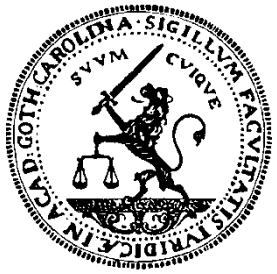

FACULTY OF LAW
Lund University

Björn Schäfer

Disclosure of changes in major holdings

LAGM01 Master Thesis

European Business Law
30 higher education credits

Supervisor: Per Samuelsson

Term: Spring 2019

Contents

Summary

With the adoption of MiFID II, a new, less regulated 'level' of capital market, the SME Growth market, is now available for the member states of the European Union. Available for SME Growth markets, there are several regulatory alleviations for issuers of shares regarding e.g. the supply of information to the market, compared to issuers on regulated and MTF markets. With this in mind, this thesis aims at, with economic research on markets as a basis of thought, analysing whether there are reasons for adopting more stringent rules on the MTF segment, specifically analysing the rules on disclosure of major holdings.

Capital markets provide a venue for companies to offer their securities and for other market participants to trade on them. Economic research holds that markets can be more or less effective, meaning that prices represent more or less of the relevant information about them. Further, economic research holds that several issues can arise from information asymmetries between buyers and sellers, including the adverse selection problem and the moral hazards problem.

On capital markets, there are several regulations that aim at improving their functioningby different means. In this thesis, some of the regulations that direct market participants' behaviour are presented and categorised as disclosure rules and prohibitions on market abuse. The disclosure rules include prospectus disclosure, periodic economic information disclosure, disclosure of insider information and disclosure of directors' dealings. The prohibitions include the prohibition of insider trading and market manipulation. The rules on disclosure of major holdings is another part of the transparency rules.

The major holdings disclosure rules are a part of Union law through the Transparency Directive. The rules entail obligations for shareholders to notify the listed companies when their holdings in them exceeds, reaches or falls below certain thresholds. These rules are only legally applicable on regulated markets but are nonetheless applied by virtue of civil law agreements on both Spotlight and First North Premier, which are two MTF markets.

It is submitted, that since there is now a third market available that facilitates the needs for smaller companies looking for less regulations to comply with, there are real benefits to be gained by adopting major holdings rules on the MTF segment. The benefits include raising the publics' conception about MTF markets, thus making them more available for wider groups of investors, applying the same level of stringency as today is applied on regulated markets, supplying the need for a smaller step between MTF markets and regulated markets and to provide information about the ownership structure changes that occur on MTF markets today.

Sammanfattning

I och med införandet av MiFID II skapades en ny, mindre reglerad, typ av kapitalmarknad, ”SME Growth marknad”, för medlemsländerna inom Europeiska unionen. På den nya typen av marknad åtnjuter emittenter flertalet regellättnader, bland annat gällande informationsgivning till marknaden, jämfört med emittenter reglerad marknad och MTF marknader. Med detta i åtanke syftar denna uppsats till att, utifrån ekonomisk forskning gällande marknader, analysera huruvida det finns fördelar i att införa mer stringenta regler på MTF segmentet, speciellt gällande flaggningsregler.

Kapitalmarknader erbjuder en möjlighet för företag att erbjuda sina aktier och för andra marknadsaktörer att handla med dem. Ekonomisk forskning föreskriver att marknader kan vara mer eller mindre effektiva, innebärande att priser kan mer eller mindre återspegla all relevant information om tillgången som erbjuds. Vidare beskriver ekonomisk forskning att flera problem kan uppkomma genom informationsasymmetrier mellan köpare och säljare. Dessa problem innefattar bland annat negativt urval (*adverse selection*) och moralisk risk (*moral hazard*).

På kapitalmarknader finns flera regleringar som syftar till att säkerställa att marknaderna fungerar väl. I denna uppsats beskrivs vissa av de regler som styr marknadsaktörers agerande och de kategoriseras i uppsatsen som informationsgivningsregler och förbud mot marknadsmanipulation. Transparensreglerna inkluderar prospektreglerna, periodisk informationsgivning, offentliggörande av insiderinformation och offentliggörande av ledande befattningshavares affärer. Förbuden inkluderar förbudet mot insiderhandel och marknadsmanipulering. Flaggningsreglerna utgör en del av transparensreglerna.

Flaggningsreglerna är en del av unionsrätten genom införandet av Transparensdirektivet. Reglerna ålägger aktieägare att ”flagga” för det aktuella bolaget när aktieägarens innehav i bolaget överskrider, når eller underskrider vissa tröskelvärden. Dessa regler är enligt lag endast tillämpliga på reglerad marknad men tillämpas ändå civilrättsligt i mindre långtgående form på både Spotlight och First North Premier, vilka utgör MTF marknader.

Då det numera finns en tredje form av kapitalmarknad som är ämnad att tillse behoven för de mindre bolag som är ute efter lägre nivå av reglering finns verkliga fördelar att hämta genom att införa lagkrav på flaggningsregler på MTF segmentet. Dessa fördelar innefattar bland annat att höja allmänhetens förtroende för MTF marknader och göra dem mer tillgängliga för spridet kapital, att kunna tillämpa lika långtgående regler som idag tillämpas på reglerad marknad, att minska steget för noterade bolag att gå från MTF marknad till reglerad och att förse MTF marknaderna med information om ägarstrukturförändringar.

Preface

När jag nu sitter och korrekturläser denna rafflande text på en solig fredagsförmiddag och Affe lär mig den ärbara konsten av att sova samtidigt som att hela tiden vara redo att skälla på dörren passar det väl att uttrycka några rader av tacksamhet. Innan de som omnämns i Europakonventionen täcks; Affe du ska verkligen ha ett megatack för den ångestdämpande effekt du har på mig och alla andra i din omgivning. Big ups.

Tack Lea för att du är och har varit den största motivationen att trumma vidare på studiernas slagverk när det varit tufft, vilket det sannerligen vid tillfällen har varit. Jag hoppas att en dag få göra dig lika stolt över mig som du varje dag gör mig.

Emma, plugget har varit vårt projekt att dela. Det förde oss ihop och ledde oss till att skapa en värld tillsammans. Nu när vi båda lämnar det bakom oss och går vidare ska det bli så sjukt kul att fortsätta bygga på vår värld (yes panda-referens). Tack för allt du gjort för oss.

Familjen, inkluderat alla, tack för att ni fått mitt liv att funka med alla bollar i luften – det hade verkligen inte gått utan er.

Till Per, tack för alla intressanta diskussioner om kapitalmarknader och för dina insiktsfulla råd.

Tack till er alla, nu räcker det med skola för min del ett tag.

