

## NBIM DISCUSSION NOTE

## Board appointment practices – an international overview

18/09/2012

Shareholders receive return on their invested equity only after the company has ensured the fulfilment of obligations to all other parties. Shareholders are therefore rightly given prerogatives to influence the company, through the approval of certain corporate decisions including, not least, the appointing of the board. This note provides a brief overview of board appointment practices in 10 equity markets. It does not seek or claim to give a full description of all relevant aspects or considerations.

### Summary

Despite differences in board structures, election procedures and nomination processes, significant commonalities of board appointment practices exist across the 10 major national stock markets analysed.

In all markets companies have a shareholder-approved board with a responsibility to oversee management. Shareholders have no formal role in producing a recommended (“nominated”) board slate, with the exception of Sweden. Shareholder rights to propose alternative board candidates exist, but are seldom used. Informal involvement in board nomination processes is the preferred route for shareholders wanting to yield influence over board composition.

## Contents

<b>1 Board appointment practices – international overview</b> .....	3
1.1 Design of overview .....	3
1.2 The overview centres on three broad topics .....	3
1.2.1 The election of board candidates .....	3
1.2.2 The nomination process .....	3
1.2.3 Board structures .....	3
1.3 At a high level, significant commonalities of principle exist .....	3
1.4 Variability of practices across markets .....	4
<b>2 Board appointment practices by market</b> .....	5
2.1 France .....	6
2.2 Germany .....	7
2.3 Italy .....	8
2.4 Japan .....	9
2.5 The Netherlands .....	10
2.6 Spain .....	11
2.7 Sweden .....	12
2.8 Switzerland .....	13
2.9 United Kingdom .....	14
2.10 The United States .....	15
<b>3 Appendix: Glossary of terms as used in this note</b> .....	16
<b>4 Appendix: Review of Swedish nomination committees</b> .....	17
4.1 Main findings of the review .....	17
4.1.1 Key context for nomination committee system: .....	17
4.1.2 Structure and appointment of committees: .....	17
4.1.3 Work modus and composition: .....	18
4.1.4 Eligibility: .....	18

# 1 Board appointment practices – international overview

## 1.1 Design of overview

The discussion note presents an overview of current board appointment practices in 10 key markets. The purpose is to provide brief analysis on differences and similarities across markets in the field of board appointments.

This memo discusses key global observations. High-level findings for each market are shown in individual tables that compare across all markets. The overview is partly based on a legal survey. However, it goes further to present common practice and country specific convention, beyond the formal legal status, where relevant. Additional sources include local corporate governance codes, data from specialist service providers as well as internal NBIM data.

## 1.2 The overview centres on three broad topics

### 1.2.1 The election of board candidates

- Do shareholder meetings have unhindered rights to elect board members?
- How are votes counted, and what are the approval thresholds?
- For how long are board members elected?

### 1.2.2 The nomination process

- How is the official nomination done, i.e. who produces the board slate that is officially recommended to the shareholder meeting?
- Do shareholders have any formal or informal role in the nomination process (including regular board scrutiny, candidate search and recommendation)?
- How can shareholders launch candidates as alternatives to the officially nominated slate?

### 1.2.3 Board structures

- Which roles do executives play on the board, and are employees represented?

The matrix gives high-level answers. If there are variations within a market – then the matrix describes the most commonly seen situation. For more details on the legal context, a fuller legal review is needed.

This overview focusses on the appointment of the supervisory or unitary board, and not on the hiring of executives or “management boards”. We use the term *board appointment* to cover the entire process from the initial board scrutiny and candidate search to the formal board elections at the shareholder meeting. *Board nomination* is a term used to describe the process by which an officially recommended board slate is produced and presented to the shareholder meeting. Independently of the official nomination, shareholders may use their rights to *propose* alternative candidates for the shareholder meeting. The shareholder meeting finally *elects* the board through a voting process.

## 1.3 At a high level, significant commonalities of principle exist

We can observe important common features across all or most markets:

**It is a responsibility of the board to oversee management.** Across different structures, the board has a supervisory role that is distinctly different from that of the executive management. As a principle, it is the responsibility of the board to hire and oversee management. The chief executive must be accountable to the board. At the same time the board is supposed to not interfere in daily operations. Japan is exceptional in that the board is usually associated with management.

