

## **SHAREHOLDER ACTIVISM IN SWEDEN**

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## **THE HISTORY OF SHAREHOLDER ACTIVISM IN SWEDEN**

Shareholder activism has a relatively short history in Sweden. Traditionally, investors seeking to bring about change in a company on the Swedish market have mainly invested through private equity, outside the public markets. In addition, Swedish listed companies have mostly had only a few controlling major shareholders, and the minority shareholders have rarely made attempts to influence the company's governance or other actions.

However, over the past decades institutional investors such as pension funds and mutual funds have increased their share of the aggregate shareholding in Swedish companies. This not only makes the traditional shareholders, including investment vehicles controlled by family-spheres such as the Wallenberg-family, less influential, but it has also given rise to a vacuum when it comes to shareholder influence since the institutional investors typically do not like to take an active and more influential role - or accepting a seat on the board. We have therefore for some time seen investors engaging more in activism, presumably also inspired by US investors and bolstered by the globalisation of the financial markets in general. In addition, the shareholder-friendly regulatory landscape on the Swedish market is a an advantageous environment for activism.

The quintessence of this development is the Swedish-based investment firm Cevian Capital, today one of the largest and most active activist funds in Europe, managing approximately EUR 13 billion. Founded in 2002, with an active ownership investment strategy dating back to 1996, Cevian describes itself as *"an international investment firm acquiring significant ownership positions in publicly listed European companies, where long-term value can be enhanced through active ownership"*. In essence, Cevian's strategy is to advocate for splitting up and divesting non-core business areas to concentrate the organisation and achieving operational enhancements as well as enforcing capital discipline and improving financial structures. Although having Carl Icahn as one of its investors, Cevian never set out to engage in hostile tactics. On the contrary, they use a collaborative approach, trying to exert influence from the inside through board positions and nomination committees, aiming to create value not solely for themselves but for all shareholders.

Cevian has been and is consequent in its strategy of only investing long term in European undervalued companies, with an initial investment horizon of approximately five years and utilizing the industry competence of its large local networks to identify and unlock values in its targets. The strategy when influencing their investment targets is diligently tested. When the collaborative approach fail to bear fruit, Cevian do not hesitate to become an agitator. If necessary, using traditional media channels to criticise the company management and to attract support for their attempts to appoint board members and alter the company's strategy.

## **CURRENT TRENDS AND RECENT CASES**

Today, there are over 330 companies listed on the two regulated markets in Sweden, and during recent years, as a consequence of an increased number of activist campaigns and new legislation in the European Union, we have seen a growing awareness of shareholder activism in general. Listed companies are now actively monitoring their shareholder register to prepare for potential activist approaches. In any public takeover offer it must also be assumed that an activist investor will surface and seek a 10 per cent shareholding enabling it to take actions further discussed below.

There is a growing overall trend of shareholder activism in Sweden and several successful activist campaigns in recent years have attracted the interest of more listed companies and investment firms. However, during the first half of 2019 there was a decrease in activist campaigns in Europe compared to previous years; arguably due to a less stable geopolitical landscape and weaker returns, shifting the focus of activist funds towards less risky investments.

The approach preferred by activist investors in Sweden is private communication and sometimes public statements. The activist typically seeks appointment to the board but would not propose a majority of the board. We would also not see any formal proxy fights but rather informal solicitations and settlements. It is so far alien to Swedish governance culture to use more aggressive approaches. However, we have also seen more aggressive actions being taken, for example requesting the appointment of a special examiner.

Examples of recent cases of shareholder activism in Sweden are described in the following.

