



FINANSINSPEKTIONEN

Enforcement of financial information

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Summary

It is important that the periodic financial information of listed companies is accurate, so as to provide stakeholders with a realistic presentation of the company's operations. Accurate financial information enables stakeholders to make well-founded investment decisions and contributes to strengthening confidence in the securities market.

Now that securities markets are no longer national, but global, it is also important that companies report their financial information in a similar manner. Foreign investors want to understand Swedish financial information, just as Swedish investors wish to understand foreign financial information. The EU has ascertained that in order for this to occur, an organisation is required to conduct enforcement of financial information. In Sweden, this task has been given to Finansinspektionen (FI) alongside the two Swedish stock exchanges.

In order to establish European collaboration and consistent enforcement in the EU, the European Securities and Markets Authority (ESMA) has established a coordination group. FI and the stock exchanges participate in that work. ESMA also has a mandate to issue guidelines and reports that clarify the enforcement procedures, and what ESMA considers to be generally accepted accounting principles. ESMA does not interpret accounting standards, but rather only make judgements on existing relevant financial reporting framework.

FI's role is to ensure that enforcement in Sweden is of high, consistent quality, and to coordinate enforcement in Sweden and with Europe. ESMA and FI note that the quality of financial statements in Europe and Sweden is constantly improving, but that there is still room for further improvement.

Rules regarding the enforcement of financial information are currently under review. Enforcement of financial information in Sweden will hence be organised and conducted differently in future.

One cohesive organisation for the enforcement of financial information would be more efficient and eliminate issues relating to equal and consistent enforcement in Sweden. FI sees therefore one alternative for the future enforcement organisation as being FI having sole responsibility for enforcement.

Introduction

In Sweden there are just over 300 listed companies that periodically issue interim and annual financial statements. These financial statements are used by an array of stakeholders wishing to obtain knowledge about the listed companies. It is therefore important that all listed companies consistently apply prevailing accounting rules. The purpose of enforcement of financial information is to ensure this.

Since 2007, supervision of the periodic financial information of listed companies in Sweden has been a legal requirement. The provisions can be found in the Securities Market Act (2007:528) – the SMA. In this instance, supervision involves verifying that annual, half-yearly and quarterly financial reports are prepared in accordance with prevailing accounting rules. The term “enforcement of financial information” is commonly used for this. The law originates from the EU’s strategy for an efficient and competitive capital market, and is described in more detail in the IAS Regulation and Transparency Directive.

Besides the Regulation and the Directive, ESMA’s predecessor, the Committee of European Securities Regulators (CESR) issued two standards for the enforcement of financial information in order to develop a joint enforcement strategy in the EU. The standards express how national enforcement of financial information should be organised, and how enforcement of financial information should be coordinated in the EU. In July 2014, ESMA published guidelines on enforcement of financial information which are to replace these standards. The guidelines are expected to enter into force at the end of 2014.

The overarching purpose of enforcement of financial information is to protect investors and strengthen confidence in the securities market. Enforcement of financial information shall also contribute to consistent application of International Financial Reporting Standards (IFRS) in Europe.

In Sweden, the Government has designate FI as the central competent administrative authority responsible for enforcement of financial information. The Government has delegated certain parts of the responsibility to the stock exchanges (currently NASDAQ OMX Stockholm AB (NOMX) and Nordic Growth Market NGM AB (NGM)). The stock exchanges are responsible for enforcement of financial information of the companies on their respective regulated markets. However, FI bears ultimate responsibility for the enforcement of financial information.

At the end of 2013, the Government appointed a commission of inquiry to analyse and submit bills regarding how enforcement of financial information ought to be organised in future. Findings will be presented by 15 February 2015 at the latest. The review of how enforcement of financial information is organised in Sweden resulted from a series of events. The stock exchanges requested that they be relieved of their responsibility, and FI has expressed that current systems do not have the advantages hoped for when the organisation was rolled out. Also, according to ESMA’s new guidelines, enforcement shall be independent of the regulated markets, which cannot be considered to be the case in Sweden because the stock exchanges conduct certain parts of enforcement of financial information.