**Boards tend to be self-perpetuating, detached from shareholders.** Shareholders have no formal role in producing a recommended board slate (nomination). In most markets shareholders will be presented with an officially recommended board slate for the upcoming board term. The nomination process is the responsibility of the incumbent board and is often heavily influenced by the chairman. In markets such as the U.S. and the UK the board routinely supplements itself with new directors without waiting for the next shareholder meeting. Main exceptions, reflecting shareholder concentration, are the Swedish shareholder representation on the nomination committee, and the Italian and Spanish proportional board representation systems.

**Shareholders are collectively responsible for the election of board candidates.** Board members are subject to re-election by shareholders at regular intervals. Since shareholders very seldom are given the choice between competing candidates, board elections at the shareholder meetings are best understood as an approval process. Non-approval rarely happens, but works as an emergency brake. Shareholders also use vote differentiation in board elections to signal preferences and concerns.

**Proposal rights exist but are difficult to use.** In all markets shareholders have the right to propose board members in opposition to those officially nominated. However, requirements, costs, procedures, and levels of conflict are substantial – and in sum often prohibitive.

**Informal involvement in board nomination processes is the chosen route locally.** In all jurisdictions covered in the overview shareholders are permitted to initiate informal dialogue with the aim of influencing board composition. The review shows that on an informal basis, local practice is for some investors to routinely engage to yield influence over board composition. Institutional investors are generally less active overseas than in their local market.

## 1.4 Variability of practices across markets

At a more detailed level there is substantial variability between the 10 markets reviewed that can be traced back to differences in history and culture, law, capital structure, and the technical infrastructure of corporate governance. Each market has distinct features in how board candidates are found, how boards are formally elected, and how the boards carry out their duties. Markets cannot easily be grouped by board appointment characteristics, because they split differently on key parameters.

There is not one comprehensive EU rule governing how boards are appointed or structured. All German companies, most Dutch companies, and a minority of French companies apply a “two-tiered board” system, under which the management team is formalised into a “management board”, and thus correspondingly have a “supervisory board” in which there are no executives. The “one-tiered” or “unitary” board structure with management representation is the convention in the UK, Italy, Spain and Sweden, and the practice most commonly seen in France.

Northern European jurisdictions, including the UK, as a general rule assign a distinct role for the board chairman position which cannot be held by the chief executive. The picture is more mixed in Southern European countries and in the U.S., where the chief executive may also chair the board.

Common law markets – UK and the U.S. – share some capital market characteristics such as a dispersed ownership of listed companies. They are both trending towards a standard of annual board elections. However, significant differences exist between them regarding board structure, how board members can be proposed by shareholders, as well as the important role of the corporate governance code in the UK, something that does not exist in the U.S. Japan is separate in that the board and the management are often closely associated.

## 2 Board appointment practices by market

This chapter gives a high-level description of board appointment practices in each of the markets by way of answering nine standardised questions.

Given the particular nomination process operating in Sweden, we look in greater depth at this market in an appendix.

The high-level answers aim at describing the typical pattern seen in each market. Actual practices may vary between companies. This overview note does not purport to give a complete picture. With a view to consistency throughout the overview we apply terms according to the glossary set out in an appendix to the discussion note.

*Sources:* Local corporate governance codes, Institutional Shareholder Services, Glass Lewis, GovernanceMetrics International, Asian Corporate Governance Association, NBIM research.