- In 2006, Cevian Capital and Parvus Asset Management (a British investment firm) formed the joint venture Violet Partners, holding a combined stake of 5.3 per cent in the Swedish truck manufacturer Volvo. The shareholders argued that Volvo was undervalued by at least 50 per cent compared to its competitors and pushed for a spinoff of peripheral parts of its business. Violet Partners gained a seat on the nominations committee but, due to resistance from a number of major shareholders, did not succeed in gaining board representation, and neither managed to enforce desired changes. Subsequently Parvus Asset Management divested its holdings in the company. However, Cevian remained, and after increasing its holdings in 2014 they succeeded in pushing out the CEO in 2015. In 2017, after 11 years of engagement, working to enhance the efficiency and overall quality of the company, Cevian left Volvo by divesting all of its holdings (8.3 per cent) to the Chinese company Geely, with good return.
- In 2015, Elliott Management disclosed a 10.01% stake in Axis in connection with Canon's takeover offer. Elliott blocked the squeeze-out of the minority and initially called for a dividend distribution to the shareholders of Axis, which was rejected by the shareholders meeting. However, a smaller minority dividend was resolved to be made. Elliott also called for the appointment of a special examiner to investigate if Axis's board acted in the best interest of the shareholders in connection with the takeover offer and also proposed a minority shareholders' auditor be appointed by the Swedish Companies Registration Office, to participate in the audit together with the company's auditor. In the second half of 2018, Canon announced an agreement with Elliott and another minority shareholder, and subsequently continued to request a delisting of Axis's shares from Nasdaq Stockholm.
- In 2016, in connection to EQT Partners's takeover offer to the shareholders of Industrial and Financial Systems ("IFS"), the activist fund Elliott took a corner position in IFS. Elliott managed to elevate the price per share by exercising a number of minority rights, including, blocking the squeeze-out of the minority, appointment of a special examiner and minority auditor as well as distribution of profits upon request by a minority shareholder. Elliott's increased pressure on the company and EQT, resulted in EQT acquiring Elliott's stake in November 2016 and then applying for delisting of IFS's shares from Nasdaq Stockholm.

- Cevian took an initial position in ABB in 2015 and subsequently started campaigning for ABB to restructure the organisation, making it less complex, and to sell off its power grids division and distribute the proceeds of the sale to the shareholders. Cevian gained board representation in 2017 and following the support of the major shareholder Investor, ABB announced the divestment of its power grids unit to Hitachi in 2018, earning approximately 11 billion USD to the shareholders. Cevian is today ABB's second largest shareholder (after Swedish Wallenberg controlled Investor), by which they continue to influence the company's strategy and actions.
- In 2010, Cevian took a holding in the Swiss logistics company Panalpina with the ambition to stabilise the company and later improve its growth and profitability. Cevian gained board representation but did not manage to implement desired changes. After publicly criticising the chairman of the board for not being able to unlock the company's potential, Cevian started to advocate for a sale of Panalpina to DSV. In the beginning of 2019 DSV made a proposal to acquire Panalpina, and after a modification of the bid the companies finally reached an agreement.
- In March 2018, Cevian took a significant position in the Swedish automotive safety supplier Autoliv. After pressure from Cevian, the company management carried through the plans to split the company into two listed companies and, like previous cases, divesting one of them to the company's shareholders, resulting in the spin-off of the electronics segment into the new company Veoneer. Cevian gained representation on the board of Autoliv in 2019 and is today the company's largest shareholder, continuing to influence the company's actions from inside the board room.
- In late 2018, Cevian announced a large holding in Nordea Bank Abp, Nordic financial services group, and attained a place in the company's nomination committee early this year. Cevian asserted that Nordea can significantly reduce costs to bring its performance in line with its Scandinavian competitors.

It shall be noted that activists may also have been involved in other cases, not least in public takeovers. The activist's involvement may not become public knowledge should the shareholding not exceed the five per cent threshold requiring the holding to be disclosed to the market.

#### **RELEVANT FEATURES IN LOCAL LAW FACILITATING OR DISCOURAGING ACTIVISM**

As mentioned under section 1 above, the Swedish regulatory landscape is known to be relatively shareholder friendly granting far-reaching powers to controlling shareholders to make long-term strategic decisions, as opposed to the management. Consequently, this offers a favourable environment and valuable tools for shareholder activism. Companies listed on the Swedish stock market are regulated by a combination of legislation, self-regulation and market practice. The primary piece of corporate legislation in Sweden is the Swedish Companies Act (Sw. *Aktiebolagslag (2005:551)*) (the "**Companies Act**"). Amongst the more mentionable self-regulatory documents are the Swedish Corporate Governance Code (Sw. *Svensk kod för bolagsstyrning*) (the "**Code**") and the rulebooks for the regulated markets and multilateral trading facilities.

