Minutes: 289 535 992 Total voting rights given in the Notice: 612 894 063 Calculated attendance rate: 47%
Swedbank	Full minutes available on website. Only outcome, not results in percentages. Under each proposal where against votes were cast it is referred to the name of the shareholders, but not the number of votes they represented.	Voting rights represented given in the Minutes: 433 869 610 Total voting rights given in the Notice: 773 060 118 Calculated attendance rate: 56%
TeliaSonera	Full minutes available on website. Only outcome, not results in percentages. Under each proposal where against votes were cast it is referred to the name of the shareholders, but not the number of votes they represented.	Voting rights represented not given in the Minutes
Volvo	Full minutes available on website. Only outcome, not results in percentages.	Voting rights represented not given in the Minutes

Table 11
Standard Notice of Annual General Meeting

< Company Name >

Notice of Annual General Meeting of Shareholders 20xx
The Annual General Meeting of Shareholders will be held at Address, City, Sweden at _ _: _ _ p.m. on Day, Month, 20xx. Registration to the Meeting starts at _ _: _ _ p.m.

Right to attend and notice of attendance
Shareholders who wish to attend the Meeting shall
be entered into the transcription of the share register as of Day, Month, 20xx, kept by the Swedish central securities depository ("Euroclear Sweden AB"); and
give notice of attendance to the Company no later than on Day, Month, 20xx at Company's web site www.company.com, by phone no. +46 (0)X XXX XXXX between _ _: _ _ a.m. and _ _: _ _ p.m. weekdays, or by facsimile no. +46 (0)X XXX XXXX. Notice may also be given by mail to Company, Address, City, Sweden. When giving notice of attendance, please state name, date of birth, address, telephone no., and number of attending assistants, if any.

Shareholding in the name of a nominee
Shareholders, whose shares are registered in the name of a nominee, must request to be temporarily entered into the share register as of Day, Month, 20xx, in order to be entitled to participate in the Meeting. Such shareholder is requested to inform the nominee to that effect well before that day. Admission cards for those attending will be sent out when notice of attendance is received.

Power of Attorney
Shareholders who are represented by proxy shall issue a power of attorney for the representative. Power of attorney issued by a legal entity shall be accompanied by a copy of the certificate of registration. Should such certificate not exist, a corresponding document of authority of the legal entity shall be provided. The documents must not be older than one year. In order to facilitate the registration at the Meeting, powers of attorney in original, certificates of registration and other documents of authority should be sent to the Company at the address above so as to be available by Day, Month, 20xx. Forms of Power of Attorney in Swedish and English are available at the Company's website www.company.com.

Agenda
1. Opening of the AGM.
2. Election of a chairman for the AGM.
3. Address by CEO followed by an opportunity to ask questions about the company.
4. Establishment and approval of voting list.
5. Approval of the agenda.
6. Election of people to check the minutes.
7. Examination of whether the meeting was properly convened.

8. Presentation of the annual report and auditors' report as well as the consolidated annual report and the consolidated auditors' report.
   a. Statement by the company's auditor and the chairman of the Auditing Committee.
   b. Statement by the Chairman of the Board on the work of the Board.
   c. Statement by the chairman of the Election Committee on the work of the Election Committee.
9. Resolutions with regard to:
   a. approval of the income statement and balance sheet as well as the consolidated income statement and consolidated balance sheet;
   b. disposal of the company's earnings in accordance with the approved balance sheet;
   c. discharge of members of the Board and Managing Director from liability.
10. Establishment of the number of Board members and deputy Board members.
11. Establishment of fees to the Board and auditors.
12. Election of Board members and Chairman of the Board.
13. Establishment of principles for the Election Committee.
14. Resolution on guidelines for remuneration to senior executives.
15. Resolution on amendment of the articles of association.
16. Resolution on contribution to foundation.
17. Closing of the AGM.

Discussion on each item
Item 1
…
…
…

Table 12
Standard of Power of Attorney (or Proxy form)

< Company Name >

Power of attorney (or Proxy)

The undersigned hereby authorize:

_____	_____
Name of proxy	Civil registration number
_____	_____
Address	Daytime telephone no

to represent me/us and vote on my/our behalf for all my/our shares at the annual general meeting of (Company Name) corporate registration number xxxxxx-xxxx, on XX April 2010.

_____	_____
Shareholders' name/company	Personal code/organization number
_____	_____
Daytime telephone number	Place and date (mandatory)

Signature of shareholder granting power of attorney (or person authorized to sign on behalf of a legal entity):

_____

The Power of Attorney (in original), and, if needed, a registration certificate or similar document should be sent (well in advance of the AGM) to Company AB, "Headoffice", P.O. Box XXXXX, YYY YY, Stockholm, Sweden

If the address of the proxyholder isn't supplied, the entrance card will be sent to the address of the Shareholder kept by Euroclear Sweden AB, the Swedish Securities Registry.

Table 13
Standard special proxy form – TeliaSonera

Proxy form for TeliaSonera´s Annual General Meeting 2008

- Please read the information on page 3.
- The complete decision proposals are stated on page 4–6 in this Proxy voting form.
- Please mark you votes in the table below.
- Please sign and date the document on page 2.
- Please send page 1 and 2 to Carl Svernlöv (address is provided on page 3).