Malmö, den 24 maj 2019

Björn Schäfer

Abbreviations

A.k.a	Also known as
Ch.	Chapter
Cf.	Compare (Latin: ‘conferature’)
E.g.	For example (Latin: ‘exempli gratia’)
EMH	Efficient Market Hypothesis
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority (UK)
FI	Finansinspektionen (Swedish Financial Supervisory Authority)
I.e.	That is (Latin: ‘id est’)
IPO	Initial Public Offering
MTF	Multilateral Trading Facility
P./pp.	Page/pages
PDMR	Persons Discharging Managerial Responsibilities
SME	Small and Medium-sized Enterprises

Legislation

Swedish legislation

	Referral in text
Aktiebolagslag (2005:551).	Swedish Companies Act, SCA
Lag (1991:980) om handel med finansiella instrument.	Financial Instruments Trading Act, FITA
Lag (2007:528) om värdepappersmarknaden.	Securities Markets Act, SMA

Swedish regulations and non-legislative acts

Finansinspektionens föreskrifter (FFFS 2007:7) om verksamhet på marknadsplatser.	FFFS 2007:7 Recommendations for Actions on Market Places
Spotlight Stock Markets Regelverk, 2019-04-01	Spotlight Stock Market Rulebook
Nasdaq First North Nordic – Rulebook, 1 January 2019	Nasdaq First North Rulebook
Årsrapport Spotlight Stock Market 2017	Spotlight yearly report 2017

EU legislation and regulations

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.	MiFID II
Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013, amending Directive 2004/109/EEC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.	Transparency Directive 2013
Directive 2004/109/EC 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	Transparency Directive 2004

securities are admitted to trading on a regulated market.	
Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation.	Market Abuse Directive
Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public.	Prospectus Directive
Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of.	Disclosure Directive
Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admissions of securities to an official stock exchange listing.	Stock Exchange Directive
Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements.	Prospectus Regulation
Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.	Market Abuse Regulation, MAR

EU delegated acts

ESMA, Indicative list of financial instruments that are subject to notification requirements according to Art. 13(1b) of the revised Transparency Directive, 22 October 2015, ESMA/2015/1598.	EMSA indicative list

1 Introduction

1.1 Background

For companies, to be listed on a capital market has obvious advantages in raising capital for the business.[1] However, to be a listed company brings about regulatory burdens[2], including among others, providing information to the market. Currently in Sweden, there are two categories of capital markets which are actively being traded on. The first kind is the regulated market[3], a category that includes Nasdaq Stockholm, a.k.a. the 'main market', as well as NGM Equity and both market operators running them abide by the highest level of regulations[4]. The second kind is the Multilateral Trading Facility[5], hereinafter 'MTF', which includes Spotlight Stock Market, hereinafter 'Spotlight', Nasdaq First North and Nordic MTF[6]. The MTF markets allow several regulatory alleviations for both market operators and issuers of securities[7], i.e. the listed companies. One of the ways in which the regulatory requirements differ between regulated markets and MTFs, is that the legal requirements for disclosure of changes in major holdings, hereinafter 'major holdings disclosure rules', only apply to regulated markets[8].

With the adoption of MiFID II[9], a specified capital market for smaller companies, the 'SME Growth market'[10], was introduced, offering the expressed purpose of granting its participants easier access to capital[11]. This category of capital markets further relieves the issuers from regulatory burdens in comparison to the regulated and MTF markets.

---

[1] See section 2.2.3.
[2] See chapters 3 & 4.
[3] As defined in chapter 1 § 4 b p. 18 Securities Markets Act, hereinafter 'SMA'; [Article 4 (1) (21) Directive 2014/65/EU, hereinafter 'MiFID II'].
[4] Cf. chapter 12 § 1 SMA and chapter 1 a § 1 p. 1 FFFS 2007:7 Recommendations for Actions on Market Places; [Article 44 MiFID II].
[5] As defined in chapter 1 § 4 b p. 15 SMA; [Article 4 (1) (22) MiFID II].
[6] 'Noterade bolag', Swedish Financial Supervisory Authority website, visited 2019-01-30.
[7] Chapter 2 § 1 p. 8 SMA; chapter 1 a § 1 p. 3 FFFS 2007:17; [Article 5 (2) MiFID II].
[8] Chapter 4 § 1 Financial Instruments Trading Act, hereinafter 'FITA'.
[9] See footnote 1.
[10] Article 4 (1) (12) MiFID II.
[11] Recital 132 MiFID II.

1.2 Purpose and perspective

The purpose of this thesis is to, based on economic theories and theories on markets, examine current Swedish legislation on major holdings disclosure rules in the light of recent European Union, hereinafter alternatively the 'EU' or the 'Union', legal developments. Given recent regulatory alleviations for small and medium-sized enterprises, hereinafter 'SMEs', should legal rules on major holdings disclosure be adopted for the MTF markets?

The main purpose of this thesis is to consider several relevant aspects and to answer the question formulated above either in the affirmative, the negative or somewhere in between. To facilitate a more fruitful analysis, an economic perspective is beneficial. However, given the fact that legal students and experts are not always also economic students or experts, a knowledge gap could appear. Therefore, a subsidiary purpose is to provide a basic understanding of capital markets as institutions and the main economic principles they are built on.

1.3 Research questions

Because there is one main purpose, which entails giving input to a legal problem from a partly economic perspective, and a subsidiary one, which is intended to serve as an aid for better achieving the primary one, the research questions will have mixed characters of being descriptive and analytic as well as economic and legal.

The economic research questions are primarily descriptive, focusing on describing others' work. However, some conclusions will be drawn from them at the end of the economic chapter. The aim of providing the reader with economic conclusions is to provide additional food for thought and to contextualise what otherwise can seem very theoretical. For those reasons, the following two economic research questions are formed:

i. What are the primary functions and elements of capital markets?
ii. What are the economic considerations behind capital markets relating to the major holdings disclosure rules?

To achieve the primary purpose, the following questions will be answered:

iii. What are the main elements of the major holdings disclosure rules and in what legal context do they operate?

iv. What are regulated markets, MTF markets and SME Growth markets and in what ways do they differ in relation to regulatory burdens, transparency and major holdings disclosure rules?

Based on the questions above, some pros and cons related to adopting major holdings disclosure rules on the MTF segment will be presented and an attempt to answer the following question will be made:

v. Are the reasons for regulating major holdings disclosure rules on MTF markets convincing?

1.4 Delimitations

Firstly, the capital markets should be separated from other types of markets, such as securities, monetary and financial markets, and the reason is that capital markets are specifically regulated. The economic principles and the rules governing capital markets form an extensive research field and to expand the scope of the thesis to include other markets would not allow a sufficient degree of reasoning about capital markets to make it fruitful.