EU legislation also plays an important role in the regulatory framework for corporate governance. In respect of shareholders rights this becomes relevant mainly through the Market Abuse Regulation (EU) No 596/2014 ("**MAR**") obligating listed companies to

publish inside information as soon as possible (with some exceptions) and the Shareholder Rights Directive (EU) 2017/828 (the “**Shareholder Rights Directive**”), being implemented in the member states during 2019 and 2020, which sets out to strengthen the position of shareholders. Hence, the model for corporate governance in Sweden, that traditionally has favoured stable and engaged controlling ownership, is now being further reinforced by EU legislation. The Shareholder Rights Directive is encouraging long-term and stable ownership by increasing the level of transparency and giving shareholders tools for putting pressure on the corporate leadership, for example, the requirement that shareholders must be able to influence the remuneration of the board of directors.

The Swedish corporate governance structure is established by the Companies Act and can in short be described as a hierarchical structure where the shareholders’ meeting as the highest decision-making body which, for example, appoints the board of directors which in turn appoints the managing director of the company. Each body may issue directives to a subordinated body and, to a certain extent, assume the authority of its subordinated body. The shareholders therefore have indirect powers over the strategic direction, operation and management of the corporate entity through the shareholders’ meeting. Some decisions regarding the company must be passed by the shareholders’ meeting, such as appointment of the board of directors, amendments of the articles of association, mergers and de-mergers, and changes to the company’s share capital by way of issue of new shares, convertibles or warrants. The Companies Act permits different classes of shares with differentiated voting rights allowing a class A share to hold up to 10 votes while B shares hold only one vote. A dual class share structure is customary in Sweden and the class A shares are often held by the company’s founder or a major shareholder, with the intention of maintaining long-term control of the company.

The Code prescribes that certain resolutions must be prepared by a shareholder-governed nomination committee. The nomination committee nominates directors and auditors as well as recommend fees for their services. They also conduct an assessment of the current board and auditors prior to making their proposals. The nomination committee is either appointed directly by the shareholders’ meeting or in accordance with a procedure decided by the shareholders’ meeting. Typically, the nomination committee consists of representatives of the three to five largest shareholders. Pursuant to the Code, the majority of the members of the nomination committee are to be independent of the company and its executive management. For a shareholder activist, a seat in the nomination committee constitutes a good point of entry when beginning to influence the governance of a listed company, by controlling the nomination of board members.

Despite the fact that the board of directors usually is proposed to the shareholders’ meeting by the nomination committee, any shareholder may nominate other members to the board of directors, as late as during the meeting. This right is a part of the collection of protective rights of minority shareholders. The Swedish regulatory landscape is based on the principle of equal treatment of all shareholders; hence the board of directors and the company management must act in the best interest of all the shareholders. To mitigate the strong powers of the majority shareholders, Swedish regulations offers several protective rights for minority shareholders. Some rights may be exercised by a single shareholder, regardless of the number of shares held, and others may be exercised by one or more shareholders holding at least ten per cent of the total amount of shares. Therefore, in order for an activist shareholder to be taken

seriously it would typically need to establish a “corner” of 10 percent of the shares, through its own holdings or through support from other shareholders.

Any shareholder, holding at least one share, may attend, vote and express views at the shareholders’ meetings. A shareholder who wishes to have a matter addressed at a shareholders’ meeting or propose a resolution can do so by submitting a written request to the board of directors beforehand. Any shareholder may also take court action against a shareholders’ resolution.

A shareholder, or a group of collaborating shareholders, holding at least ten per cent of the shares is entitled to take a number of actions under the Swedish Companies Act. The most important such right of a ten per cent shareholder may be the power to block the squeeze-out of minority shareholders following a takeover offer which only may be executed by a shareholder holding more than 90 per cent. This was for example done by Elliott Management in connection with the takeover offers in IFS and Axis, as described above. Other important actions a ten per cent shareholder may take would include to call for an extraordinary general meeting, block a decision to discharge board members or the managing director from liability or call for the appointment of a special examiner or a minority shareholders' auditor to investigate the management, the company’s books or actions taken by the company. These are measures utilised by activists to lever the management into certain actions, especially when a more collaborative approach is rejected. Shareholders representing at least ten per cent of the shares may also request the distribution of one-half of the remaining profit for the year pursuant to the adopted balance sheet following certain deductions. Shareholders with at least one-third of the voting rights are able to block certain resolutions, e.g., share issues, share buyback, share capital reductions.