I, the undersigned, hereby authorize Carl Svernlöv or Cecilia Bjelle, individually to represent me and vote on my behalf for all my shares in the manner stated below at the annual general meeting of TeliaSonera AB (publ), corporate registration number 556103-4249, on 31 March 2008.

This proxy revokes any previously issued proxy.

"Yes" denotes that I vote in favour of the decision proposal.
"No" denotes that I vote against the decision proposal.

1.	**Election of chairperson of the meeting**	**YES** ☐	**NO** ☐
7.	**Resolution to adopt the Income Statement, Balance Sheet, Consolidated Income Statement and Consolidated Balance Sheet for 2007**	**YES** ☐	**NO** ☐
8.	**Resolution concerning appropriation of the Company's profits as per the adopted Balance Sheet, and setting of record date for the stock dividend**	**YES** ☐	**NO** ☐
9.	**Resolution concerning discharging of members of the Board of Directors and the Presidents from personal liability towards the company for the administration of the Company in 2007**		
	Discharge from liability for:	**YES**	**NO**
	Lars Nyberg	☐	☐
	Anders Igel	☐	☐
	Tom von Weymarn	☐	☐
	Maija-Liisa Friman	☐	☐
	Conny Karlsson	☐	☐
	Lars G. Nordström	☐	☐
	Timo Peltola	☐	☐
	Jon Risfelt	☐	☐
	Caroline Sundewall	☐	☐
	Carl Bennet	☐	☐
	Eva Liljeblom	☐	☐
	Lennart Låftman	☐	☐
	Lars-Erik Nilsson	☐	☐
	Sven-Christer Nilsson	☐	☐
	Agneta Ahlström	☐	☐
	Elof Isaksson	☐	☐
	Yvonne Gustafsson (former Karlsson)	☐	☐
	Arja Kovin	☐	☐
	Berith Westman	☐	☐

10.	**Resolution concerning number of board members and deputy board members to be elected by the Annual General Meeting**	**YES** ☐	**NO** ☐
11.	**Resolution concerning remuneration to the Board of Directors**	**YES** ☐	**NO** ☐
12.	**Election of Board of Directors**		
	Re-election:	**YES**	**NO**
	Maija-Liisa Friman	☐	☐
	Conny Karlsson	☐	☐
	Lars G. Nordström	☐	☐
	Timo Peltola	☐	☐
	Jon Risfelt	☐	☐
	Caroline Sundewall	☐	☐
	Tom von Weymarn		
13.	**Election of chairman of the Board of Directors**	**YES** ☐	**NO** ☐
14.	**Resolution concerning number of auditors and deputy auditors**	**YES** ☐	**NO** ☐
15.	**Resolution concerning remuneration to the auditors**	**YES** ☐	**NO** ☐
16.	**Election of auditors and deputy auditors**	**YES** ☐	**NO** ☐
17.	**Election of nomination committee**	**YES** ☐	**NEJ** ☐
18.	**The Board of Directors´ proposal for guidelines for remuneration of the executive management**	**YES** ☐	**NEJ** ☐

Place and date: _____

Telephone nr : _____

Personal identification nr/
Corporate registration nr: _____

Signature: _____

Name in block letters: _____

If the shares are jointly owned, all owners are required to sign this proxy form. Guardians, trustees and administrators are required to specify this. Representatives of legal entities are required to submit a certified copy of the certificate of registration or corresponding proof of authority.

Proxy form for TeliaSonera´s Annual General Meeting 2008

TeliaSonera AB (publ) will hold its annual general meeting ("AGM") on Monday March 31, 2008 at 3.00 p.m. at Stockholms International Fairs in Älvsjö, Stockholm.

The board of directors offers shareholders to vote by proxy at the annual general meeting by using this proxy form, supplied by the board of directors, in which he shareholder may tick off the applicable boxes to indicate how they wish to vote.

Carl Svernlöv, attorney-at-law at the law firm Baker & McKenzie in Stockholm, will act as the shareholder's representative in respect of the proxy voting. Should Carl Svernlöv be unable to attend the annual general meeting, Cecilia Bjelle, attorney-at-law with Baker & McKenzie in Stockholm, will represent the shareholder with this proxy form.

The original of this proxy form must be in Carl Svernlöv´s possession no later than March 25, 2008 at the following address:
Carl Svernlöv
c/o TeliaSonera AB (publ)
Box 10
182 11 Danderyd
Sweden

Instructions for completing the proxy form
The Swedish Companies Act stipulates that the shareholder may only tick off "Yes" or "No" in the applicable boxes or abstain from ticking off any of the alternatives.

- Conditions may not be attached to replies submitted.
- It is not permitted to write instructions to the representative in the proxy form.
- If a shareholder includes any special instructions or conditions in the proxy form, the proxy will be invalid.

Registration for the annual general meeting
To be entitled to vote by proxy at the annul general meeting, the shareholders must

- be registered in the share register maintained by the Swedish Securities Register Center ("VPC AB") as of Tuesday March 25, 2008; and
- give notice of attendance to the company no later than 4.00 p.m on Tuesday 25, 2008 on +46 8 611 60 15, or in any other way stipulated in the notice convening the annual general meeting.

A correct prepared proxy form stating personal identification number/corporate registration number will be regarded as a notice of attendance to the company.

