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Introduction

Thank you for inviting me to this workshop on Strengthening the Private Enforcement of Shareholder Rights. I think this is a great initiative and I found the issues note very interesting and very well written – I learned a lot reading it.

As you can already tell from the note, Sweden represents, in this context, a kind of alternative way to prevent misconduct from controlling shareholders and managers, and maybe also to facilitate dialogue with minority shareholders. When listening to the interesting presentation of CVM´s supervision of listed companies in Brasil, it struck me, though, that in substance there are many similarities with the task put upon the Swedish Securities Council.

The Swedish stock market is by far the largest stock market in the Nordic area. There are in total some 850 listed companies today, most of them on the Nasdaq Stockholm Stock Exchange and the rest on one of the two MTFs. The market is very active, and unlike the situation in almost all other countries, the number of IPOs are high. Last year nearly 150 companies entered the market. Takeover-activity, including hostile bids, has also always been high on the Swedish markets, roughly equal to that of the UK relative to market size.

Institutional ownership is high (approx. 85 per cent) and the Swedish institutional investors are, in an international comparison, very active in the field of corporate governance.

Now, let me start some 30 years back in time.

In the mid 1980´s, Swedish businesses in general, and listed companies in particular, were facing a severe crisis of confidence. Against the backdrop of an intense public debate on what was often referred to as “scandals” and “unethical conduct” in the stock market, and politicians (as so many times before) feeling compelled to take legislative action, the Confederation of Swedish Industry and the Stockholm Chamber of Commerce took upon themselves to establish a

self-regulatory body – The Swedish Securities Council – to promote best practices in the Swedish stock market (and to precede regulation).
The role model was the UK Takeover Panel but the Council was given a much broader mandate. The Council may, according to its by-laws, *examine any action taken by a Swedish listed company or a shareholder of such a company, if the action relates to a share in the company or may be relevant to the assessment of the share*.

Today the Council is more broadly established, being the responsibility of The Confederation of Swedish Enterprise, the Association of Listed Companies, NASDAQ Stockholm, the Securities Dealers' Association, the Institute of Authorised Public Accountants, the Bankers' Association, the Insurance Federation, the Investment Fund Association and, not the least, the Association of Swedish Institutional Investors.

Decisions by the Council

The Council commenced its operations in 1986. The public debate leading up to the establishment of the Council gave the impression that there was ample need for an impartial body to which – not the least – the investing public could turn

for an assessment of whether certain actions were compatible with good stock market practises. The instigators appears to have expected a torrent of petitions as soon as the Council operations got underway, mostly from small, individual shareholders. This did, however, not turn out to be the case.

During the first years of operation, there were fewer petitions than expected, amounting to only approximately ten matters per year. The trend was also negative and the number of petitions filed declined. In the mid 1990s, however, this trend turned. The influx of petitions began to rise steadily and, at present, an internal rule of thumb applied by the Council´s Secretariat is to plan for an average of one petition a week.

What types of issues does the Council address, then? After just a few years, two well-defined focus areas began to crystallize as those which would come to receive most of the Council's attention. The very first decision concerned public takeover bids. The number of petitions regarding takeovers steadily increased, and takeovers became one of the main focus areas for the Council. The second focus area which quickly developed involves queries about incentive schemes and other types of share-related remuneration structures, principally for senior executives. Even though these areas

constitutes the majority of the Council's workload, the Council also receives petitions regarding miscellaneous questions relating to minority protection, such as targeted share issues, buy-back programs, Related Party Transactions, mergers, spin offs, amendments of by-laws etc.

Currently, the vast majority of the matters brought to the Council involve takeover bids. With the implementation of the EU Takeover Directive in 2006, the rules regarding takeover bids on the Sweden stock market – previously a matter of self-regulation – took on a new legal form. Certain basic rules concerning takeover bids were embodied in law, the exchanges were required to have takeover rules, and the Swedish Financial Supervisory Authority (FSA) was designated as the competent supervisory authority. As a consequence, the Council's supervision of takeovers became, in some aspects, legally regulated and delegated to the Council by the FSA. It is an interesting example of the interplay between legislation and self-regulation.

Also in contrast to what was originally expected, it was not chiefly the individual, small shareholders or the Swedish Shareholders' Association (representing individual shareholders' interests) which turned to the Council for

assessments of various marketplace practices. Most of the matters dealt with by the Council are instead initiated by companies or major shareholders and concerns measures such as, for example, planned takeover bids, planned incentive programmes, or planned issues of new shares or other financial instruments. Typical examples of actors bringing petitions to the Council would be an offeror considering the formulation of a planned tender offer in some respect - perhaps the conditions for completion – wanting confirmation on whether if the use of one or more such terms are compatible with the takeover rules and best practices in the stock market; a company contemplating an executive incentive programme wishing to know whether certain details of the programme are compatible with best practices in the stock market; or a company pondering a new issue of financial instruments, wanting to find out whether certain terms of the issue are compatible with good practices in the stock market; and so on.

Queries concerning actions which have *already been taken* – that is, where the individual or company seeks to know whether a certain step actually is or was compatible with best practices in the stock market – have been much less common than anticipated from the outset. Individual shareholders have made only a few inquiries of this type.

It is, however, increasingly common that a party involved in a hostile takeover calls into question the steps taken by another party and asks the Council to decide whether, for example, actions by a competing bidder or by the target company are compatible with the takeover rules and best practices in the stock market. [A couple of years ago, there was a contest between two companies in the oil industry who had made bids for each other. The contest gave rise to no less than nine sizeable matters before the Council. In fact, it went so far that the Council explained in a sternly formulated letter to both companies that their actions had undermined the confidence in the Swedish stock market and urged them to attempt to quickly reach an agreement regarding control of the companies. Both companies were later delisted.]