## 2.1 France

Topic	Question	France
<b>The election of board candidates</b>	<i>Does the right to elect board members belong to the shareholders? Which limitations exist?</i>	Yes. However, the board itself may appoint additional members between shareholder meetings.
	<i>Do shareholders at the AGM vote on individual board candidates, or can they vote on a candidate slate only?</i>	Individual
	<i>Will votes be counted, and must each candidate reach a specific vote threshold to be considered elected? What is the approval threshold?</i>	Count, simple majority.
	<i>How long are the terms for which board members are elected? Will all members be elected at the same time? If not, what is the rotation pattern?</i>	Varies, but usually 4 years & classified (1/4 up for election each year), as prescribed in local corporate governance code.
<b>Nomination process. (The official process to recommend to the AGM the board members to be elected or re-elected)</b>	<i>Do shareholders have formal rights to be involved in the process of nominating board candidates? How?</i>	No
	<i>Do some shareholders typically get informally involved in the process of nominating board candidates? How?</i>	Generally little, but some strategic investors such as the French state and state-owned FSI and CDC may be involved via their board representation.
	<i>Which rights do shareholders have to propose alternative board candidates for the AGM to vote on?</i>	Rights to place items on the agenda, necessary holding varies between 0.5% and 4% depending on company size.
<b>Board structures</b>	<i>Will top management be members of the board? If so who?</i>	CEO is chairman in about 50% of companies. Sometimes 1 or 2 other top managers
	<i>Will employee representatives be members of the board? If so how many?</i>	Possible, though not frequent. Employee shareholder representation if employees hold more than 3% of the capital.

## 2.2 Germany

Topic	Question	Germany
<b>The election of board candidates</b>	<i>Does the right to elect board members belong to the shareholders? Which limitations exist?</i>	Yes. The board can replace retiring members between shareholder meetings via a court request. Exceptionally, particular shareholders have the right to designate board members.
	<i>Do shareholders at the AGM vote on individual board candidates, or can they vote on a candidate slate only?</i>	Individual
	<i>Will votes be counted, and must each candidate reach a specific vote threshold to be considered elected? What is the approval threshold?</i>	Count, simple majority.
	<i>How long are the terms for which board members are elected? Will all members be elected at the same time? If not, what is the rotation pattern?</i>	Usually 5 years, this is the legal maximum. Ordinarily all members elected at the same time.
<b>Nomination process. (The official process to recommend to the AGM the board members to be elected or re-elected)</b>	<i>Do shareholders have formal rights to be involved in the process of nominating board candidates? How?</i>	No
	<i>Do some shareholders typically get informally involved in the process of nominating board candidates? How?</i>	Market practice for institutional investors to suggest nominees to supervisory board.
	<i>Which rights do shareholders have to propose alternative board candidates for the AGM to vote on?</i>	Right to call AGM and place items on the agenda, available for the most part if holder of over 5% of share capital. Any shareholder can make counter proposals ahead of AGM, but procedures work against the election via this mechanism.
<b>Board structures</b>	<i>Will top management be members of the board? If so who?</i>	No. Law prescribes a supervisory board, in which management is not represented.
	<i>Will employee representatives be members of the board? If so how many?</i>	1/2 of seats (1/3 if less than 2,000 employees).

## 2.3 Italy

Topic	Question	Italy
<b>The election of board candidates</b>	<i>Does the right to elect board members belong to the shareholders? Which limitations exist?</i>	Yes.
	<i>Do shareholders at the AGM vote on individual board candidates, or can they vote on a candidate slate only?</i>	Candidate lists that are given proportional board representation.
	<i>Will votes be counted, and must each candidate reach a specific vote threshold to be considered elected? What is the approval threshold?</i>	Counted
	<i>How long are the terms for which board members are elected? Will all members be elected at the same time? If not, what is the rotation pattern?</i>	Usually 3 years, this is the legal maximum.
<b>Nomination process. (The official process to recommend to the AGM the board members to be elected or re-elected)</b>	<i>Do shareholders have formal rights to be involved in the process of nominating board candidates? How?</i>	Voto di Lista. Right to put up own candidate list if holding is over a percentage between 0.5% and 4.5% of the share capital, depending on capitalisation. Minorities guaranteed representation.
	<i>Do some shareholders typically get informally involved in the process of nominating board candidates? How?</i>	No official nomination (recommended board composition) is undertaken under the Voto di Lista system.
	<i>Which rights do shareholders have to propose alternative board candidates for the AGM to vote on?</i>	Right to propose alternative candidate list. Can also call general meeting (5% holding generally required).
<b>Board structures</b>	<i>Will top management be members of the board? If so who?</i>	Top managers, such as CEO, CFO and legal director, usually sit on the board.
	<i>Will employee representatives be members of the board? If so how many?</i>	No