Revocation
The shareholders may revoke this proxy by writing to Carl Svernlöv at the above address. Such revocation must be received at the address above no later than 4.00 p.m. on March 25, 2008. The shareholders may also contact the company on +46 8 611 60 15 before the same deadline.

Decision proposals

1. Election of chairperson of the meeting

Nomination Committee's proposal: Sven Unger, Attorney-at-law.

7. Resolution to adopt the Income Statement, Balance Sheet, Consolidated Income Statement and Consolidated Balance Sheet for 2007

The board of directors proposes that the income statement and the balance sheet and the consolidated income statement and the consolidated balance sheet as per December 31, 2007 are adopted as presented in the Annual Report of 2007.

8. Resolution concerning appropriation of the Company's profits as per the adopted Balance Sheet, and setting of record date for the stock dividend

The board of directors proposes that a dividend of SEK 4.00 per share be distributed to the shareholders, and that April 3, 2008 be set as the record date for the dividend. If the Annual General Meeting adopts this proposal, it is estimated that disbursement from VPC AB will take place on April 8, 2008.

9. Resolution concerning discharging of members of the Board of Directors and the Presidents from personal liability towards the company for the administration of the Company in 2007

Discharge from liability towards the company is proposed for the CEOs Anders Igel and Lars Nyberg and for the board members Tom von Weymarn, Maija-Liisa Friman, Conny Karlsson, Lars G. Nordström, Timo Peltola, Jon Risfelt, Caroline Sundewall, Carl Bennet, Eva Liljeblom, Lennart Låftman, Lars-Erik Nilsson, Sven-Christer Nilsson, Agneta Ahlström, Elof Isaksson, Yvonne Gustafsson (former Karlsson), Arja Kovin och Berith Westman.

10. Resolution concerning number of board members and deputy board members to be elected by the Annual General Meeting

Nomination Committee's proposal: Seven (7) with no deputy board members.

11 Resolution concerning remuneration to the Board of Directors

Nomination Committee's proposal: Remuneration to the Board of Directors until the next Annual General Meeting would be SEK 1,000,000 (earlier 900,000) to the chairman, SEK 425,000 (earlier 400,000) to each other Board member elected by the Annual General Meeting. The chairman of the Board's audit committee would receive remuneration of SEK 150,000 and other members of the audit committee would receive SEK 100,000 each, and the chairman of the Board's remuneration committee would receive SEK 40,000 and other members of the remuneration committee would receive SEK 20,000 each.

12. Election of Board of Directors

Nomination Committee's proposal re-election of Maija-Liisa Friman, Conny Karlsson, Lars G Nordström, Timo Peltola, Jon Risfelt, Caroline Sundewall and Tom von Weymarn.

13. Election of chairman of the Board of Directors

Nomination Committee's proposal: Tom von Weymarn.

14. Resolution concerning number of auditors and deputy auditors

Nomination Committee's proposal: The number of auditors shall, until the end of the Annual General Meeting 2011, be one (1).

15. Resolution concerning remuneration to the auditors

Nomination Committee's proposal: Remuneration to the auditors shall be paid as per invoice.

16. Election of auditors and deputy auditors

Nomination Committee's proposal: Re-election of PricewaterhouseCoopers, until the end of the Annual General Meeting 2011.

17. Election of nomination committee

Nomination Committee proposal: Viktoria Aastrup (Swedish state), Markku Tapio (Finnish state), KG Lindvall (Swedbank Robur funds), Lennart Ribohn (SEB funds) and Tom von Weymarn (chairman of the Board of Directors).

18. The Board of Directors´ proposal for guidelines for remuneration of the executive management

The Board of Directors´ proposal:

Remuneration policy for the Executive Management

This policy concerns the remuneration and other terms of employment for the Executive Management of TeliaSonera AB.

General policy statement

The guiding principle is that remuneration and other terms of employment for the Executives shall be competitive in order to assure that TeliaSonera can attract and retain competent Executives. The guiding principle is further that the Executives' total remuneration shall consist of fixed salary, variable components of annual variable salary and long term variable compensation, pension and other benefits. Together these elements constitute an integral remuneration package.

Salary

The fixed salary levels shall be aligned with the salary levels in the market in which the Executive in question is employed taking the total remuneration package into consideration. The salaries shall be set and reviewed on an individual basis considering salaries for comparable positions, the level of responsibility and the Executive's experience and performance.

Variable components

Annual variable salary
The Executives may receive annual variable salaries in addition to fixed salaries. Such salaries shall be defined in a plan for a set period, normally a calendar year. Precise targets shall be set in a way that promotes TeliaSonera's business goals. Both financial and non-financial targets may be used.
The level of the annual variable salary may vary between Executives and can not exceed 50% of the fixed annual salary.

Long term variable compensation

TeliaSonera does presently not have any stock related long term variable compensation program. Any such program shall be decided by the shareholders meeting. A program, if proposed, shall be perceived as fair and information about the program to the shareholders shall be full, accurate, timely and understandable.

Pension

Pension plans shall follow local market practice. If possible, the defined contribution system shall be used for newly appointed Executives.

Termination and severance pay

The contract between the company and Executives shall require a period of at least six months from the employee and maximum 12 months (6 month for the CEO) from the company with respect to resignation or termination of employment. Upon termination by the company, the Executive shall be entitled to severance pay equal to his fixed monthly salary for a period of maximum 12 months (24 month for the CEO). Other income shall be deducted from the severance amount. If the executive resigns his or her position, he or she shall not be entitled to severance pay.