The Swedish organisation for enforcement of financial information is unique in the EU. The purpose of this report is to describe how the enforcement organisation is currently structured both nationally and internationally, and to describe FI's work with enforcement of financial information in Sweden. In addition, FI wishes to call attention to the current review of the regulations affecting enforcement of financial information.

European collaboration

Enforcement of financial information is a European matter that is coordinated by the European Securities and Markets Authority (ESMA). In each EU country, there must also be an organisation responsible for national enforcement of financial information, in order to ensure consistent application of enforcement of financial information in Europe. Sweden and FI participate actively in the European collaboration.

The rules for enforcement of financial information differ to a certain extent from the other supervision provisions of the Transparency Directive. For example, a competent authority other than that appointed as the central competent authority may according to the Directive be given responsibility for enforcement of financial information. However, only the central competent authority may fully or partially delegate enforcement of financial information.

European countries have organised enforcement of financial information in different ways. The most common is to delegate responsibility to an authority for the entire enforcement, but there are exceptions. In Denmark, there is one authority that is responsible for financial institutions and another for non-financial corporations. In Portugal, responsibility has been split between three authorities focusing on different company types – non-financial corporations, insurance undertakings and credit market institutions.

Sweden, like Austria and Germany, has exercised the right to delegate certain parts of enforcement to private bodies. However, in such cases there is a central competent authority that bears ultimate responsibility and supervises how the appointed body manages its tasks. In the UK, a private body has been given the status of competent authority with full responsibility for enforcement. Sweden's solution is unique because delegation has taken place through Swedish law, and to the stock exchanges.

Enforcement of financial information in each country is coordinated by ESMA. ESMA's highest decision-making body is its board, which consists of members from all EU countries. Under the board are twelve permanent committees, including the Corporate Reporting Standing Committee (CRSC), in which enforcement of financial information is conducted. Enforcement of financial information is largely conducted by the permanent work groups under CRSC: European Enforcers Coordination Sessions (EECS) and IFRS Project Group (IFRS PG). In addition, work groups are appointed as needed.

ESMA's regulations contain several tools for influencing the market and the national enforcers. The strongest is the issuance of guidelines on areas in need of clarification. Each country must either confirm their intention to comply with the guidelines or explain their intended non-compliance. ESMA can also issue opinions and Q&A. Such documents have a vaguer legal status than the guidelines.

CORPORATE REPORTING STANDING COMMITTEE (CRSC)

CRSC includes representatives from each country's supervisory authority for the securities market. FI participates as Sweden's representative.

CRSC works with financial and periodic reporting, auditing and storage of regulated information.

CRSC holds around four meetings annually, two of which are preceded by a meeting with a consultation group that includes representatives of the companies, analysts, auditors and academics. At the CRSC meetings, the work conducted in the work groups is addressed and decisions are made about when a matter is ready to be presented to the board. CRSC uses the consultation group as a sounding board in order to obtain the opinions of stakeholders on the matters within its field.

CRSC is currently working on guidelines regarding alternative performance measures (APM), technical standards for a single electronic reporting format for annual and consolidated financial statements in the EU, and technical standards for a European electronic access point for regulated information in accordance with the Transparency Directive. The two latter tasks CRSC received as a result of the amendments to the Transparency Directive.

In order to achieve consistent application of IFRS, the rules must be consistently interpreted. ESMA contributes to this through the subgroup IFRS PG, which submits consultation responses to all material projects which the International Accounting Standards Board (IASB) works with and which affect listed companies, such as when new or revised accounting standards are set forth.

In the last few years CRSC has published several documents on accounting rules regarding e.g. forbearance, materiality, goodwill and business combinations.¹ Such documents not only describe certain conditions or rules, but also express ESMA's judgment of what constitutes accepted accounting practice for the listed companies.