## 2.4 Japan

Topic	Question	Japan
<b>The election of board candidates</b>	<i>Does the right to elect board members belong to the shareholders? Which limitations exist?</i>	Yes
	<i>Do shareholders at the AGM vote on individual board candidates, or can they vote on a candidate slate only?</i>	Individual
	<i>Will votes be counted, and must each candidate reach a specific vote threshold to be considered elected? What is the approval threshold?</i>	Count, simple majority.
	<i>How long are the terms for which board members are elected? Will all members be elected at the same time? If not, what is the rotation pattern?</i>	2 years (1 year in case of a company with committees) unless otherwise shortened by the articles of incorporation or shareholder resolution. Board members usually have concurrent terms.
<b>Nomination process. (The official process to recommend to the AGM the board members to be elected or re-elected)</b>	<i>Do shareholders have formal rights to be involved in the process of nominating board candidates? How?</i>	No
	<i>Do some shareholders typically get informally involved in the process of nominating board candidates? How?</i>	Informal suggestion is more common than formal proposals. A shareholder wanting to suggest candidates often makes informal suggestion first, saying he may resort to formal rights if not accepted.
	<i>Which rights do shareholders have to propose alternative board candidates for the AGM to vote on?</i>	Right to call general meeting (3% held for 6 months required). A holder with 300 voting rights or 1% for 6 months (can be relaxed by the articles) has the right to submit proposals to the shareholder meeting. Shareholders can use this right to propose board candidates.
<b>Board structures</b>	<i>Will top management be members of the board? If so who?</i>	Yes, board is dominated by management and close associates.
	<i>Will employee representatives be members of the board? If so how many?</i>	No

## 2.5 The Netherlands

Topic	Question	Netherlands
<b>The election of board candidates</b>	<i>Does the right to elect board members belong to the shareholders? Which limitations exist?</i>	Yes
	<i>Do shareholders at the AGM vote on individual board candidates, or can they vote on a candidate slate only?</i>	Individual
	<i>Will votes be counted, and must each candidate reach a specific vote threshold to be considered elected? What is the approval threshold?</i>	Count, simple majority unless articles provide otherwise.
	<i>How long are the terms for which board members are elected? Will all members be elected at the same time? If not, what is the rotation pattern?</i>	Maximum 4 years. Rotation to avoid simultaneous retirement.
<b>Nomination process. (The official process to recommend to the AGM the board members to be elected or re-elected)</b>	<i>Do shareholders have formal rights to be involved in the process of nominating board candidates? How?</i>	No
	<i>Do some shareholders typically get informally involved in the process of nominating board candidates? How?</i>	Would sometimes take place as part of more general shareholder-board dialogue.
	<i>Which rights do shareholders have to propose alternative board candidates for the AGM to vote on?</i>	Rights to call EGM (10% holding and court authorisation required) and right to place item on the agenda (1% holding/EUR 50 mln required; a bill expected to come into force the 2H 2012 raises requirement from 1% to 3% and abolishes the alternative criterion of EUR 50 mln).
<b>Board structures</b>	<i>Will top management be members of the board? If so who?</i>	Most large companies have a supervisory board, in which management is not represented, as well as a management board. A few have a unified board with both non-executive and executive members. In this case the CEO is always a member of the board. Other top management may or may not be members of the board. In most cases the CFO is also a member of the board.
	<i>Will employee representatives be members of the board? If so how many?</i>	If the Dutch large company regime applies the works council has enhanced right to recommend up to one third of supervisory board members.

## 2.6 Spain

Topic	Question	Spain
<b>The election of board candidates</b>	<i>Does the right to elect board members belong to the shareholders? Which limitations exist?</i>	Yes. However, large (groups of) shareholders have right to designate board members. Exceptionally, the board of directors may elect a director, in conjunction with the shareholders, to cover a vacancy.
	<i>Do shareholders at the AGM vote on individual board candidates, or can they vote on a candidate slate only?</i>	Individual
	<i>Will votes be counted, and must each candidate reach a specific vote threshold to be considered elected? What is the approval threshold?</i>	Count, simple majority.
	<i>How long are the terms for which board members are elected? Will all members be elected at the same time? If not, what is the rotation pattern?</i>	4 years usual and considered good practice. 6 years is legal maximum. Classified.
<b>Nomination process. (The official process to recommend to the AGM the board members to be elected or re-elected)</b>	<i>Do shareholders have formal rights to be involved in the process of nominating board candidates? How?</i>	Yes – right of proportional representation whereby shareholders may nominate a number of directors commensurate to holdings.
	<i>Do some shareholders typically get informally involved in the process of nominating board candidates? How?</i>	Level of communication differs between companies; investors generally not very active.
	<i>Which rights do shareholders have to propose alternative board candidates for the AGM to vote on?</i>	Rights to call general meeting (5% holding required) and right to place supplementary item on the agenda (5% holding required).
<b>Board structures</b>	<i>Will top management be members of the board? If so who?</i>	There are no statutory limitations; managers may be elected to be directors. The CEO must be a member of the board.
	<i>Will employee representatives be members of the board? If so how many?</i>	Not customary.