Other benefits

The basic principle is that other benefits, such as company cars and health insurance, shall be competitive in the local market.

Decision making

The Board of Directors shall decide on the CEO's remuneration package, including decision on the variable salary model and targets. Normally, the Board's decision shall be taken after review and recommendation by the Board's remuneration committee.

Based on the CEO's recommendation, the Board's remuneration committee approves the remuneration package for Executives reporting directly to the CEO, including variable salary model and targets.
The Board of Directors may allow minor deviations on an individual basis from this remuneration policy.

Figure 1
Regulatory Framework of Sweden's Share-Voting System

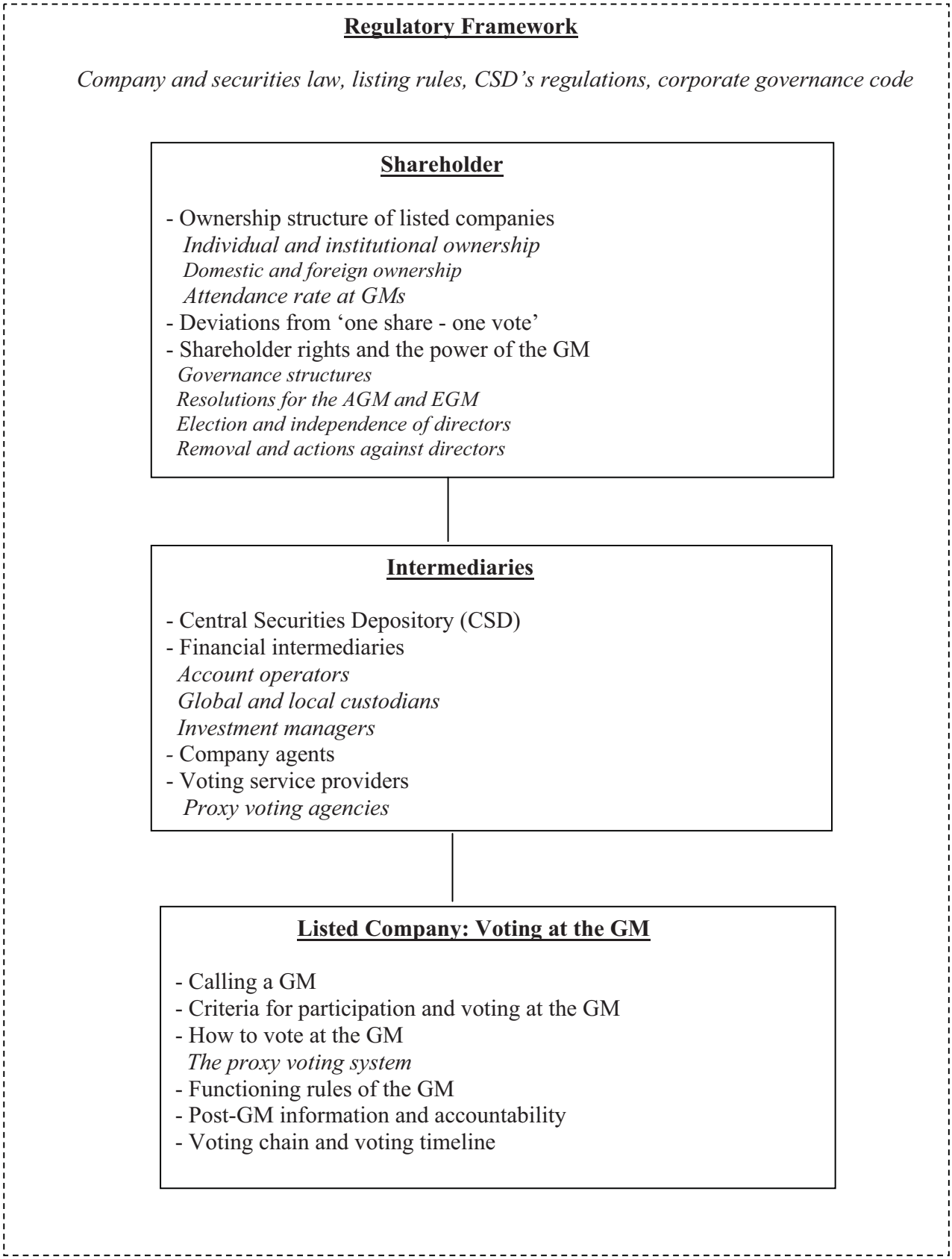


Figure 2
The typical governance structure of a Swedish listed company

This figure describes the typical governance structure of a Swedish listed company where: the GM appoints the board of directors; the board appoints the chief executive officer (CEO) which in turn appoints the other members of the management. Under certain conditions, employees of Swedish companies have the right to appoint representatives to serve on the board. The decision to appoint employees to the board is made by local employee organizations (Trade Unions). The GM appoints the company's auditor which has a supervisory function vis-à-vis the board and the CEO. The GM must also either appoint a nomination committee or approve a procedure for the appointment of the following's year nomination committee. GMs typically approve such a procedure and the nomination committee is normally made up of 5 members: the chairman of the board of directors and four members appointed by the company's four (or five) largest shareholders. The nomination committee's main task is to submit to the GM proposals on electoral and remuneration issues.