The main subject of examination in this thesis, the major holdings disclosure rules, is a part of the disclosure system for issuers on capital markets. This normally refers to an entire system of rules intended to give information about the market to market participants including e.g. rules on prospectuses, periodic disclosure of financial information, public disclosure of inside information and directors' dealings disclosure.[12] These concepts will be described more accurately in chapters 3–5, but it is of value to the reader to know at the outset that this thesis mainly aims at evaluating the major holdings rules, which are a part of a bigger system of disclosure rules, which in turn forms a part of the wider concept of transparency rules.

[12] See e.g. contents list, Veil (2017), pp. xx–xxvi; contents list, the United Kingdome Financial Conduct Authority, *Disclosure Guidance and Transparency Rules sourcebook*, pp. DTR-i–DTR-ii.

It should be stated that a very interesting question to raise is whether major holdings rules on the MTF segment should be regulated on the Union level. For such a discussion to be interesting, it is submitted that some kind of comparative analysis between different member states should be conducted. However, since the Transparency Directive provides for minimum harmonisation rules, the question that here is raised targets whether major holdings disclosure rules should be adopted at the national level in Sweden. The considerations throughout the thesis are thus primarily intended to be read by the Swedish legislature, however, a lot of the ideas could equally be applicable on the Union level.

The national direction of the thesis also highlights the question of EU uniformity, which would be of interest to discuss in the analytic parts but will also be left out to keep the stringency on the analysis.

1.5 Method

This thesis will adopt what can be labelled a legal analytic method with an EU as well as an economic perspective. The mission is to interpret Union legal acts in order to describe what the current Swedish system provides. It is thus not a method that primarily determines the content of Union law. The method used is closely linked to the classic dogmatic method because the sources used are similar and include (i) legal acts, including primary, secondary and delegated Union law, Swedish legal acts, regulations and delegated acts, (ii) preparatory works and (iii) doctrine. The reason for distinguishing the method from the classic dogmatic method is mainly because of the thesis' aim, which includes not only describing the content of the law, *de lege lata,* but also adding an element of what the law should be, *de lege ferenda*.[13]

There are parts (chapters 3 & 4) adopting an EU-inspired method where a teleological approach, considering the purposes of the legal acts is adopted. This approach is in line with the EU legal method.[14] However, the explicit teleologic interpretation will 'stop' at the secondary-law level because the analysis will focus on the national aspects rather than if EU as an

[13] Korling & Zamboni (2014) pp. 21 & 22.
[14] Korling & Zamboni (2014) pp. 123 & 124.

organisation would benefit from the conclusions. Therefore, it is not of major importance for this work to consider the General Principles of Union Law, the Treaties and the Charter of Fundamental Human Rights.

The method should also be distinguished from the EU legal method because of the implications of the Lamfalussy method[15] which is adopted within financial services law. Because of this, the EU legal sources that will be examined are (i) binding primary law, (ii) secondary law, (iii) delegated acts by the Swedish Financial Supervisory Authority, hereinafter 'FI' and the European Securities and Markets Authority, hereinafter 'ESMA'. Further, the usually prominent role of the European Court of Justice is not as present in this thesis because of the delegation of powers to national authorities.[16]

As is often the case within legal research, the classic dogmatic method can benefit from an enrichment from other disciplines of research.[17] Economic theory that relates to the foundations of capital markets and how information flow affects pricing and functioning of markets is used in this thesis. This is a part of microeconomic theory, which partly focuses on how individual entities act.[18] Because of the economic elements, a transdisciplinary method is used.[19] There are plenty of economic theories to choose from but the ones that are examined in this thesis are typically the ones closely associated with the shaping of capital markets.[20]

The economic theories are, and rightly should be, evaluated and examined on a continuous basis. However, such research is left to the economists. For the same reason, the method applied is also distinguished from the 'legal economic method' which typically entails some economic analysis of the research[21]. Here, the economic research is merely used as a tool to explain benefits and disadvantages in different legal solutions in order to distinguish relevant from irrelevant arguments as well as to provide more accurate

[15] On the Lamfallusy process, see section 4.1.
[16] Korling & Zamboni (2014) p. 130.
[17] Papadopoulou & Skarp (2017) p. 132.
[18] Devlin (2015) pp. 12 & 13.
[19] Korling & Zamboni (2014) p. 429.
[20] For an example of the relevance of the economic theories chosen, see the content lists of Veil (2017) and Bodie, Kane & Marcus (2018).
[21] Papadopoulous & Skarp (2017) p. 136.

conclusions from them.[22] It is thus not a method that will question the economic aspects to such an extent that entails an economic analysis.

Throughout the thesis, the general idea is to, as far as possible, explain general issues before going into more detailed questions. This has the pedagogic advantage of allowing the reader to always be aware of the bigger picture perspective and enable the reader to continue reading without going back in the text to look up specific information. Brief analytic sections follow every chapter, the method of going from general to specifics is also applied in these parts. The methodology it follows is that the descriptive chapter presents a wide perspective with information that is directly relevant for achieving the purposes of the thesis but also bits of general knowledge that provides context as well as deeper understanding of the area. The continuous analysis fulfils the two-fold purpose of summarising as well as highlighting parts that are of special relevance. The final analysis in chapter 6 will then further narrow down its scope to the most fundamental considerations to answer achieve the purpose of the thesis.

1.6 Material and other research

The choice of material regarding economic theory has, because of the obvious additional efforts required by a writer from the legal discipline engaging in economic studies, as much as possible been kept as non-controversial as possible. Therefore, search for literature started in course literature for courses at undergraduate level in financial economics. The main book used to describe relevant parts of economic market theory, *Investments*, written by Bodie, Kane & Marcus. The book is widely used for educational and professional purposes and covers, among other areas, what is considered some of the fundamentals of financial economic theory.[23] An important part used in this thesis explores the *efficient market hypothesis* which, for the purposes of this thesis is not disputed.[24]

[22] Cf. Ekelund & Stattin (2015) pp. 27–30.
[23] Bodie, Kane & Marcus (2018) preface pp. xvi–xvii.
[24] See section 2.3.1 for a brief explanation of the debate surrounding the EMH.

As stated in the method explanation, the material has, to a large extent, been used as a descriptive tool to facilitate an independent analysis. For example, chapter 2 on economic theory and fundamentals of capital markets, contains debateable information but is not used as a basis for arguing about its correctness. Such information is, for the purposes of this thesis, used to describe a way of thinking that has had influence on the legal system which is under exploration. As regards the two other books used to explore the efficient market hypothesis, *Finance* by Byström and *Business Finance* by Pierson et al., both are also widely used in education. For the purposes of exploring the efficient market hypothesis, neither of these books directly contradict each other and the two complementary books are used chiefly as tools for explaining particularly difficult passes of the theory from different angles.

