

Shareholders Association: 200 policy changes to strengthen the voice in listed companies

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Simple translation by Nachemson-Ekwall, with explanations for an international public.

Debate: It is just as important today to protect the interest of the smaller shareholders than it was back in the 1990s. Addressing this, the Shareholders Association presents the organizations demands on corporate governance, nominations of directors to the board and takeover rules. A key issue is enrolling members to the nomination committee at the AGM, writes Joacim Olsson, Claes Folkmar and Sophie Nachemson-Ekwall.

The Swedish Shareholders Association¹, Aktiespararna, wrote the first Swedish ownership policy addressing listed companies in 1993. The Ownership book is Aktiespararnas new policy, the fifth edition. It covers more than 200 ideas and recommendations that can be summarized into 37 clear demands. Aktiespararna must be regarded as an important and relevant party when society's view on ownership and corporate governance develops.

Our voice is important. In Sweden the private investor, large as well as small, is an important resource for the business sectors ability to access capital and long-term ownership. This holds in particular for SMEs, that also play an important role in employment. Nasdaq Stockholm, alongside a number of Exchange Traded Facilities, have more than 800 listed companies, of which 500 are smaller, with thousands of private shareholders.

All stakeholders of the stock market: companies, family-owners, institutional investors and financial institutions as well as the state as a regulatory body and tax policies, have a common interest in a strong position of the private shareholders.

As such, Sweden's private shareholders, to act as investors and be able to contribute, must be able to feel trust related to:

- Equal treatment of all groups of shareholders. In the Ownership Book we take a clear stand against general mandates for the board to decide on capital increase without first offering incumbent shareholders a right to participate, without first calling a general assembly for a decision. Sweden has gained international recognition for its good treatment of the minority shareholders. Everyone is said to agree to the notion that small private investors shall feel included and treated equally during capital increases, have access to equal information and the ability to use its voice at the general meeting. Sadly, to say, that is not always the case.²
- A long-term commitment to value creation. We must be able to have trust in that the board and executive management focus sustainable value creation. The Ownership Book challenges everyone that claim it to be enough that the board signs off on

¹ Sveriges Aktiesparares Riksförbund, sarf www.aktiespararna.se

² The general clause in the companies' act is clear on equal rights for all shareholders. However, new recommendations have made it easier for companies to circumvent smaller shareholders when raising new capital. In a governance system, where large shareholders can control the board, this might open up for misuse. Cases show up in companies that lack institutional investors as owners, and the smaller shareholders usually lack financial resources to protect their interests.

beautifully formulated intentions. We wish that the Swedish companies act makes it clear that the board's commitment is to create sustainable profits. This can be achieved through a revision of the profit motive in the companies act.³ We also wish that the boards responsibility is broadened to assure that the board makes sure that there are guidelines for responsible behaviour. This includes the company's relationship to the broader society in terms of environmentally, socially and economically responsibilities – and that this is related to the companies value creative ability.⁴

- That the company has engaged and active owners. We must be able to trust that there is a healthy balance between the influence from the general assembly, accountants, board and executive management (CEO).⁵ We are proud to remind the reader that Aktiespararna introduced the idea with external NC.⁶ But the model needs revision to be able to both cope with the demands of today's capital market and assure legitimacy from both smaller and larger shareholders. The Ownership Books demands that the Nasdaq Stockholm's listing rules state that a listed company shall have at least three independent directors that are independent of both the company and larger shareholders. The Swedish code of Corporate Governance only settles for two from large owners' independent directors.

We also claim that it is about time that the nomination committee is set up at the AGM, in line with Aktiespararnas original idea. Allowing the composition of the NC to reflect the largest shareholders at the time of the end of the third quarter, which is the usual procedure, sends the wrong signal.⁷ The purpose of the NC is to work in the best interest of the company translated through the interest of all shareholders alike, and this is best communicated at the AGM. Such a procedure would also facilitate the invitation of a representative from us smaller shareholders.