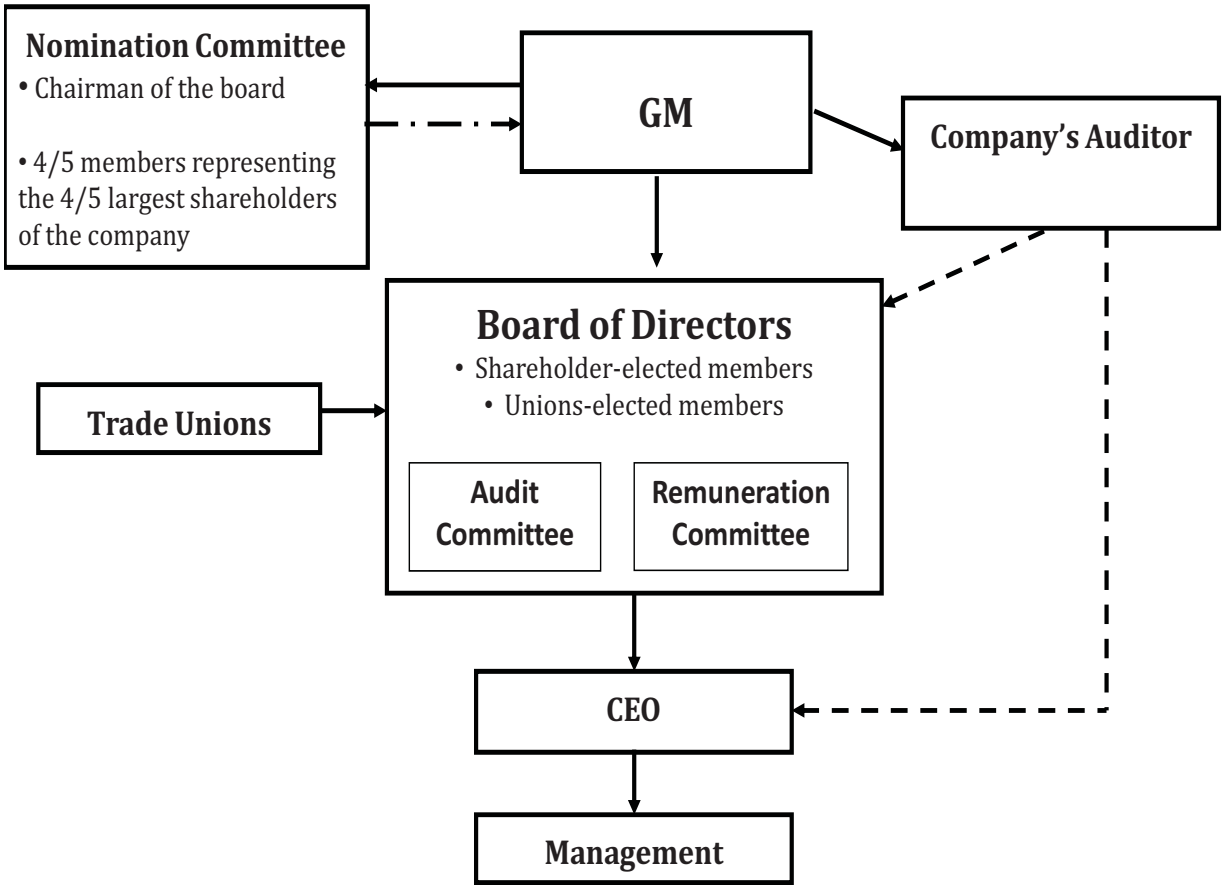
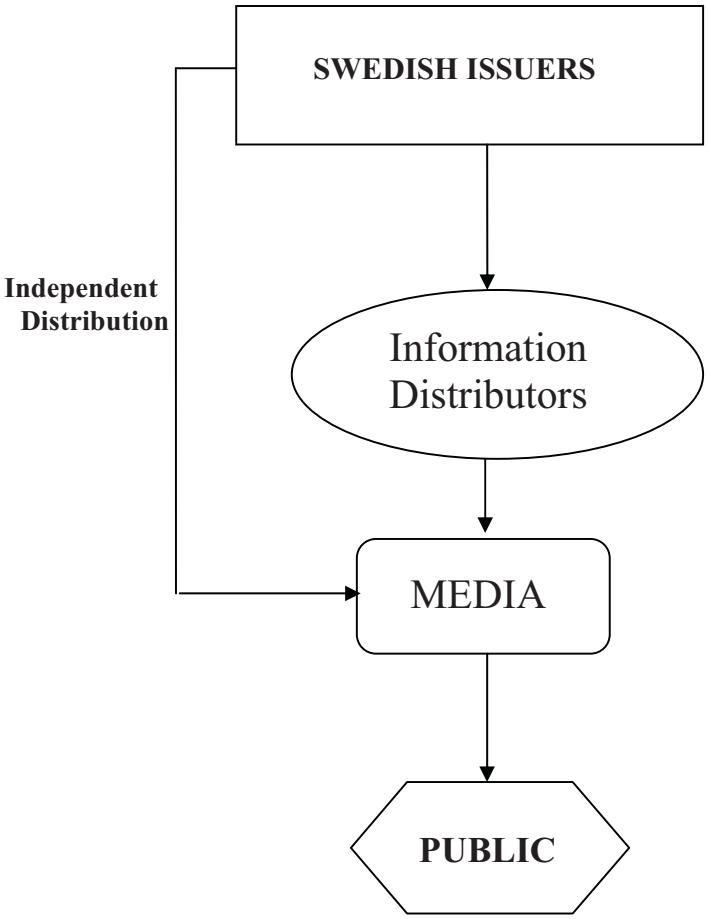