EUROPEAN ENFORCERS COORDINATION SESSIONS (EECS)

EECS includes the participation of representatives of 39 supervisory authorities and other supervisory bodies from the 28 EU Member States and two EEA countries (Norway and Iceland), which have voluntarily opted to follow the Transparency Directive and the IAS Directive. For Sweden FI, NOMX and NGM participate. EECS was formed to create consistent enforcement of financial information that is to lead to listed companies in the EU applying IFRS consistently and accurately.

EECS holds eight to nine meetings annually. Ahead of each meeting, FI holds preliminary meetings with the stock exchanges. As a rule, FI and NOMX attend all EECS meetings, while NGM attends around two meetings each year. At the meetings, discussion topics include national decisions taken in the framework of enforcement of financial information in EU Member States, in order to ensure that the matter would have been similarly assessed by other supervisory authorities. Decisions can be discussed either before or after a decision is made.

All decisions discussed at EECS are saved in an internal database. Sweden has registered 22 decisions since 2007, when enforcement of financial information in Sweden commenced. ESMA publishes some of the decisions so that affected market participants can obtain information about the position of the European supervisory authorities on important mat-

¹ The documents are available on FI's website;
<http://www.fi.se/Regler/Borsbolag/Redovisningstillsyn/>.

ters. To date, ESMA has published 15 extracts from the database. They are available on FI's website.se.²

In 2013 there were over 6,700 companies listed on a regulated market in the EU and which prepared financial statements according to IFRS. European supervisory authorities and other supervisory bodies together reviewed a total of around 1,900 annual and interim financial statements. Around 500 of these reviews ended with one of the measures we describe on page 11.

Since 2012, ESMA together with EECS has annually prepared a number of priorities on which the supervisory authorities are to focus when reviewing the financial reports of listed companies. Listed companies and their auditors should take account of these priorities in their respective preparation and review of financial reports. The documents are published by ESMA and are also on FI's website, fi.se.³

Another task of EECS is to assist IFRS IC⁴ in responding to queries regarding how companies in the EU apply IFRS in practice. EECS also flags to IFRC IC accounting matters for which different interpretations of IFRS have been noted among the companies in connection with enforcement of financial information.

Enforcement of financial information conducted in the EU is summarised each year in an activity report.⁵ According to ESMA, the quality of financial reports in the EU has improved, but there is still room for improvements. FI shares this view with respect to the Swedish market.

2 <http://www.fi.se/Regler/Borsbolag/Redovisningstillsyn/EECSs-beslutsdatabas/>.

3 <http://www.fi.se/Regler/Borsbolag/Redovisningstillsyn/>

4 IFRS Interpretation committee is the standard-setting body for the international reporting standards.

5 <http://www.fi.se/Regler/Borsbolag/Redovisningstillsyn/>.

Finansinspektionen's enforcement

FI is the central competent authority for enforcement of financial information in Sweden. FI hence bears ultimate responsibility for enforcement. FI also verifies that the stock exchanges conduct enforcement delegated to them.

FINANSINSPEKTIONEN' ASSIGNMENT

FI's assignment in accordance with the Securities Market Act⁶ – the SMA, is to:

- verify that the stock exchanges conduct enforcement of financial information in accordance with the regulations
- Supervise the companies covered by enforcement of financial information but which are not present on the market of the Swedish stock exchanges
- bear responsibility for international cooperation

FI's organisation for conducting enforcement of financial information is within the Markets function.

SUPERVISION OF STOCK EXCHANGES

FI also supervises the stock exchanges to ensure that they enforce financial information in accordance with the SMA and FI's regulations.⁷

FI's regulations are mainly based on the two CESR standards. Accordingly, the regulations are primarily principle-based, meaning that parties that are to follow the regulations must make considerations themselves because the regulations do not specify exactly what to do, but rather only the principles according to which enforcement is to be conducted. FI's regulations are however not as comprehensive as the standards.