In Sweden, we often talk about the great value of self-regulation through which the constituents of the capital market act together to agree on good practise for the stock market, without involvement by the regulatory bodies. The Swedish Corporate Governance Board

³ Companies Act 3 Ch 3§ reads "The purpose of the corporation is to deliver profit to the shareholders, if nothing else is stated (in the corporate charter)". Rewriting and including a word such as sustainable will clear out a discussion on the Swedish capital market as well as society. Profit is all too often discussed in terms of profit maximization. Since Sweden has a companies' act that lets the shareholders recruit the board, the profit-goals is communicated by the current (sometimes short-term) shareholders.

⁴ Inspiration can be find in the British companies' act 2006, on the role of the board, § 172:I.

⁵ Swedish, and Nordic, corporate governance applies a two-tier board with a clear separation between the organs of the corporation (i) the shareholders at the AGM: (ii) the board of directors and: (iii) the CEO and executive management. The Swedish Companies act only allows one executive to be elected to the board, which is usually the CEO. Still, about half of the boards of listed companies abstain from enrolling the CEO (Lekvall, 2008).

⁶ The NC was inspired by the Cadbury Code in 1993, and Aktiespararna quickly gained support of a group of the largest institutional investors. The NC presents candidates for the AGM. The definition of independent from large owners is a bit illusive, as there are often ties between people belonging to the same network.

⁷ The Swedish corporate governance code settles for both models, at the AGM or the Q3 model, but the great majority of companies settles for the Q3 model. All large Swedish institutional investors participate. Foreign institutional investors often abstain.

oversees the code and the takeover rules.⁸ The Swedish Securities Council delivers statements, advice and information, in order to promote good practices in the Swedish stock market. The model has shortcomings which as time passes has become clearer:

- Not everyone is listened to. In corporate governance matters the voice of the smaller shareholder is often left out. Consequently, we demand that a representative of the smaller shareholders is included in all the bodies that makes up the Swedish self-regulation.
- It must be easier for smaller shareholders, but also smaller companies, to turn to the Securities Association for guiding and statements. Today it is too expensive. Aktiespararna should be able to receive guiding free of charge.

In our new ownership policy, we centrefold the importance the openness that is needed for the Swedish stock market, with all its different exchanges, the grow in tandem with all changes. We believe it is about time for a common Swedish Stewardship code for pensions funds and retail funds that more clearly harmonizes with an international development.⁹ We wish to see takeover rules that harmonize with the development in other countries. We need a level playing field, reciprocity, where the bidding party and the target company obey the same rules and regulation.¹⁰ In the Code there are clear recommendations on how the companies are to inform pay-packages to the management and board, on the home-page and in the annual report. But everyone more or less agrees that the quality of the information is very disappointing. Why should we as shareholders continue to accept this?¹¹

The Ownership Book is 120 pages and includes two parts. Part one describes Aktiespararnas views on corporate governance in general, the international trends, including all the new EU directives. Part two includes a guide to shareholders, companies and other constituents that act on the stock market on a daily basis. The work with the Ownership Books has involved fifty representatives for the stock market. Now it shall be read, it shall influence and be refined. The world develops all the time. The Swedish shareholders Associations is and will remain an important voice for the private and smaller shareownership.

Joacim Olsson, CEO, Aktiespararna

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⁸ The Swedish Financial Authority has, in line with EU regulation, delegated the oversight of the governance activities to the self-regulatory bodies.

⁹ The majority of the Swedish institutional investors publish a stewardship code, and there are codes for the state pensions funds and the retail funds. The association of retail-funds has a code. But there is not a common one, and no body overseeing their quality.

¹⁰ Sweden has the most active takeover market in Europe, outside the UK. We have few limits. For more read Nachemson-Ekwall (2012), An institutional analysis of cross border hostile takeovers. Phd dissertation. Stockholm School of Economics.

¹¹ Sweden does not have a "Say-on pay", though stock option-programmes are voted on the AGM. The idea of a general shareholder vote clashes with the boards responsibility in the companies act. The board can always be replaced, if 10 per cent of the shareholders call for an extra general meeting. Notably pay-packages that involve shares/stock options are checked with the largest institutional investors a beforehand.