The level of transparency in Swedish listed companies is relatively high. Pursuant to the Companies Act, all listed companies in Sweden must maintain a public share register and appoint a central securities depository. Such central securities depository is obliged, on request, to provide a copy of the register including all shareholders with a holding of more than 500 shares in the company. Despite this, it has previously been difficult identifying shareholders using custody accounts etc. However, pursuant to the Shareholder Rights Directive II, companies will have increased possibilities to identify its shareholders and require institutional investors to be transparent about their investment strategy. Additionally, MAR requires, as mentioned above, the publication of any inside information held by the company. Gathering information about the shareholder base and the company’s business may be useful for activists when arranging sales and acquisitions in their stake-building process and makes a good foundation for activist to determine their strategy and to assess the opportunities to cooperate with other shareholders. Furthermore, Swedish companies are prohibited from utilizing proxy solicitation except under certain exceptions. On the other hand, it is possible for shareholders in Sweden to collect proxy votes before a shareholders’ meeting, consequently providing shareholder activists an advantage in a conflict with the management.

In the context of cooperating, a shareholder activist must also consider the implications of the concept of acting in concert under the Directive 2004/25/EC on Takeover Bids, thus being obligated to make a mandatory bid. The European Securities and Markets Authority (“**ESMA**”) has issued a public statement regarding shareholders cooperating and acting in concert to mitigate the uncertainty for institutional investors wishing to cooperate on corporate governance issues but abstain from doing so fearing the risk of

being regarded as acting in concert. The statement contains a “white list” with activities deemed not acting in concert by ESMA.

An additional feature of Swedish company and financial markets regulations discouraging for shareholder activism is the requirement for a shareholder of a listed company in Sweden to disclose changes in its holding exceeding or falling below 5, 10, 15, 20, 25, 30, 50, 66 2/3 or 90 per cent of the total amount of shares in the company, complicating private approaches to the company management. Together with the transparency requirements discussed above, these are mechanisms used by the listed companies themselves for monitoring the shareholder base and preparing for activist campaigns as well as by major shareholders to maintain control of the company in question. To prepare for activist approaches companies also monitor shareholder advisory services and media, continuously communicates their strategy with the shareholders and keeps the board informed and ready to act on short notice.

### **THOUGHTS ABOUT FUTURE DEVELOPMENTS**

Historically, European investment firms have followed the trends of their US equivalents, hence, that is a prudent approach when seeking to predict the development on the European markets going forward. However, as the model of shareholder democracy on the European markets keeps evolving there are also more collaborative ways of influencing publicly listed companies in Sweden, that may not to the same extent be available for example in the US. The traditionally strong links between the boards and the shareholders in Swedish companies may be expected to be amplified, further weakening the potential of hostile activist approaches. Furthermore, “Investor days” and other forums for company managements to communicate with the shareholders is growing in importance. At the same time, we will most likely see an increased use of proxy voting guides among the listed companies, issued by shareholder advisory services, such as ISS, to prepare for potential activist campaigns. In addition to this, in the paradigm of digital public communication, it is not unlikely that more sophisticated tactics will be utilised by shareholder activists’ in public campaigns going forward, as for example, communicating through social media platforms.

In addition, there is a growing trend in the area of sustainability among Swedish stakeholders in general, influencing corporations on environmental issues, human rights protection, pushing for policies on climate and social issues and for diversity in the board rooms. For example, the occupational pension provider Alecta, also one of the largest shareholders on the Swedish regulated markets, recently joined the international shareholders initiative Climate Action 100+. Furthermore, the Swedish Investment Fund Association (a Swedish fund market self-regulatory body) has adopted a sustainability standard for investment funds, obligating fund management companies to publish information on sustainability. Environmental issues in relation to business will also likely continue to be addressed by both the European and the Swedish regulator as well as the shareholders. Furthermore, we expect to continue seeing demands for transparency on investment strategies and shareholding as well as accountability for company management. Naturally, the future development of shareholder activism in Sweden is also depending on the development on the global financial markets in general. Hence, affected by the currently diversified sentiments on the capital markets due to geopolitical uncertainty and concerns regarding the length of the current economic cycle.