The stock exchanges are responsible for

- enforce that companies – which have Sweden as their home Member State and which are listed on the regulated market run by the stock exchange – prepare their financial statements in accordance with prevailing accounting rules
- reporting infringements to FI if a company, despite being so requested by the stock exchange, has not published corrected or supplementary information
- regularly report to FI on the enforcement
- assisting FI in European enforcement work

The law requires the stock exchanges' enforcement of financial information to be independent of their business operations, and the stock exchanges to have sufficient resources and powers to fulfil these obligations.

FI continually performs follow-up to ensure that the stock exchanges satisfactorily fulfil their tasks. This is done by means of FI reading the stock exchanges' yearly reports and sampling ahead of the reviews of the

⁶ Securities Market Act (2007:528) – the SMA.

⁷ Chapter 16 of the SMA and Chapter 5, sections 12–19 of FFFS 2007:17.

coming year, and decisions that ended in some form of actions. FI holds regular meetings with the stock exchanges, around three times a year with NOMX and twice a year with NGM. On top of that, FI meets the stock exchanges on at least eight occasions per year to discuss accounting matters ahead of the international meetings.

Each year, FI assesses whether the stock exchanges should be investigated with respect to enforcement of financial information. In the past five years, FI has carried out four investigations.

SUPERVISION OF THE COMPANIES

The companies covered by FI's supervision are those with their registered office in Sweden which have transferable securities admitted to trading on a regulated market in the EU but outside of Sweden. Because the companies are spread out across the entire EU, FI must repeatedly perform reviews to identify such companies. In 2014, ten companies are under FI's supervision, for more information see Appendix 1.

FI's procedure regarding supervision of the companies is based on CESR standard no. 1 which describes how enforcement of financial information should be conducted.

Ahead of the annual review, FI takes a sample of the companies. The selection model shall be a combination of a rotation or sampling approach and a risk-based approach. Each company shall be reviewed at least once during a five-year period, according to FI's regulations.⁸

Investigation

An investigation is commenced by FI sending a letter to the company in question stating that an investigation will be performed and which financial report will be reviewed.

FI then reviews the selected report and summarises its observations. If it emerges that the company has committed an infringement of a regulation or if information is missing to establish an opinion, FI sends a 'verification document' to the company. The company then has the opportunity of accommodating FI's observations and providing further information.

When the company has responded and there is sufficient information to make a decision on the matter, the finalisation process commences. If there are still question marks, FI can pose further questions in order to take a final position on the matter.

Decisions

Enforcement of financial information shall result in FI calling the attention of companies to infringements of accounting regulations. Whether or not an error counts as an infringement depends on whether it is considered material, according to the definition in the accounting regulations. An infringement must always end in FI taking a measure (more information is provided below). If no infringement has been committed, FI ends the investigation by means of notifying the company thereof in a letter.

As a preventive measure, FI can also inform companies of non-material errors. The companies are then recommended to address the errors in future when so deemed relevant. However, this does not lead to any action.

⁸ Chapter 5, section 14 of FFFS 2007:17.

Measures

If a company has committed an infringement, FI may, according to the SMA⁹, take two types of measures: action or sanction.

The two measures can be combined if the desired effect is not realised by just one of them. In an action, the company must issue corrected financial information to stakeholders. In its action decisions, FI can also issue a fine.

According to CESR standard no. 1, enforcers of financial information can decide that a company shall take one of the following actions:

- a) reissuance of the financial statements
- b) corrective note
- c) correction in future financial statements.

While the first two actions are reactive, the final point is about preventing future inaccuracies. In Sweden, there are certain legal issues related to using point a) but the other two are used in enforcement of financial information.

