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CESR

CESR's Advise on possible Level 2 Implementing Measures for the Proposed Prospectus Directive

1. Introduction

Stockholmsbörsen is a Swedish authorised Securities Exchange, and notified to the Commission as a regulated market under the Investment Services Directive. Stockholmsbörsen is also the competent authority in Sweden for scrutinizing and approving listing particulars in accordance with the European Parliament and the Council Directive (2001/34/EC) on the admission of securities to official stock exchange listing and on information to be published on those securities. Securities that are admitted to listing and trading at Stockholmsbörsen include, but are not limited to, shares in listed companies as well other financial instruments issued by such companies, short and long term debt securities and warrants.

The approval of listing particulars is currently an integral part of the listing process when a new company applies for listing at Stockholmsbörsen. At a very early stage in that process, Stockholmsbörsen appoints an independent auditor as Listing Examiner who submits a report regarding the company in question as basis for the decision to be taken by Stockholmsbörsens Listing Committee, which is the body that has the power to approve or reject applications for listing. Since the Listing Examiner is appointed at the outset of the listing process, he or she can advise the issuer on issues related to the listing requirements and give views on e.g. the listing particulars and how the information therein is presented.

Stockholmsbörsen's experience is that the quality of listing particulars generally speaking is good, and that this partly is a result of the procedures that since long have been common practise in Sweden. Stockholmsbörsen also takes other actions in order to promote transparent and user friendly listing particulars. One example is the yearly contest regarding the listing particulars of the year, which is sponsored by, amongst others, Stockholmsbörsen, Finansinspektionen and the Swedish Securities Dealers Association (SSDA).

In brief, the model for listing particulars used in Sweden can be described as focusing on general and transparent descriptions of the company and information relating to its activities, instead of a US-style form based approach, where it is more important which information is included than how it is presented. Stockholmsbörsen strongly favour the current model, and fear that the approach proposed by CESR will foster a development more in line with the latter one.

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Stockholmsbörsen recognize that the new prospectus directive most certainly will not enable delegation of certain functions to e.g. an exchange, due to the sunset clause brought up by the ECOFIN in the very last minute. Consequently, the current role of Stockholmsbörsen will change, and swift towards a model where Finansinspektionen will be the Swedish watchdog in respect of prospectus handling. This model is the one that already is applied in a number of European jurisdictions, and there are no reasons to believe why it should not work in Sweden as well. However, the prospects for the new model becoming successful is highly dependent on the outcome of the path which the Commission, and CESR, will follow on the level 2 implementation measures. The consultation currently carried out by CESR is therefore a strong concern for Stockholmsbörsen as well as the Swedish market as such.

As an initial and comprehensive remark, Stockholmsbörsen concludes that the draft level 2 implementing measures are too specific and detailed. The risk with this type of regulation is that companies will focus on the actual wording and form of the requirements but not the purpose of the requirements and how the information is presented. Less detailed requirements focusing in general on the purpose of the prospectus would therefore be preferable. In addition, one can easily conclude that some of the proposed blocks are relevant in only a few, or even one single, jurisdictions (e.g. as regards shipping ventures). It could therefore be argued that blocks should not be used for situations which rarely are expected to occur, or which is expected to be of interest to only one or maybe two jurisdictions. Instead the model should facilitate that atypical situations be dealt with on a case-by-case basis or according to national practise, since there simply will not be any harmonisation aspects in those cases. The advantage of drafting building blocks aimed only for common situations would considerably simplify the legal framework, and potentially decrease the costs for the issuers.

In addition to those general introductory remarks, Stockholmsbörsen has following comments as to some of the details in the proposal.

2. Comments

A. Equity Securities

(i) Question 100: Disclosure requirements in the building block for start-up companies

Yes, it is a good idea to have specific demands for start-up companies. However, these demands should perhaps apply to all companies without documented profitability.

We believe that an important issue is the financial position of the company and specifically regarding companies without documented profitability. Therefore, we are of the opinion that companies without documented profitability should be required to evidence that they have the financial resources required for conducting the planned operations during at least the 12 months immediately ahead (i.e. a working capital requirement). It is particularly important that the prospectus contains clear-cut information about when the company expects a positive cashflow and how the company intends to finance its operations until such time.

IIA2 – does not feel very important.



IV. D. It is important that companies without financial history provides the investor with sufficient non-financial information of high quality. Information regarding when the company counts on reporting a positive cashflow and how the company will fund its operations until then must always be included.

V.A. This should not only apply to start ups but to all companies doing an initial public offering.

(ii) Question 101: Independent expert opinion

No, expert opinions are not something that should be included. The problem that in practice arises is who is to be considered as an expert in a specific field, who will certify them as experts and what criteria have to be met to fulfil the role of an independent expert.

It is also questionable if such opinions add any substantial information or value to the investor.

(iii) Question 105 and 106: Disclosure requirements for SME's

The majority of the around 300 companies listed at Stockholmsbörsen will probably fall under the classification SME. All of these companies give financial information for three years today and we cannot find any reason to limit that information to two years.

B. Debt Securities

(iv) Question 129: Disclosure requirements for debt securities

We do not find it appropriate to have the same requirements for debt securities as for equity securities. Since the debt security investor's main concern is the credit risk on the issuer, he will not need all the information provided for equity securities.

C. Derivative Securities

(v) Question 170 and 171: Definition of derivative securities

We believe that it is important to provide a definition of derivative securities. It is however important that the definition is sufficiently wide to include future types of derivatives. We therefore prefer the approach based on fundamental features.

(vi) Question 179 and 180: sub-categorisation of derivative securities

We agree with the sub-categorisation into guaranteed and non-guaranteed and that the two sub-categories should have different disclosure requirements. However we do not feel that it is necessary to create two different building blocs. Instead guaranteed securities should have the same disclosure requirements as debt securities and derivative securities, whereas non-guaranteed only have the derivative securities requirements.



(vii) Question 232: minimum guaranteed return

We believe that it will be difficult to find an exact percentage limit between guaranteed and non-guaranteed derivative securities. Therefore our suggestion is that all instruments with a guaranteed feature should in general be seen as a guaranteed derivative security but with possibilities for the competent authority to make exceptions from this rule after an overall assessment of the instrument.

D. The Registration Document

- 53 Proforma information— a threshold at 25 percent feels very high. The difference between a measure affecting the result with 10 percent and for example 22 percent is large. A suggestion is to say that if at least three of the factors mentioned under paragraph 50 are affected by more than 10 percent a proforma should be prepared.

Yours sincerely,

STOCKHOLMSBÖRSEN

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