## 2.7 Sweden

Topic	Question	Sweden
<b>The election of board candidates</b>	<i>Does the right to elect board members belong to the shareholders? Which limitations exist?</i>	Yes
	<i>Do shareholders at the AGM vote on individual board candidates, or can they vote on a candidate slate only?</i>	In practice elections are bundled in one voting item at AGM. Strictly, the legal position is that voting is on an individual director basis.
	<i>Will votes be counted, and must each candidate reach a specific vote threshold to be considered elected? What is the approval threshold?</i>	No count if not contested.
	<i>How long are the terms for which board members are elected? Will all members be elected at the same time? If not, what is the rotation pattern?</i>	One year
<b>Nomination process. (The official process to recommend to the AGM the board members to be elected or re-elected)</b>	<i>Do shareholders have formal rights to be involved in the process of nominating board candidates? How?</i>	In practice the largest shareholders are offered a nomination committee seat. May or may not be contained in the articles.
	<i>Do some shareholders typically get informally involved in the process of nominating board candidates? How?</i>	Company website states procedure for suggesting nominations to nomination committee.
	<i>Which rights do shareholders have to propose alternative board candidates for the AGM to vote on?</i>	Right to call general meeting (10% holding required) and propose items for the agenda (no requisite holding) - in any case director elections are a mandatory AGM item.
<b>Board structures</b>	<i>Will top management be members of the board? If so who?</i>	CEO usually on the board. No more than one member of the board may be a member of the executive management of the company or a subsidiary.
	<i>Will employee representatives be members of the board? If so how many?</i>	Yes – up to three depending on size of company.

Given the particular nomination process operating in Sweden, there is an appendix to this discussion note that looks at this market in more depth.

## 2.8 Switzerland

Topic	Question	Switzerland
<b>The election of board candidates</b>	<i>Does the right to elect board members belong to the shareholders? Which limitations exist?</i>	Yes
	<i>Do shareholders at the AGM vote on individual board candidates, or can they vote on a candidate slate only?</i>	Individual
	<i>Will votes be counted, and must each candidate reach a specific vote threshold to be considered elected? What is the approval threshold?</i>	Count, simple majority unless higher majority expressed in the articles.
	<i>How long are the terms for which board members are elected? Will all members be elected at the same time? If not, what is the rotation pattern?</i>	Most large companies specify 1 to 3 years. 6 years statutory limit. Usually not all members are elected at the same time, but, e.g., every year 1/3. However, rotation is not a legal requirement.
<b>Nomination process. (The official process to recommend to the AGM the board members to be elected or re-elected)</b>	<i>Do shareholders have formal rights to be involved in the process of nominating board candidates? How?</i>	No
	<i>Do some shareholders typically get informally involved in the process of nominating board candidates? How?</i>	Institutional investors maintain regular contact with company representatives, through which informal suggestions are made.
	<i>Which rights do shareholders have to propose alternative board candidates for the AGM to vote on?</i>	Rights to call general meeting (10% holding required) and right to place item on the agenda (CHF 1mln required), right to make a motion (no minimum holding requirement if election of board members is on the agenda of the AGM).
<b>Board structures</b>	<i>Will top management be members of the board? If so who?</i>	Management representation is possible. The CEO being the chairman of the board is, however, not considered good corporate governance.
	<i>Will employee representatives be members of the board? If so how many?</i>	No

