

## Circular No. 8/2012

For issuers of shares and equity certificates and members of Oslo Børs

### Unofficial translation

23.10.2012

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[http://www.oslobors.no/ob\\_eng/Oslo-Boers/Regulations/Circulars](http://www.oslobors.no/ob_eng/Oslo-Boers/Regulations/Circulars)

## 1 Revised edition of the Norwegian Code of Practice for Corporate Governance

On 23 October 2012, the Norwegian Corporate Governance Board (NCGB) published a revised edition of the Norwegian Code of Practice for Corporate Governance.

The revised Code of Practice is available in Norwegian at [www.nues.no](http://www.nues.no) and will shortly be available in English at [www.ncgb.no](http://www.ncgb.no). Issuers of shares and equity certificates will receive printed copies of the revised Code of Practice by post. Please address any request for additional copies to [notering@oslobors.no](mailto:notering@oslobors.no).

## 2 Changes since the October 2010 edition

### 2.1 Changes to the Code of Practice in October 2011

The previous printed edition of the Code of Practice was published on 21 October 2010. Following a consultation exercise in 2011, NCGB decided to announce certain minor changes and amendments to the Code of Practice in the form of a separate document dated 21 October 2011. These changes and amendments are described in Circular no. 8/2011.

### 2.2 Changes to the Code of Practice in October 2012

NCGB again carried out a consultation exercise in 2012. This resulted in the amendments to the Code of Practice as set out below:

- **Section 1 'Implementation and reporting on corporate governance'**  
The commentary to this Section now provides a more detailed explanation of the 'comply or explain' principle. The commentary clarifies that the Code of Practice imposes more comprehensive requirements than the Accounting Act in respect of the information that companies must provide.
- **Section 4 'Equal treatment of shareholders and transactions with close associates'**  
In accordance with the convention used in the Code of Practice for the use of 'should' and 'must', the wording of this section has been amended so that a decision to waive pre-emption rights in the event of an increase in share capital 'should' be justified, and the stock exchange announcement of such share issues 'should' include the justification for this decision. This does not represent a material change.
- **Section 7 'Nomination committee'**  
The commentary to this Section now provides more guidance on what should be included in the nomination committee's recommendations. This includes clarification that the committee's justification of its recommendations should

address the criteria specified in Section 8 on the composition of the board of directors.

- **Section 8 'Corporate assembly and board of directors: composition and independence'**

This Section now makes it clear that the recommendation on the composition of the corporate assembly only applies to companies that have a corporate assembly. The commentary to this Section clarifies that not having a corporate assembly does not represent a deviation from the Code of Practice.

- **Section 10 'Risk management and internal control'**

The third paragraph of the recommendation, which relates to the report on the main features of internal control etc., has been deleted since this is now a requirement stipulated by the Accounting Act. The explanation in the commentary to this Section on what the report should include has been retained.

- **Section 14 'Take-overs'**

The recommendation that the board of directors should not hinder or obstruct take-over bids has now been made unconditional. The recommendation now includes a paragraph dealing with agreements between the target company and the bidder (transaction agreements): As a general rule, such agreements should not prevent the target company from trying to generate competing bids.

Moreover, the target company should not undertake to pay compensation to the bidder if the bid does not complete. In any case, compensation should be limited to the actual costs incurred by the bidder in connection with the bid. Transaction agreements that are of significance for how the market evaluates the bid should be publicly disclosed.

Furthermore, certain of the commentaries to the sections have been revised, and the notes have been updated to reflect the legislation and regulations as in force at 1 October 2012.

### **3 Oslo Børs' requirement for annual corporate governance reports**

Companies listed on Oslo Børs must, in accordance with Section 7.1 of Oslo Børs' "Continuing obligations", provide a comprehensive report on the company's corporate governance in the directors' report or in a document that is referred to in the directors' report. The report must cover every section of the Code of Practice. If the company does not fully comply with the Norwegian Code of Practice for Corporate Governance, this must be explained in the report. Foreign companies and companies with a secondary listing on Oslo Børs or Oslo Axess are permitted to report their compliance in accordance with the equivalent code of practice for corporate governance applicable in the state in which they are registered or in their primary market.

According to section 7.2 of the "Continuing obligations", listed companies must moreover ensure that the report also satisfies the requirements set out in Section 3-3 b of the Accounting Act. If the report is made available in a document that is referred to in the directors' report, this document must be publicly disclosed in full no later than at the same time as the annual report is publicly disclosed.

Companies should report in accordance with the new Code of Practice with effect from the 2012 annual report.

Feedback from investors confirms that the corporate governance reports are a valuable tool for their continuing assessment of the companies. Oslo Børs monitors the companies'

compliance with the requirement to provide a corporate governance report. During the last few years, Oslo Børs has conducted this review through sample surveys. Overall, Oslo Børs finds a high degree of compliance with the reporting requirement. Issuers with material shortcomings in their report are contacted by Oslo Børs.

Information on Oslo Børs' requirements regarding corporate governance is available at [http://www.oslobors.no/ob\\_eng/Oslo-Boers/Listing/Corporate-governance-CG2](http://www.oslobors.no/ob_eng/Oslo-Boers/Listing/Corporate-governance-CG2).

#### **4 Norwegian Corporate Governance Board**

The Norwegian Corporate Governance Board (NCGB) issues the Code of Practice and is responsible for updating and revising the Code as required. Changes in legislation and regulations as well as experience gained from the use of the Code of Practice may generate a need for future revisions. NCGB will consider international changes in this area as well. Please address any enquiries and comments in respect of the Code of Practice to [info@nues.no](mailto:info@nues.no).

Please also refer to NCGB's website: [www.ncgb.no](http://www.ncgb.no).

Yours sincerely  
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