Figure 3
Dissemination of regulated information

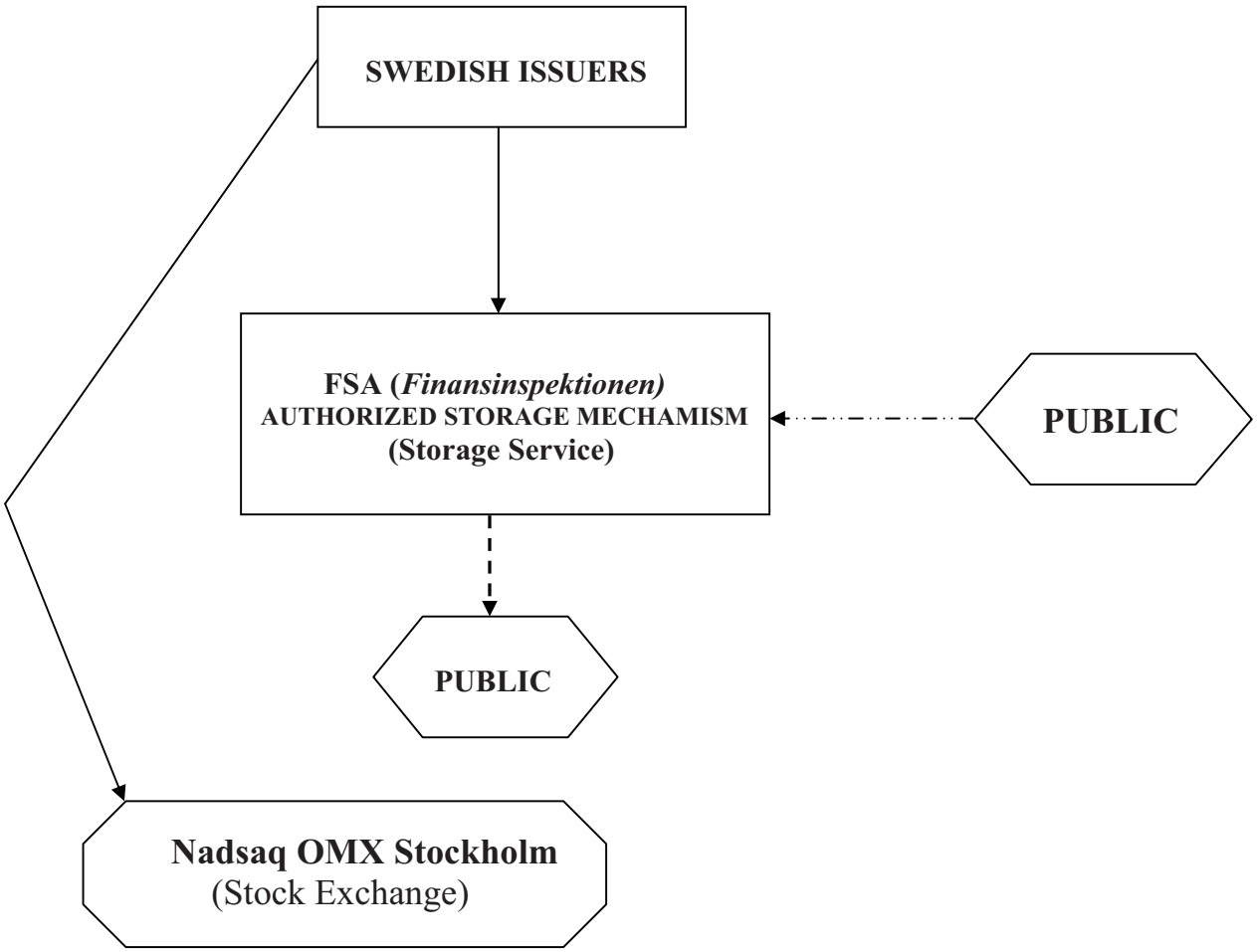
Figure 3 shows the dissemination system for information that issuers of transferable securities admitted to trading on a regulated market whose home Member State is Sweden (hereafter, "Swedish issuers") must make available to the public under the Swedish law, the Regulations of the Swedish Financial Supervisory Authority (Finansinspektionen), and the NASDAQ OMX Stockholm's Rule Book for Issuers (hereafter "regulated information"). Swedish issuers are required to appoint an information distributor (i.e., Reuters, Bloomberg) to reach media across the European Economic Area. In addition, issuers can take care of the dissemination of regulated information to the public on their own. The arrows highlight the passages of regulated information along the chain of dissemination.