## 2.9 United Kingdom

Topic	Question	UK
<b>The election of board candidates</b>	<i>Does the right to elect board members belong to the shareholders? Which limitations exist?</i>	Yes. However, the board itself may appoint additional members between shareholder meetings.
	<i>Do shareholders at the AGM vote on individual board candidates, or can they vote on a candidate slate only?</i>	Individual
	<i>Will votes be counted, and must each candidate reach a specific vote threshold to be considered elected? What is the approval threshold?</i>	Count, simple majority.
	<i>How long are the terms for which board members are elected? Will all members be elected at the same time? If not, what is the rotation pattern?</i>	1-3 years. Annual terms codified, implementation gradual.
<b>Nomination process. (The official process to recommend to the AGM the board members to be elected or re-elected)</b>	<i>Do shareholders have formal rights to be involved in the process of nominating board candidates? How?</i>	No
	<i>Do some shareholders typically get informally involved in the process of nominating board candidates? How?</i>	As part of wider engagement and communication between shareholders and board.
	<i>Which rights do shareholders have to propose alternative board candidates for the AGM to vote on?</i>	Indirect – through right of shareholders holding 5% of voting rights or a group of 100 shareholders to requisition a general meeting or propose agenda items at a meeting.
<b>Board structures</b>	<i>Will top management be members of the board? If so who?</i>	The CEO and usually 1-2 additional executives are elected to the board as executive directors.
	<i>Will employee representatives be members of the board? If so how many?</i>	No

## 2.10 The United States

Topic	Question	U.S.
<b>The election of board candidates</b>	<i>Does the right to elect board members belong to the shareholders? Which limitations exist?</i>	Yes. However, the board itself as a standard practice appoints additional members between shareholder meetings.
	<i>Do shareholders at the AGM vote on individual board candidates, or can they vote on a candidate slate only?</i>	Individual
	<i>Will votes be counted, and must each candidate reach a specific vote threshold to be considered elected? What is the approval threshold?</i>	Increasing use of "majority voting" – a director that does not receive a qualified majority of 50% tenders resignation. Otherwise simple majority.
	<i>How long are the terms for which board members are elected? Will all members be elected at the same time? If not, what is the rotation pattern?</i>	Annual terms dominate; 3-year terms & classified boards are on the decline.
<b>Nomination process. (The official process to recommend to the AGM the board members to be elected or re-elected)</b>	<i>Do shareholders have formal rights to be involved in the process of nominating board candidates? How?</i>	No
	<i>Do some shareholders typically get informally involved in the process of nominating board candidates? How?</i>	Little, dependent on "activism" of shareholders.
	<i>Which rights do shareholders have to propose alternative board candidates for the AGM to vote on?</i>	Expensive proxy contests possible but rarely conducted to replace existing directors outside of the corporate takeover context. A right for a proponent shareholder to have alternative candidates included on the official AGM agenda ("proxy access") is under debate.
<b>Board structures</b>	<i>Will top management be members of the board? If so who?</i>	CEO is often chairman of the board for large-caps (2/3 of NBIM top 100 US holdings), but roles separated in slight majority of all NBIM US holdings. Market is trending slowly towards separation.
	<i>Will employee representatives be members of the board? If so how many?</i>	No

### 3 Appendix: Glossary of terms as used in this note

<i>Board</i>	The body that is elected by shareholders and has responsibility for overseeing management. The supervisory board in markets where a dual board structure may exist (Germany, Netherlands, and France). Not management boards.
<i>Appointment</i>	The entire process of populating the board – from the setting of criteria for the search for directors, to official nomination, via potential competing director proposals, to the final approval through elections at the shareholder meeting.
<i>Nomination</i>	The process of the board or an instituted nomination body to officially recommend to shareholders the individuals to be elected or re-elected at the shareholder meeting.
<i>Proposal</i>	The utilisation by shareholders of formal rights to propose candidates that may compete against the candidates nominated by the board or nomination body.
<i>Election</i>	The vote at the shareholder meeting to approve the nominees or choose among competing candidates.
<i>Designate</i>	The discretionary appointment of one or more board members by shareholders that have such particular rights according to bylaws. Occurs in Germany, the Netherlands and the U.S.
<i>Simple majority</i>	The directors with the most votes get elected if there is a contest. In uncontested elections there is no numerical requirement. “Plurality” in the U.S.
<i>Qualified majority</i>	A numerical requirement for the board member to be regarded as elected, e.g. 50% of votes. In the U.S. the board may have discretion to accept failed directors.
<i>Classified board</i>	A classified board means the board terms by intention end in different years, to avoid the possibility of complete board change at any one same time.
<i>Management</i>	The hired CEO and executive team, sometimes referred to as management board or executive board, something that is not the focus of this overview.