The main book used to describe capital and securities markets is *European Capital Markets Law* by Veil. The book is written from a legal dogmatic perspective and is thus very comprehensive in terms of regulations. However, much like this thesis is intended to be, it is interdisciplinary and refers to research within other fields to put the legal issues in a broader context. It therefor has the advantage of using some economic theory to explain the underlying principles justifying the legal rules which has been very helpful in the research for this thesis. To further complement and consider different views and aspects on major issues on capital markets, *Börsrätt* by Sevenius and Örtengren as well as *Kapitalmarkandsrätt* by Ekelund and Stattin, have been considered and referred to.

Briefly regarding other research on the topics of this thesis, the economic theories presented have been extensively described by economic scholars. A development of the efficient market hypothesis has been presented by Fama, named the *efficient capital market hypothesis*, to be better applied on capital markets. However, for the usage here, being describing the relationship between information flow, pricing and market functioning, the original efficient market hypothesis serves the purpose better because it simplifies otherwise rather complex market mechanisms. Regarding capital markets, several Swedish and international writers have described and categorised their main elements. The way of describing the relevant parts for this thesis seem

to be quite undisputed. If one compares e.g. the book by Veil with the two other books by Sevenius and Örtengren as well as by Ekelund and Stattin, they all adhere to more or less the same categorisation of rules. Other literature that can be of relevance include *Lärobok i kapitalmarknadsrätt* by Afrell, Klahr and Samuelsson. All the above-mentioned works also cover, to a more or less extent, major holdings disclosure rules.

The chapters covering legal content (chapters 3–5) are primarily based on legal acts and preparatory works. Because Union law typically has less extensive preparatory works then what can be found after a Swedish legislative process, a lot of attention is given to the recital texts of the various legal acts in order to interpret the provisions and their purposes more accurately. In the areas that are more in-depth, certain special reports and other preparatory works have been considered to provide a deeper level of understanding. Also, the previously mentioned book by Rüdiger Veil has been used for complementary insights.

1.7 Outline

Following this introduction chapter, an economic chapter will follow. This chapter (2) will describe relevant elements of capital markets and some economic theories that has had influence on how capital markets are set up today. Chapter 3 follows an EU legal method (with the changes described in the method section above) and will outline important parts of the transparency and disclosure systems that apply for capital markets. Chapter 4 will go into details of the major holdings rules from a EU perspective and chapter 5 will do the same but from a Swedish perspective. Following this, chapter six will summarise the conclusions brought from all the previous chapters and go one step further in the analysis by bringing the concepts together, consider how they interact among each other and present arguments for and against legal regulation of major holdings disclosure on MTF markets.

There is a list of Union and national legislative and non-legislative acts in the beginning of the thesis. To allow a simpler overall reading experience, full referrals to these acts will not be given in the body text. Only the shortened names will be used and the first time they are written the publication

year and number will be presented. If one should be confused when reading, the list in the beginning of the thesis is helpful.

2 Capital markets and economic theories that has shaped them

2.1 Introduction

Since this thesis is intended to give an answer to whether further legal rules are desired, it is first and foremost addressed to legally knowledgeable practitioners, scholars and students – thus not economists. Therefore, an introductory chapter is provided, aimed at giving a simple, straightforward theoretical introduction to capital markets and their underlying economic principles. It is not an analytic chapter, rather it is intended to provide a basic description of capital markets, their participants and the participants' roles as well as some fundamental economic theories that have had impact on how markets are regulated today. The intention is that this knowledge will serve as a basis of knowledge for discussing whether the legal rules on major holdings are satisfying or not.

2.2 Markets and capital markets

2.2.1 Introduction

Markets is a concept stemming from the idea of having a common place where goods and services can be traded. It is a system where supply and demand meet.[25] Instead of merchants meeting at each other's homes or at random locations, it is more convenient and efficient to have a centralised venue where all trade can take place. The foundation of capital markets, as we know them today, was laid as early as in the early 14th century in Belgium. As the story goes, merchants from northern Italy and southern Hanseatic Germany met in Bruges, Belgium, because it was situated in a junction between the two trading empires.[26]

[25] Veil (2017) p. 103.

[26] 'The stock market: from the "Ter Buerse" inn to Wall Street', the National Bank of Belgium Museum website, translated from Belgian author De Clercq G., *Ter Beurze. Geschiedenis van de aandelenhandel in België, 1300-1990*, 1993, pp. 15–32, visited 2019-02-15.

Although locals were not usually traders themselves, an occupation developed from the locals operating as intermediaries between them. This originally included providing housing for the merchants, but soon developed into further representative tasks including arranging meetings and acting as representation for one or more parties on them. The need for such broking was partly due to language barriers. To act as intermediaries between merchants became a central role in the nourishment of the city of Bruges, and broking became a respected occupation which was passed on through generations and often kept within the families. One of the most well-known families engaged in such broking was the Van der Beurse family who, for five generations, ran the 'Ter Beurse' inn. The square in front of their inn developed into the centre of commerce and finance and thus the name 'beurse' ('börs' in Swedish) was created.[27] In 1602, the first ever sale of shares in a company was completed, this was on the Amsterdam 'beurse' and the shares was offered by the Dutch East India Company.[28]

2.2.2 Primary functions of capital markets

Companies usually need money to grow their business. Raising money for an expansion can be done by generating profits which are saved or invested directly back into the company and this is what all companies stride for in some capacity. To engage in a bigger expansion however, companies naturally sometimes need to raise large amounts of money faster than what could have been possible through the type of incremental procedure just described, and this is where capital markets become relevant for businesses.[29]

By reaching outside a company´s profit limits, it can obtain outside investor capital (money), but to do so, it must offer something in return.[30] What usually is offered to this end is either *issuing shares* in the company,

[27] 'The stock market: from the "Ter Buerse" inn to Wall Street', the National Bank of Belgium Museum website, translated from Belgian author De Clercq G., *Ter Beurze. Geschiedenis van de aandelenhandel in België, 1300–1990*, 1993, pp. 15–32, visited 2019-02-15.
[28] Sevenius & Örtengren (2017) p. 105.
[29] Sevenius & Örtengren (2017) pp. 118 & 119.
[30] Ekelund & Stattin (2015) p. 19.

i.e. raising equity, or by *issuing bonds*, i.e. borrowing capital. Issuing shares entails selling a portion of the company, while issuing bonds is typically done by entering into a loan agreement between the company and the investor.[31]