Regulated information

Figure 4
Filing and storage of regulated information

Figure 4 shows the filing and storage systems for regulated information. Swedish issuers are required to file regulated information with the Swedish Financial Supervisory Authority (Finansinspektionen - FSA*)*. The FSA is the Swedish 'authorized storage mechanism' and performs the storage function. Stored information must be easily accessible by the public. The FSA is required to make information on shareholdings (flagging notifications) available to the public in the European Economic Area. Swedish issuers listed on the Nasdaq OMX Stockholm are always required to file regulated information with the Exchange.



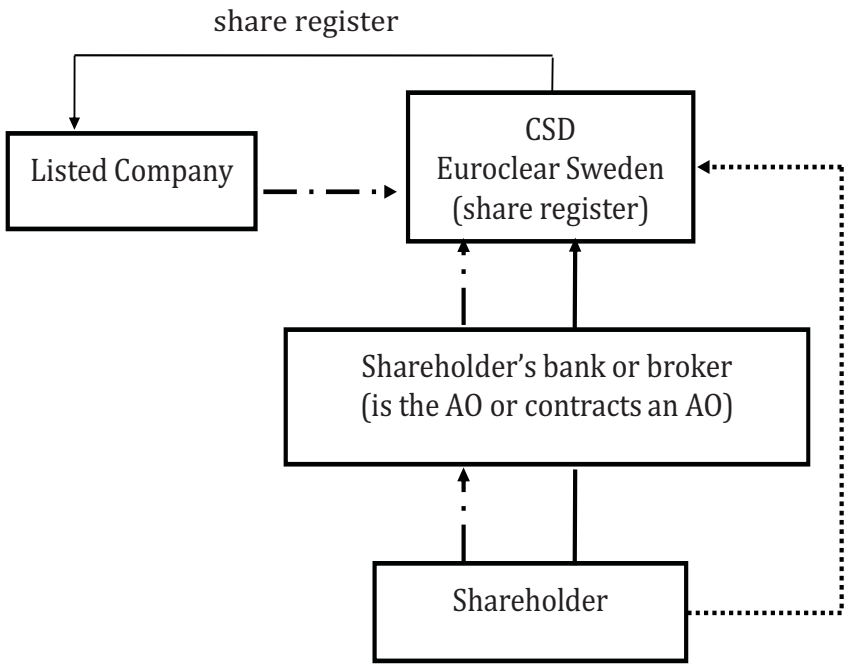
Regulated information

Easy Access to stored regulated information at no-charge

Publication of information on shareholdings (flagging notifications)

Figure 5
Custody Chain for shareholders with an 'owner/direct account' in Euroclear Sweden

The Figure describes a simplified example of a custody chain where the shareholder decides to hold her shares directly in an account with Euroclear Sweden (owner/direct account). To do so, the shareholder must appoint an account operator (normally the shareholder's bank or broker) authorized to open an account in the CSD system. The shareholder is the account holder and the account is opened in the shareholder's name. In this case, the shareholder's name is automatically registered in the share register of the company kept by Euroclear Sweden. The CSD is required to provide the company with a correct share register.



'Custody agreement'

'Chain of appointment'

'Account holder/Name on the share register'

Figure 6
Typical Custody Chain for a Foreign Institutional Shareholder (with nominee-registered shares)

This figure describes a typical custody chain through which foreign institutional shareholders of Swedish listed companies hold their shares. This is a common setup for a foreign large institutional shareholder who holds shares through a chain of intermediaries. The shareholder appoints a global custodian which does not open an account with the local Central Securities Depository (CSD) and uses its network of local custodians (Swedish custodian banks). The local custodians are CSD participants and account operators (AOs) or must contract an AO; they are account holders and the shares held in custody are registered in the Euroclear Sweden's system in their name (on behalf of the shareholder/client). The institutional shareholder also appoints one or more investment managers that manage part of the shareholder's assets.