## 4 Appendix: Review of Swedish nomination committees

We have carried out a review of the nomination committees of 10 of the NBIM Swedish holdings. Details on the structure and composition of each committee were collected, and the main findings are presented in this appendix.

To the committees, institutional shareholders usually dispatch investment professionals who do not take on board roles. These representatives may be managers, portfolio managers or corporate governance officials. No investors are represented by advisors or loosely associated personnel.

Survey findings are consistent with the overview of board appointment practices in 10 key markets summarised in this discussion note.

### 4.1 Main findings of the review

#### 4.1.1 Key context for nomination committee system:

- The Swedish nomination committee practice reflects the controlled nature of most large Swedish companies. All the reviewed companies have one or more dominant shareholders, and in all cases such shareholders play key roles on the nomination committee. They often have parallel board representation.
- At the same time are board elections in Sweden conducted in a way that leaves little possibility for shareholders to express dissatisfaction via the vote. The election takes place as one non-counted bundled voting item at the AGM. Hence, it is not possible for shareholders to differentiate votes between board candidates the way they can in most other markets.

#### 4.1.2 Structure and appointment of committees:

- The nomination committees are not regulated in law or bylaws, but by separate annual decisions of the shareholder meeting. General guidance is given in the Swedish corporate governance code.
- The committees usually have representatives of the four largest shareholders by votes that are willing to take up a seat, plus the board chairman. If the rank among shareholders changes "significantly" during the term there is usually a procedure to adopt one or more new committee representatives. The committee (i.e. the dominant shareholders) usually has some discretion in application of this rule.
- The annual meeting motion either names the shareholder representatives for the committee or describes a procedure by which a vote ranking is produced as of a stated date.
- If the committee representative ends his or her employment or association with the shareholder the representative will be substituted. The committee must publish the names of its members and state which shareholder(s) they represent. This underlines the idea that each committee member is a representative of a specific shareholder or group of shareholders. (This differentiates from the Norwegian nomination committee model, where committee members do not necessarily represent specific shareholders.)
- At the same time, the Swedish corporate governance code states the principle that the committee must work for the interests of all shareholders. "*Valberedningens ledamöter ska, oavsett hur de utsetts, tillvarata samtliga aktieägares intresse...*" The often-seen practice of populating boards with a high number of members linked to dominant owners can be criticised as potentially contradicting this principle.

#### **4.1.3 Work modus and composition:**

- The board is expected to conduct an annual self-appraisal and report relevant finding to the nomination committee, according to the code.
- We understand that shareholders may involve in non-formalised discussions on board appointments outside the institutionalised framework. The committees publish a procedure by which all shareholders can give input to the committee.
- No foreign institutional shareholders have currently taken up seats in the 10 companies reviewed, despite likely eligibility for institutions such as CPPIB, Capital World and NBIM. Foreign representation has been seen, but seldom.
- Most eligible Swedish shareholders do take up a seat, the main exception being banks not taking up seats in the nomination committees of competing banks.
- There is some variability among the committee representatives. The dominant shareholders tend to be represented by senior management, who frequently have board roles. The institutional shareholders usually dispatch investment professionals who do not take on board roles. These investment professionals may be managers, portfolio managers or corporate governance officials or others. No investors are represented by advisors or loosely associated personnel.
- Almost all committee members are Swedish nationals or Swedish-speaking.

#### **4.1.4 Eligibility:**

- Shareholders may have to re-register their shares in order to be eligible of a committee seat.
- NBIM appears likely to be eligible to committee representation in several of the companies reviewed. Eligibility can be roughly estimated based on the positions of shareholders as reported by service providers such as FactSet/LionShare, and past committee participation by the relevant investors.

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