Shares and bonds are examples of *securities*. These can be traded with on the capital market, in contrast to e.g. the money market, which facilitates trade in securities in the form of currencies, commercial papers and federal funds.[32] The term securities is somewhat misleading, considering that securities are in no way secure. On the contrary, the money put into the companies by the investors through acquiring securities is usually referred to as *risk capital*, because there is no guarantee that the investments will generate income or even be returned.[33]

Capital markets are divided into a *primary* and a *secondary market.* When a company first offers shares or bonds, it is done to the primary market. On the primary market, investors can directly invest their money in a specific company because they believe in its potential. After the shares or bonds have been issued to the primary market, they are marketable on the secondary market. On the secondary market, different investors trade on the investments which were originally offered on the primary market.[34]

2.2.3 Incentives for listing

Chiefly, there are two reasons for a company to start a procedure for an initial public offering, 'IPO', which is the process that leads to a company becoming a listed company. First, the owners of the company might be looking for a pay-day and therefore decide to sell off a piece of their shares. Secondly, the company needs to raise money for other reasons, such as financing an expansion.[35]

[31] Veil (2017) pp. 103 & 104.
[32] 'Definition of money market', Financial Times online lexicon, visited 2019-03-05.
[33] Sevenius & Örtengren (2017) p. 119.
[34] Veil (2017) pp. 106 & 107.
[35] Sevenius & Örtengren (2017) p. 43.

After the IPO, when shares in the company have been listed, several advantages occur. First, they become easily traded, which will lead to the market deciding on the appropriate price, which then will indicate to the owners what the listed company is worth. Another important part is that listing the share will grossly raise the *liquidity*[36] of the shares, making it easier for the owners to turn their shares into money. Other benefits include making the company known to a broad audience which usually leads to certain benefits. For example, well-known companies are usually higher valued than comparable not well-known alternatives. Also, it is easier to find new staff since workers tend to prefer working for well-known employers before unknown.[37]

However, there are downsides to be listed on a capital market. For example, firstly, when offering shares to the primary market through an IPO, there is typically a spread in control of the company. For a company to take in new owners, the current ones must give up some of their ownership and this will typically include giving up some of the voting rights that the ownership of the shares entails. This downside can be mitigated by offering shares with less voting rights, usually referred to as 'B-shares', but doing so will still lead to some dilution of ownership.[38] Further, by offering shares to the market, the listed company is exposed to the risk of takeovers, which means that an outside investor tries to take control of the listed company by acquiring shares.[39]

Further, there are transparency and disclosure rules that apply to listed companies. As will be shown, these also entail up- and downsides. The transparency rules, of which the major holdings disclosure rules form a part, will be closer explained in chapters 4 and 5.[40]

[36] Liquidity is, for the purposes of this thesis, defined as 'the degree to which an asset can be quickly bought or sold in a market, without affecting the assets' price'.
[37] Sevenius & Örtengren (2017) p. 43.
[38] Chapter 4 §§ 1–6 Swedish Companies Act.
[39] For brief explanation on public takeover bids, see Sevenius & Örtengren (2017) pp. 339–354.
[40] Ekelund & Stattin (2015) p. 20.

2.2.4 Incentives for investing

Clearly, the most prominent, though not the only, reason for an investor to turn to a capital market with their money is to, sometime in the future, receive a bigger amount in return.[41] When money is put in a bank, the saver usually receives interest for that money which, per definition, will yield a bigger amount of money in return at a future point in time. So why choose to access a capital market instead of a bank? The answer, usually – a bigger return on the investment.

To invest in a listed company, instead of a bank, has the potential of leading to a better pay off. If an investor can 'get in on the action' early, it can be even more profitable. To get in early can mean different points in time. It could refer to investing in the IPO on the primary market or it could mean investing at an even earlier stage by acquiring shares directly from the owner.[42]

For issuers, investors and the creators of markets, the concept of *risk eversion* is of importance, especially in order to facilitate a well-functioning market. This basic concept relates to the question raised above about why not saving money in the bank instead of on a capital market. Although the answer is obvious, the choice can be difficult when the lines between return and risk become blurred. To illustrate this, there is a classic example of a newly graduated lawyer who is offered a position at a law firm with an assignment to run an entire case, with a *conditioned* yearly salary of 50 000 euros. The condition is that the salary will only be paid if the lawyer wins the case. Now let us assume that the same lawyer is offered another position at another firm, with a *guaranteed* yearly salary of 49 000 Euros, the newly graduated lawyer will most likely prefer this option, given the insecurity that is affiliated with the condition of winning the case. This phenomenon has been well-studied, and persons can of course be more or less risk-aversive leading to a higher or lower willingness to 'pay' for insurance of income.[43]

[41] Ekelund & Stattin (2015) p. 17.
[42] McAlpine (1999) pp. 577 & 578.
[43] Polinsky (1989) pp. 53–55.

2.3 Economic theories about markets

2.3.1 Introduction

This section will describe some of the most fundamental economic theories that has shaped the way capital markets are set up in relation to different issues. First, the efficient market hypothesis is explained, secondly, two examples of problems relating to asymmetrical information in business relationships will be presented. This will be followed by some criticism of those theories to allow some more reflection and hopefully a deeper understanding of the problems.

2.3.2 The efficient market hypothesis

The notion that prices on a market reflect all available information is what is referred to as the efficient market hypothesis.[44] This, seemingly obvious, idea is one that continues to cause debate among scholars and practitioners because it suggests that it is impossible to beat the market, i.e. outperforming its general performance. Still, it is nonetheless commonly used as a theoretical instrument to explain how prices and information flow relates to one another.[45] This section is not aimed at clearing out any controversy regarding whether capital markets in reality actually are efficient or not, but is intended to provide an understanding of how providing different amounts of information affects markets and how it leads to different outcomes.

In order to simplify the idea of the efficient market hypothesis, it is helpful to view it in the light of its origin. After computers were invented in the 1950's, economists anticipated that computers' ability to calculate complex numbers could be used on information about previous prices of stocks in order to discover tendencies on the stock markets. This was first examined by Maurice Kendall in *The Analysis of Economic Time Series, Part I: Prices,* published in the Journal of the Royal Statistical Society in 1953. However,

[44] Byström (2014) p. 208.
[45] Byström (2014) p. 195.

no predictable pattern could be discovered, and prices seemed to change randomly, regardless of whether they had been successful or not in the past.[46]

Building on the finding that knowing the information about prices is not sufficient to predict future prices and that prices seemed to evolve randomly, economists have, after further contemplation, accepted a very basic paradigm within financial economics theory. The economists hold that if a predictable pattern *had been* discovered, and assuming that it was accessible for all investors, the advantage of such a prediction would quickly be undermined. This is because if the analysis of the prices of a certain stock would show that it was undervalued, all rational investors would quickly engage in buying that stock. However, no rational owners of that very same stock would sell to that price and the market would quickly correct that discrepancy.[47]

If one accepts that all information available in, for example, the capital market is information about past prices about the shares; then where such information is available to all market participants simultaneously and there is competition between those actors, this will lead to prices adjusting in accordance with the latest information. Although perhaps a bit theoretical, this is what indicates a *strong market*.

