

Swedish Bankers' Association

Svenska Bankföreningen

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Green Paper: Corporate Governance in financial institutions and remuneration policies

The Swedish Bankers' Association welcomes the opportunity to comment on the Commissions green paper on corporate governance and remuneration policies, COM (2010) 284/3.

In the consultation paper opinions are sought on: (1) composition, role and functioning of the board of directors, (2) risk management function, (3) the role of external auditors, (4) the role of supervisory authorities, (5) the shareholders control, (6) strengthening implementation of corporate governance principles, (7) remuneration for directors of listed companies and (8) conflicts of interests.

General remarks

Initially the Swedish Bankers' Association would like to highlight that there are significant differences in the legislative and regulatory frameworks across the countries regarding the governance structure.

In description of different corporate governance systems from an international perspective, a distinction is often made between the Anglo-American model/the one-tier model (the United States and the United Kingdom) and the Continental European Model/the two-tier model (the countries in continental Europe, particularly Germany).

One characteristic of *the one-tier model* is that there is only one governance body in the company. The company's highest decision-making body, the Shareholders meeting, appoints the board of directors, which is responsible for the company's governance. There is no separate executive board. Thus in practice, the board also has an executive function, the responsibility for which normally rests with the managing director, who is appointed by the board.

The two-tier governance model, divides the governance function between two governing bodies – a supervisory board and a management board. The shareholder's meeting is the company's highest decision making body. The meeting appoints the supervisory board which, in turn, appoints the management board. There is normally a strict division of functions between the supervisory board and the management board. The key governing body is usually the management board, which is responsible for looking after the administration of the

company. The Supervisory board supervises the work of the management board and may in general only intervene in the direct management of the company in a very limited way. In addition it is normally forbidden for the same person to sit on both boards.

The Swedish corporate governance model lies somewhere in between the Anglo-American and the continental models in several respects. In Sweden the Companies Act stipulates that companies must have three decision-making bodies in a hierarchical relationship to one another: the shareholders' meeting, the board of directors and the chief executive officer. There must also be a controlling body, the statutory auditor, which is appointed by the shareholders' meeting. According to the Swedish Corporate Governance Code the shareholders' meeting's decisions on election and remuneration of the board of directors are to be prepared in a structured, clearly stated process governed by the shareholders (through the nomination committee) that provides conditions for well-informed decision-making. The task of the nomination committee is among others to specify the duties and profile of directors, including the chairman, appropriate to the company's operations and in line with the articles of association of the company and the interest of all shareholders.

As an overarching principle we, in light of the complexity of different governance models, therefore believe that guidance regarding effective corporate governance should be principle-based, balanced and adequately flexible to reflect different national structures and business models.

We agree that weaknesses in the corporate governance were not the main cause of the financial crises. Furthermore, the financial crisis has been more or less severe in different countries, where Nordic banks overall have managed well. In the light of that we believe that the analysis, which lays the ground for the Green paper, could benefit from a broader perspective and an extended study base. Sweden, for instance, has a combination of statutory provisions concerning corporate governance and generally accepted practices. Among others the Swedish Corporate Governance Code is applicable to all Swedish companies whose shares are admitted to trading on a regulated market in Sweden. Those provisions and guiding principles have made a sufficient base for a good corporate governance structure in Sweden.

We would furthermore like to stress the importance of clarifying and considering the interaction between and different roles and responsibilities of the shareholders, the board of directors, the executive management and the supervisory authorities and the importance of such roles and responsibilities being separated. It must also be considered that many regulatory initiatives are on-going or in progress; the Green paper being only one part of such regulatory initiatives. Due to these facts co-ordination and harmonization between different regulations is of great importance.

Specific comments

- 1.1 Due to differences between countries and companies we do not believe that such measures would improve corporate governance, see general remarks above. It must be assessed in each individual case, by the shareholders/nomination committee, how many boards on which a director may sit to be able to devote the necessary time and care to effectively protect and promote the interest of the company and its owners.
- 1.2 According to the Swedish Banking and Financing Business Act (chapter 10 section 6) the chief executive officer may not be the chairman of the board. The same rule is applicable

for public limited companies according to the Swedish Companies Act (chapter 8 section 49).