Another interesting observation is the fact that the Stock Exchanges every now and then turns to the Council in order to determine whether certain steps taken by listed companies are compatible with best practices.

In order for the Council to effectively pursue its mission of promoting best practices in the stock market, it is necessary for its decisions to be made public. Accordingly, a decision by the Council should result in a written decision, which should, as a

main rule, be published. However, with regards to certain matters, the Council may under certain circumstances decide to keep the ruling confidential for the time being. Decisions which are not immediately made public nearly always involve planned transactions which have not yet been carried out. Also, in certain cases, it is obvious that the transaction will not be carried out as planned since the decision by the Council goes against the company or individual initiating the matter in some decisive way.

Since its start, the Council has made a total of more than 900 decisions. Approximately 80 per cent of these are public and accessible via the Council’s website.

Organisation and decision-making process

A few words on the organisation and decision-making process.

The responsibilities of the Council place high demands on the Council's composition. It must reflect the various interests present in the business community and on the stock market so that the decisions taken by the Council are (and are perceived to be) well-founded. The members must be highly knowledgeable and have extensive experience within their

respective fields. But this is only the start. The members must also have integrity and, not the least, feel responsible for "best practices in the stock market".

The Council currently has 30 members. It includes judges, legal and financial advisors, representatives of various categories of investors, and corporate leaders. The members are appointed for consecutive periods of two years, with the possibility of an extension.

The Chairman of the Council has a particularly important role in the Council's activities as the one who heads the meetings of the Council and as the sole decision taker in certain types of matters. When the Council was established, it was decided that its Chair must have extensive legal knowledge and judicial experience. The current Chair, Mrs. Marianne Lundius, was formerly the President of the Swedish Supreme Court.

The Council meets when required, at an ad hoc basis. The Council itself decides whether or not to hear a matter brought before the Council. In this context, consideration is given, among other things, to whether or not the issue is or may be expected to be addressed elsewhere, such as in courtroom proceedings. In practice, there have been very

few cases in which the Council has refused to hear a legitimate petition.

The Council is quorate when attended by between four and eight members.

The decisions by the Council are always unanimous. According to the by-laws of the Council, it is possible to take majority decisions, but this has only occurred on one occasion to date, some twentyfive years ago. In order for the decisions to be respected as an expression of best practices in the market, the decisions taken must, in my view, be unanimous.

Decisions from the Council cannot, as a general rule, be appealed. However, there is an important exemption to this rule. Like other decisions of governmental authorities, decisions taken by delegation from the Financial Supervisory Authority are appealable. The latter primarily involve decisions concerning mandatory bids. Over the last twelve years during which this possibility for appeal has existed, only four decisions have been appealed, in all cases without success.

The Council's ambition is to be readily accessible and have short response times. The first ambition means that it is normally possible to reach the Secretariat and when necessary

refer a matter on any day of the week, 365 days a year, and largely also at any time of day.

The response time for a particular matter depends of course on the nature of the matter. Statistics show that cases decided by the Chair result, as a rule, in a decision on the day after the final petition was submitted, sometimes even on the same day. Cases decided by the Council in a collective setting also have short response times which do not, as a rule, exceed one week. Matters requiring longer response times typically involve multiple parties such as, for example, competing bidders, who must be given the opportunity to comment on each other's submissions.

Sanctions

From the outset, Council decisions have been met with great respect. When the Council established that a certain planned measure was not compatible with best practices, the finding was respected and, when the Council criticised a measure which had already been pursued, that criticism was taken with the utmost seriousness by all parties involved, notwithstanding that the Council had no formal means of sanction at its disposal.

Today, the situation is more complex. The regulatory regime in certain respects has changed. It is still the case that if the Council makes a decision that certain planned measures are not compatible with best practices, it is respected.

With regard to decisions from the Council concerning measures which have already been carried out, it remains the case that the Council itself has no sanctions at its disposal. However, the exchanges can now take disciplinary measures against all listed companies violating generally accepted practices in the securities market. In practice, this means that if the Council finds that a listed company acted in violation of best practices, it is highly probable that the company will be subjected to disciplinary sanctions by the stock exchange.

In addition, the takeover area has its own system of sanctions. If the Council finds that an offeror has acted in violation of the takeover rules, it may result in disciplinary sanctions. The same applies to actions by the target company.

Conclusion

Let me conclude by saying that anyone who is interested in best practises in the stock market can find an interesting

example of what may be achieved if all involved parties are prepared to assume their responsibilities in the activities of the Swedish Securities Council. I dare to assert that the Council, during its some 30 years of operation, has contributed significantly to relatively sound ethics on the Sweden stock market in general, and in the area of takeovers in particular. With the continued readiness of listed companies, institutional shareholders and, not the least, the financial and legal advisors to safeguard the Council's mission, there is good reason to believe that this trend will continue.

In a broader perspective, I am willing to state that the work done by the Securities Council is one of the explanations why, notwithstanding a large number of listed companies and fervent takeover activity, Sweden has hardly had a single law suit concerning takeovers, and very few concerning core company law matters. Last but not least, I believe that this self-regulatory regime to a large extent has made it possible to avoid the poorly thought-out and draconian legislation which history has shown to otherwise be the result of scandals and crises of confidence in the business community and the stock market.