To complicate things a bit further, there are of course other types of information, apart from past prices, that could be used to predict future prices of stocks. Such information include public information, i.e. information about the companies' products, management, financial status, patents, and accounting practices as well as insider information, i.e. information that is only available for management of the company. The categories: past information about (i) prices, (ii) public information and (iii) insider information are considered to represent different versions of the efficient market hypothesis.[48]

Past prices, public information and insider information is said to represent different versions of the efficient market hypothesis, and this helps to consider and answer the question – how efficient is the market? When

[46] Bodie, Kane & Marcus (2018) p. 333.
[47] Bodie, Kane & Marcus (2018) p. 334.
[48] Bodie, Kane & Marcus (2018) pp. 337 & 338.

answering this question, three 'levels of efficiency' is usually affiliated with the different versions explained in the previous paragraph, these include:

- weak efficiency, correlating to a market where the prices reflect only historical information about prices,
- semi-strong efficiency, where the prices reflect all public information, and
- strong efficiency, where prices reflect all and all information about the companies.[49]

As stated in section 2.3, there is controversy among scholars and practitioners as regards how efficient capital markets really are. Instead of trying to answer this question, it is submitted that because past prices are not sufficient to predict future, new information is what develops the prices.

There are several implications stemming from efficient market hypothesis, chiefly allocated to financial economics research. For the purposes of this thesis, the following implications are particularly relevant. Firstly, an efficient market is one in which it is impossible to (except for by chance) beat the market because the available information is already reflected in the prices. Secondly, an efficient market will react accordingly to new information about the market. Therefore, business leaders can expect their share prices to respond to news about their successes and failures.[50] Thirdly, the more efficient the market, the more reason there is for investors to act passively and focusing on minimum costs in order to follow the market average. However, if all investors were passive, there would be no one to act quickly on new information and thus incentivizing active investors, trying to cherry-pick the best buys.[51]

2.3.3 Asymmetric information problems

Turning to information flow in relation to prices and market functioning, the issue of asymmetrical information will now be explored. According to economic theory, asymmetrical information can lead to problems such as (i)

[49] Byström (2014) pp. 196 & 197.
[50] Pierson et al. (2015) p. 501.
[51] Byström (2014) p. 208.

adverse selection and (ii) moral hazard. This section will examine these issues in order.

What sometimes is referred to as 'the lemons problem' is a theory, published in a now classic economic article by *Nobel prize*[52] winner George A. Akerlof, that describes issues that arise regarding the value of an asset due to asymmetric information in relationships between buyers and sellers.[53]

According to the theory, in which Akerlof uses the market for used cars as an example where cars with poor quality are referred to as 'lemons', it is argued that in a market where buyers and sellers do not have equal or at least similar information to assess the quality of a product, the market is doomed to fail.[54]

To elaborate a bit further, the theory supposes that in a car market, there can only be four types of cars, namely: (i) new cars, (ii) used cars, (iii) good cars and (iv) lemons (bad cars). Both new and used cars can be either good or lemons. When a buyer chooses a car, they have no way of knowing whether it is a lemon or not and therefore, buyers will only accept paying the average price of all cars. After owning a car for some time, it is easier to assess the quality of the car. Since sellers have owned the cars they are selling, they have more information than the buyer and this is what is known as asymmetrical information. The problem is that good cars and lemons must still be sold at the same price, since the buyers have no way of distinguishing them. Since it is obvious that new cars have a higher likelihood of being in good quality, the price buyers will accept paying for any car that is not new will therefore be lower than the price of new car and probably somewhere close to the average value of all cars.[55]

Sellers of cars that are good, i.e. better than the cars with the same value as the price accepted by the unknowing buyers, will therefore not

[52] Officially the 'Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel'.
[53] George A. Akerlof, A. Michael Spence and Joseph E. Stiglitz won the 'Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel' in 2001 'for their analyses of markets with asymmetric information', information from the Nobel Prize website, visited 2019-02-14.
[54] Akerlof (1970) p. 500.
[55] Akerlof (1970) p. 489.

receive the proper value of their car and therefore will leave the market. Akerlof expresses it as '…good cars may be *driven out* of the market by the lemons.'[56]. What is alarming, is that this effect does not stop there, rather, a situation will occur where the second-best category of cars is driving out the best, the third-best driving out the second-best and so on, until there are only lemons left on the market.[57]

This is a simplified explanation. However, it does demonstrate a case where asymmetric information leads to adverse selection. The lemons problem highlights that if markets can put buyers and sellers on the same or a close level of information regarding the quality of what is marketed and sold, the market will work more efficient in allocating resources at the proper place. In reality, there are obvious ways of controlling the quality of an asset to a certain extent. However, so long as there are relevant aspects of the asset that are unknown to one of the parties there is a risk of adverse selection occurring and the question is to what extent the problem can be limited.

The second issue relating to asymmetric information that will be highlighted is the problem of moral hazard. The problem has been present since the emergence of insurance institutions in England during the 18th century, and the basic idea behind it is that an ensured person can be incentivised to act less careful than they would if given the same set of circumstances but without insurance.[58]

Since its birth, because of the obvious economic implications, the concept of moral hazard has generated interest and receives plenty of attention from both insurers, economists and academia.[59] Since the 1960's economists have, as a part of research on *decision-making under uncertainty*, been using the theory to describe certain economic behaviour.[60] For economic theoretical purposes, the problem is not limited to insurance situations, but extends to all relations where there is asymmetric information that results in a situation

[56] Akerlof (1970) p. 490.
[57] Akerlof (1970) p. 490.
[58] Dembe & Boden (2000) pp. 257–259.
[59] For example, a search for 'moral hazard' on Google Scholar generates almost 300 000 results, not including quotations.
[60] Dembe & Boden (2000) p. 261.

where one or both parties are incentivised to not act in good faith to maximise individual benefits.[61]

For instance, to stick to examples including cars, in a relationship between a car repair and their customer, there is usually a major difference in the knowledge about repairing cars. Further assuming, that there are different types of spare parts which have different profit margins for the car repair offering them to the customer. If the spare part with the higher profit margin is objectively a worse option than the other, the car repair is incentivized to offer the not so good spare part to the unknowing customer because of the higher profit.