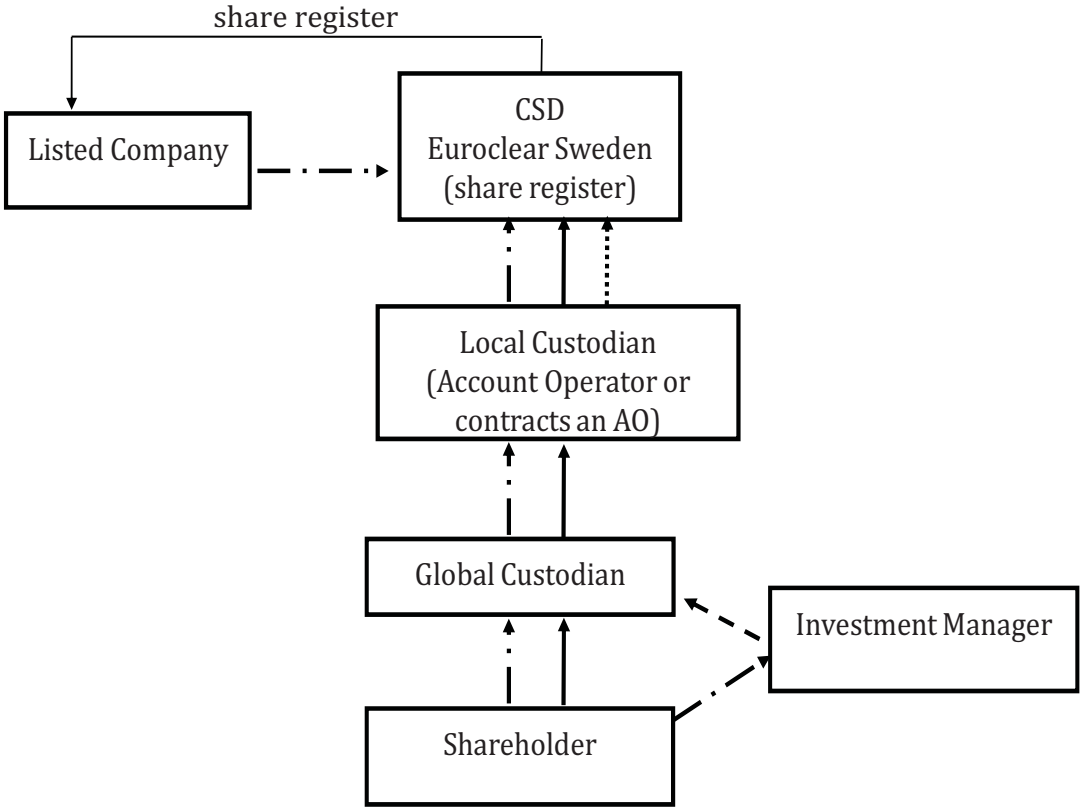
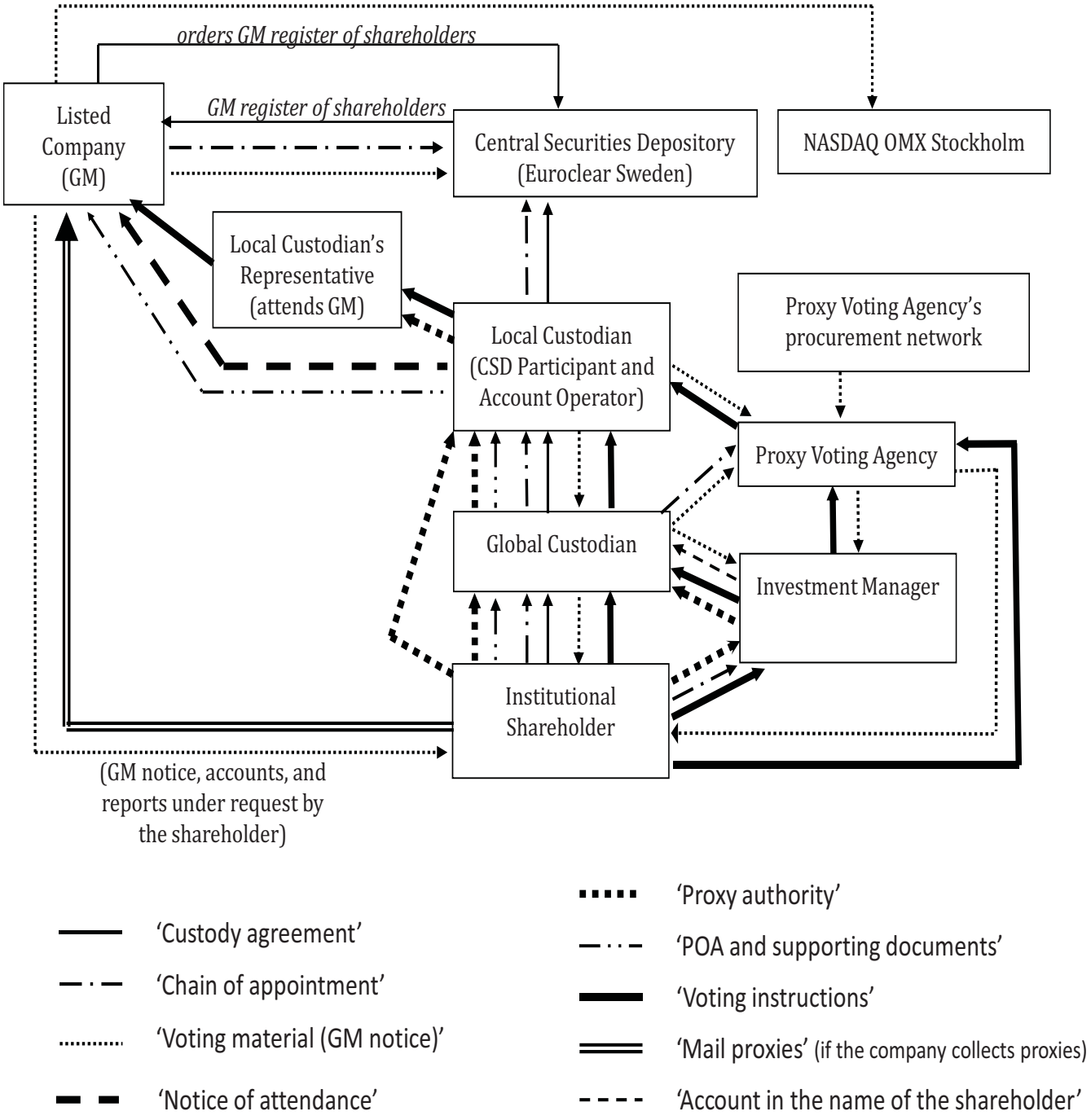


Figure 7. Typical Voting Chain for a Foreign Institutional Shareholder

This figure describes a typical voting chain for a large foreign institutional shareholder who wants to exercise voting rights at the general meetings (GMs) of Swedish listed companies.



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