A sanction is in place to further strengthen the importance of the company following the decision taken. When FI issues a sanction to a company, the authority may also impose an administrative fine of a minimum of SEK 50,000 and a maximum of SEK 10 million.

It is important that the measures are effective and proportionate to the infringement.

Until 2014, FI had another possibility for a measure: expressing criticism in a final report. This measure was in place because FI found that the intervention possibilities afforded by the SMA should only be used for infringements in which FI also wished to decide on a sanction. A review has now been performed and FI finds it important that all decisions regarding infringements follow statutory intervention possibilities, so that FI will be better able to exert pressure, but also so that companies will have a formal right to appeal.

⁹ Chapter 25, sections 18-23 of the Securities Market Act.

Enforcement of financial information in 2013 in figures

Below is a summary of the enforcement of financial information conducted by FI and the Swedish stock exchanges in 2013. In terms of the detail of the stock exchanges' enforcement, please see their respective reports.

COMPANIES UNDER SUPERVISION

According to Chapter 16 of the SMA, companies that have Sweden as their home Member State¹⁰ and whose transferable securities are admitted to trading on a regulated market are covered by enforcement of financial information.

The definition of transferable securities is broad so that more instruments can be included. In order to attain comprehensive enforcement, it is therefore important that the list of companies under supervision is kept constantly up to date in the enforcement process. In order to clarify the various securities, the companies are broken down by equities, bonds and other.

When the companies publish their periodic financial information, they shall, according to the SMA¹¹, also submit it to FI. This information is stored and published on FI.se.

The companies that came under supervision according to the respective enforcers were as follows ahead of enforcement of financial information in 2013:

Enforcer	Equities	Bonds	Other	Total
Finansinspektionen	4	6	0	10
Nasdaq OMX	252	57	0	309
NGM	13	0	2	15
Total	269	63	2	334

SELECTION MODEL

Each enforcer itself selects which companies are to be reviewed each year, but FI has overarching responsibility for the stock exchanges following the regulations. Each organisation performs initial selection and then, over the course of the year, companies can be added or removed depending on changed circumstances. The table below shows the number of companies for which reviews were completed in 2013.

In a full review, the enforcer goes through a company's entire financial report. In a partial review, certain accounting areas are selected for review in a report.

¹⁰ Definition of home Member State can be found in Chapter 1, section 7-9 of the Securities Market Act.

¹¹ Chapter 17, section 3 of the Securities Market Act.

Enforcer	Full	Partial
Finansinspektionen	1 ¹²	
Nasdaq OMX	37	57 ¹³
NGM	3	
Total	41	57

ACTIONS

The measures completed in 2013 have, in the table below, been classified according to the actions which ESMA describes in CESR standard no. 1. This is also the basis for how the Swedish organisations have chosen to divide up the actions available. In addition to these actions, a sanction decision can be made in each individual case.

Actions	Finansinspektionen	Nasdaq OMX	NGM	Total
Restatement	0	0	0	0
Reissuance/corrective note	0	0	0	0
Correction in future financial statements	1	20	1	22
No measure	0	74	2	76

In 2014, enforcement has been similarly arranged, but has not been finalised at the time of writing.

¹² Two reviews, which were completed in 2014, are missing from the figures.

¹³ The figure includes 10 reviews that were commenced in 2012 and not completed until 2013, and 28 follow-ups of the 2012 review.

Future enforcement of financial information

In the near future, there will be several regulatory amendments, both at EU and Swedish level, which will affect how enforcement of financial information will be organised and conducted in Sweden.

On 26 November 2013, the EU Commission decided on amendments to the Transparency Directive. In order to go through these amendments, the Government appointed a Commission of inquiry which, on 30 September 2014, submitted its report. The main element affecting the enforcement of financial information in the amended Transparency Directive is that the requirement regarding interim reports has been removed. If the wording of the Transparency Directive is also incorporated into Swedish law, enforcement of financial information will only affect annual and half-yearly financial reports.