The moral hazard problem is usually described from the individual's perspective. The detrimental effects of the behaviour described by the car repair in the example described above are obvious – the customer receives the worse option of two spare parts. If one considers this problem in a more massive scale however, it is not difficult to conclude that in a market where asymmetrical information is present for most or all consumers or buyers, the market will suffer.

2.3.4 Critizism of economic theory

Above, three fundamental economic theories have been accounted for which, in one way or another, relate to the relationship between access to information and the functioning of markets. The efficient market hypothesis is of more general relevance, offering a systematic map for evaluating the efficiency of markets. The lemons and the moral hazard problems relate to specific situations in which unwanted results may occur from relations with asymmetrical information between parties.

There are, however, relevant objections to be made regarding the presented theories. Except for the sake of evaluating the correctness and validity of the theories, there is value in exploring their critique for purposes of gaining deeper understandings of the theories. The attentive, or perhaps the economic sciences-acquainted, reader will have noted that all the above-

[61] Holmström (1979) p. 74.

mentioned theories assume rational behaviour that maximizes utility from the market participants. This assumption, however, has met increasing criticism over time, and is now far from considered an absolute truth, if it ever was.

Within the discipline of *behavioural economy*, scholars argue that humans in fact are not perfectly rational and that the utility maximization paradigm poorly describes human economic decision making. Building on psychologic research[62]; the rationality-based paradigm that lays the foundation for economic research is criticised from a number of angles. Examples include aspects relating to that humans are motivated by a diverse spectrum of factors other than maximizing utility such as fairness or resentment, that humans are affected by social norms that impact decision-making which denies the idea that group behaviour can be extracted from simply aggregating observed individual behaviour and there are computational difficulties which humans are not very good at solving.[63] By adding these elements of human intellects to economic research, behavioural economics grant the development of more accurate explanations of economic phenomena.

Although the research on behavioural economics has had major positive effects, the impacts of the rationality based economic theories described above should still not be underestimated. One could say that by reducing the complexity of humans to that of a person that does not exist, economists can form theories that explains certain concepts more easily.[64] If one views the efficient market hypothesis, the lemons and the moral hazards problems as normative theories rather than descriptive of human behaviour, big values can still be extracted from them. To exemplify by using the lemons problem. If one accepts that additional information to even out the asymmetric information relationship and improve market performance on the basis of an idea of a rational utilizer, the same increase of information would naturally increase the possibility to decide for more complex humans. It seems self

[62] E.g. the research conducted by winner of the 'Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel' Daniel Kahneman and the late Amos Tversky on human decision making that yielded the 'Prospect Theory', widely used within behavioural economics.
[63] Karacuka & Zaman (2012) pp. 367–383.
[64] Devlin (2015) p. 396.

evident that whenever there is decision-making involved, equal or similar information levels would be preferable.

2.4 Concluding remarks

To summarise this introductory chapter, the basic idea behind a marketplace is to bring buyers and sellers of goods or services to the same place. The kind of market that was developed in Bruges and Amsterdam, which resembles the capital markets of today, has distinctive characters including the use of intermediaries, brokers, like the Van der Beurse family to help facilitating the trade. Such intermediaries still play an important role for the functioning and efficiency of the communications between all market participants.

Capital markets is a place where companies can turn to raise money. Raising money is done by offering either shares or bonds in return for private or institutional investors' investments. By entering a capital market, companies' owners sell off parts of their control in the company to either receive payment or to invest that money into the company. This has positive and negative effects, the positive being mainly reputational and the negative being mainly the struggle of staying compliant with all regulations. For investors, accessing the capital market instead of other venues to place money is usually supported by the wish to receive a larger payment from the investment.

The efficient market hypothesis is a theory that helps to describe that market can be more or less efficient. According to the theory, markets where the prices of the commodity more accurately reflects new information about those commodities are more efficient and this is typically done by granting more access to information for the participants.

Two examples of issues that may arise when there is inequality of information between buyers and sellers include the issue of adverse selection and the moral hazard problem. Although not completely with parallel application to the efficient market hypothesis, the adverse selection problem arises in markets with less efficiency and more information asymmetries. The moral hazards problem works in the same way. If one only pursued the aim of mitigating those two issues, a free flow of information between all market participants would be preferable.

All above explained theoretical aspects of economics relate to one another. If a market increases its information flow, advantages in the form of more accurate pricing as described in the adverse selection will occur. Further, if markets offer efficient systems for disclosing relevant information that could otherwise be used in a way advantageous for an individual but detrimental for the market, this will in its nature decrease the amount of moral hazard issues. These two considerations taken together would, according to the definitions provided by the efficient market hypothesis lead to a more efficient market. However, these considerations should always be considered in the light of the smooth functioning of the market for all participants. If one increases the level of regulations that issuers must abide by too much there will be less issuers entering the market, leading to a less attractive market. This issue is more relevant regarding smaller issuers because they will in all likeliness be less prepared to comply with heavy regulations.

3 Behavioural rules for listed companies

3.1 Introduction

When a company enters the capital market, a large regulatory burden follows. When deciding on whether or not to turn to the capital market to access investor capital, one of the main considerations is whether the company has the organisational and economic capacity to comply with those regulations. Closely connected to this consideration is whether a company should aim to be listed on the main regulated market, or if it should initially choose to access one of the less burdensome alternatives.[65]

The rules that become applicable after a company is listed is a system intended to work as a control mechanism for all market participants. This control mechanism aims to lower the overall costs of investing as well as to build trust in the capital markets and through this, facilitate for the market to adopt the correct price for the traded shares. The basic idea is that if the investors have easily accessible information about the companies on the market, they do not have to spend their own resources to evaluate them and it is more efficient for all companies to supply information to all investors rather than all investors gathering information about every company.[66]

There are several regulations that apply to companies listed on capital markets, including special rules on the boards of directors of public companies and rules regulating the process of takeovers, the aims of which are in one way or another derived from the basic idea of improving market functionality. For our purposes and due to reasons of space, the parts that will be covered include (i) certain disclosure rules and (ii) the prohibition of market abuse.[67]

[65] About the concept of different levels of markets, see section 3.4.
[66] Sevenius & Örtengren (2017) pp. 34–36.
[67] Veil (2017) pp. 28 & 29.

This chapter will very briefly outline the contours of these two systems, of which the major holdings rules form a part of the former. The purpose of describing this is to allow the reader an understanding of in what context the major holdings rules operate in. A reason for this is to assess the current legal regime on major holdings disclosure from a bigger perspective. Another purpose is to allow an easier navigation of the area of law. The explanations of the disclosure rules and the prohibition of market abuse will be followed by a short explanation of the different levels of capital markets in section 3.4.