- 1.3 See general remarks above.
- 1.4 We believe that different backgrounds, experiences and skills should be considered when composing the boards; however this should be the task of the shareholders' through the nomination committee, see general remarks above. The company should have as an ambition to strive for equal gender distribution on the board.
- 1.5 We believe that the responsibility for the evaluation of the functioning of the board of directors should rest with the chairman of the board. Such evaluation should form part of the decision making process when nominating board members. The evaluations should be mannered in a structured way and in proportion to the company's size and activities. The results of the evaluation should not be made available to supervisory authorities and shareholders in order not to risk an open and responsible self assessment dialog.
- 1.6 According to the Swedish law the board is responsible for ensuring that the requirement for solvency, liquidity, risk management, transparency and soundness are met. The responsibility to arrange the risk management should rest with the board however with the possibility to set up a separate risk committee.
- 1.7 See 1.6. This should not be mandatory.
- 1.8 In line with the Swedish company structure with three decision-making bodies in a hierarchical relationship to one another the board of directors should be the addressee for such reports.
- 1.9 See general comments above and 1.8.
- 1.10 The general requirements for disclosure of risk control in the Swedish Annual Accounts Act together with the specific reporting requirements according to pillar three should be sufficient.
- 1.11 No, this is part of the management of the company and should be the task of the executive management (chief executive officer). The role for the board should be to establish policies and instructions for such approvals.
- 1.12 An open dialogue between the company and the supervisory authority is vital. The supervisory authority must however be prepared to open up for such dialogue and be willing to give guidance to the company.
- 1.13 No. Boards should have the overall responsibility. No specific duty of care needs to be established for separate stakeholders.

Risk management function

- 2.1 The status of the chief risk officer and the chief financial officer should be equivalent.
- 2.2 See general remarks above and 1.8-1.9.
- 2.3 See 2.2
- 2.4 This is an important issue. There should be clear and stringent reporting and escalation lines which allow for quick decision-making; however there is no need for further regulations within said area.
- 2.5 No, the signing does not change the board's overall responsibility.

The role of external auditors

- 3.1 No. We believe it is important to keep the hierarchical relationship between the bodies within the company and furthermore, it is important to distinguish the role between the supervisory authority and the company.

3.2 No. According to Swedish law the external auditor has an obligation to report to the board and, in certain matters, to the supervisory authority. We do not believe that the obligation should be extended.

3.3 No regulation is needed. This is already part of the external auditor's obligation according to Swedish law.

The role of the supervisory authority

4.1 No, the supervisory authorities should have a supervisory role only.

4.2 No. According to applicable law the supervisory authority shall, when granting a license, conduct a thorough assessment of the business and its organization and structure.

4.3 No. The responsibility should rest with the shareholder's meeting, through the nomination committee. The supervisory authority should, with regard to the prudential assessment, assess whether any doubts exist about the integrity and professional competence of the board members.

The shareholders control

5.1 The disclosure of institutional investors' voting may have an impact on other legislative areas and should therefore be handled in a broader perspective. However, a disclosure should not be compulsory.

5.2 We support a code of best practice for institutional investors but we do not believe in a mandatory obligation.

5.3 This question should be handled in conjunction with the consultation on modernization of the directive 2004/109/EC, transparency requirements for listed companies.

5.4 We have no examples of other measures which could encourage shareholders to engage in financial institution's corporate governance.

Strengthening implementation of corporate governance principles

6.1 No. We believe the Swedish system is sufficient.

6.2 No. We believe it is questionable if the imposition of civil and criminal liability has any preventive effect according to experience from the past.

Remuneration for directors of listed companies

General comments

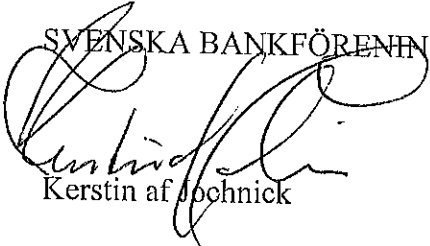
Since the beginning of 2009 different organisations, i.e. EU-commission, FSB and CEBS, has issued recommendations and guidelines concerning remunerations in listed companies and/or for the financial sector. We believe that companies should be given enough time to implement and act in accordance with these regulations. After sufficient implementing time and after an assessment have been made the need for further regulation can be examined.

Conflicts of interest

Separated roles and responsibilities are important to prevent conflicts of interests, see general remarks above. No further regulations are needed.

Yours Sincerely

SWEDISH BANKERS' ASSOCIATION

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