Furthermore, the sanctions linked to enforcement of financial information are amended. The new rules involve higher sanction amounts, that natural persons can also be sanctioned and that all sanctions shall be publicly disclosed. The Amending Directive will be implemented by 26 November 2015 at the latest.

ESMA's new guidelines on enforcement of financial information¹⁴ published on 10 July 2014 shall start to apply no later than two months following their translation, which is expected to be done in the autumn of 2014. These guidelines are an update of previous CESR standards and largely have the same content. In several areas, clarifications have been made to attain consistent enforcement in Europe and consistent application of IFRS by listed companies. The biggest difference to the previous standards is that the guidelines have higher status. Each country must confirm to ESMA its intention to comply with the guidelines or explain its intended non-compliance. There is less scope than currently for refraining from complying with a guideline.

The Government has also appointed a commission to analyse and submit bills regarding how enforcement of financial information in Sweden ought to be organised in future. The inquiry will, according to the plans, be completed by 15 February 2015 and a new structure for the enforcement of financial information will hopefully be presented then.

FI has argued that there are drawbacks in the current organisation of both FI and the stock exchanges acting as enforcers of the financial information of companies. The main drawbacks are:

- Multiple participants, which makes it difficult to obtain and retain competence for each of them.
- Difficulty in sharing information and achieving consistent enforcement.
- Two hierarchical levels create an additional supervisory need.
- Enforcement is not currently completely independent of the regulated markets, which it shall be according to ESMA's new guidelines.

Therefore, in FI's view, one cohesive organisation for the enforcement of

¹⁴ <http://www.esma.europa.eu/content/Final-Report-ESMA-Guidelines-enforcement-financial-information>.

financial information would eliminate issues relating to equal and consistent enforcement in Sweden, and be more efficient. FI sees one alternative for the future enforcement organisation as being FI having sole responsibility for enforcement.

Appendix 1

COMPANIES UNDER FI's supervision 2013

Companies	Comp. reg. no.	Note:
If Skadeförsäkring AB (publ)	516401-8102	Bond, Luxembourg
AB SCA Finans (publ)	556108-5688	Bond, Luxembourg
ContextVision AB (publ)	556377-8900	Equity, Norway
Volvo Treasury AB (publ)	556135-4449	Bond, France, Luxembourg
Provinsfastigheter I AB (publ)	556676-8742	Bond, Denmark
Provinsfastigheter II AB (publ)	556684-2968	Bond, Denmark
Dannemora Mineral AB (publ)	556678-3329	Equity, Norway
Reinhold Europe AB (publ) (previously Reinhold Polska AB (publ))	556706-3713	Equity, Poland
Nickel Mountain Group AB (publ) (previously IGE Resources AB (publ))	556227-8043	Equity, Norway
Northland Resources AB (publ)	556656-1675	Bond, Norway

Definitions

Amending Directive Directive 2013/50/EC of the European Parliament and of the Council amending the Transparency Directive.

CESR standard No 1 Standard No 1 on Financial Information: Enforcement of Standards on Financial Information in Europe, Cesr/03-073.

CESR standard No 2 Standard No 2 on Financial Information: Coordination of Enforcement Activities, Cesr/03-317c.

ESMA Guidelines on enforcement of financial information
Esma/2014/807.

IAS Regulation Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

Listed company A company whose securities are admitted to trading on a regulated market.

Transparency Directive Directive 2004/109/EG of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

ABBREVIATIONS

CESR Committee of European Securities Regulators.

ESMA European Securities and Markets Authority.

CRSC Corporate Reporting Standing Committee.

EECS European Enforcers Coordination Sessions.

IFRS PG IFRS Project Group.

IFRS International Financial Reporting Standards. International accounting standards prepared by a private-body organisation, IASB.

IASB International Accounting Standards Board.

IFRS IC International Financial Reporting Standards Interpretations Committee.

APM Alternative performance measures.



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