3.2 Disclosure rules

3.2.1 Introduction

Regulating market participants' behaviour can be said to stand on two legs. The first is known as the disclosure rules which, strictly speaking, form a part of the transparency rules on capital markets, but that is a wider concept. The second is the *behavioural prohibitions* and exploration of the it will follow the first.

Since there are several regulatory regimes that targets disclosure of information to the public, only the most important ones will be described, and the explanations will be very brief. The aim is to allow an overview of the system and an understanding of the purposes behind it. What will be covered are the rules on (i) prospectus disclosure, (ii) periodic information disclosure, (iii) disclosure of inside information and (iv) disclosure of directors' dealings. The major holdings disclosure rules form a part of the disclosure rules system but will be subject to an independent examination in chapter 4.

3.2.2 Prospectus disclosure

For those unfamiliar with the term, a prospectus can be described as a highly detailed information document that a company issuing securities must publish containing information about the company. This explanation is very general and was deducted by a reading of Articles 1–3 of Directive 2003/71/EC, hereinafter the 'Prospectus Directive'. However, in practice, the rules are

extensive and entail that the affected company has allocated sufficient resources to comply with them.

The aim of the prospectus rules is to ensure investor protection and market efficiency, and this is to be achieved by providing full information about the financial instruments and the companies that offer them.[68] When a company admits its securities to a regulated market *or* when it offers them to the public, the obligation to publish a prospectus arises.[69] The notion 'offer to public' is defined broadly to widen the scope of application for the rules[70].

The prospectus rules are set up as containing a general obligation to publish a prospectus when admitting them to a regulated market or offering to the public. The obligation to publish a prospectus is qualified by exemptions, including offerings of financial instruments to solely qualified investors, offers made to less than 150 persons, offers under 100 000 euros per investor and more.[71]

3.2.3 Periodic economic information disclosure

Periodic disclosure of economic information is, as indicated by its title, an obligation for listed companies to, at certain pre-determined moments in time, provide economic information to the market. The rules governing periodic disclosure are found in Directive 2013/50/EU, hereinafter the 'Transparency Directive 2013', amending Directive 2004/109/EEC, hereinafter the 'Transparency Directive 2004'. The Transparency Directive 2004 and its predecessor are collectively referred to as the 'Transparency Directive' and will be further elaborated on in chapter 4.

The aims described in the Transparency Directive include contributing to a genuine single market through having efficient, transparent and integrated securities markets.[72] Further, to facilitate those aims, companies listed

[68] Recitals 10 & 18 Prospectus Directive.
[69] Article 3 Prospectus Directive.
[70] Article 2 (d) Prospectus Directive.
[71] Article 3 Prospectus Directive.
[72] Recital 1 Transparency Directive.

on marketplaces should ensure appropriate transparency for investors through a regular flow of information.[73]

Rules on periodic information disclosure have connections with accounting and includes providing the market with information on a yearly and half-yearly basis about the financial status of the company.[74] For the yearly reports, what shall be included is the audited financial statements, the management report and statements from the persons responsible within the company.[75] The half-yearly reports are less extensive and include a condensed set of financial statements, an interim management report and statements from the persons responsible for the company.[76] The member states may, under specific circumstances, oblige its listed companies to provide certain financial information also on a quarterly basis.[77]

Disclosure of periodic information differs from e.g. the prospectus rules because they are not triggered by a specific event. On the contrary, they are to be applied on a continuous basis in order to gradually over a period of time enhance both investor confidence and simplify making an informed assessment of the company.[78]

3.2.4 Disclosure of insider information

The idea behind disclosing insider information is that persons who have insider information are incentivised to speculate on that information by either buying or selling securities in that company. However, should that information become public and available for everyone, the information loses its power because the market will automatically adapt to it.[79]

Similar to the rules prohibiting insider trading[80], the relevant provisions are found in Regulation (EU) No 596/2014, hereinafter 'MAR'. The

[73] Recital 2 Transparency Directive.
[74] Articles 4 & 5 Transparency Directive.
[75] Article 4 (2) Transparency Directive.
[76] Article 5 (2) Transparency Directive.
[77] Article 3 (1a) Transparency Directive.
[78] Recital 1 Transparency Directive.
[79] Veil (2017) p. 348.
[80] Cf. section 3.3.2.

aim of the regulation is to ensure the integrity of the markets,[81] and the obligation to disclose inside information is formulated in Article 17.

As an explicit reason, the Union legislature argued that '[a]n integrated, efficient and transparent market requires integrity.' and that '[m]arket abuse harms the integrity of financial markets…'.[82] The new legislation in its form as regulation, in contrast to its predecessor Directive 2003/6/EC, hereinafter 'Market Abuse Directive', establishes directly applicable rules that apply uniformly across the union. It follows from Article 288 of the Treaty on the Functioning of the European Union that regulations do not need to be implemented and are thus likely to have stronger application.

The core obligation requires listed companies to disclose insider information as soon as possible. There is, however, a possibility for companies to, on their own volition, delay such disclosure. The exception is subject to certain limitations and the company applying it must inform the competent authorities of the delay.[83]

3.2.5 Disclosure of directors' dealings

The rules on disclosure of insider information are more likely to apply to leading figures rather than others because of their positions entail high likelihood of acquiring such information. The rules on disclosure of directors' dealings take this approach one step further and explicitly targets actions or omissions committed by such company representatives regardless if the behaviour is abusive or not.

The aim described by the Union legislature is to act as preventative measures against market abuse, to prevent the public's suspicions against certain deals and to give the competent authorities another means to perform market surveillance.[84]

According to Article 19 of MAR, where the obligation is stated, the Union legislator has targeted persons discharging managerial responsibilities,

[81] Recital 2 MAR.
[82] Recital 1 MAR.
[83] Articles 17 (1) & 17 (4) MAR.
[84] Recitals 58 & 59 MAR.

hereinafter 'PDMRs', in listed companies to disclose information about their, and persons closely associated with them, transactions relating to the listed company. The disclosure obligations are limited to transactions exceeding 5,000 euros per year to avoid too many notifications.[85] The PDMRs are further prohibited from completing any deals relating to the listed company's securities within a closed period of 30 days before the publication of financial reports.[86]

3.3 Prohibitions against market abuse

3.3.1 Introduction

The second leg of regulating market behaviour targets ensuring market integrity and confidence by adopting *prohibitions* of certain unwanted actions by its participants, namely market abuse. Since 2003, rules aimed at ensuring this has been harmonised in the Union through the adoption of MAR. What constitutes insider information is described in section 3.2.4 and that definition is applicable on the prohibitions to.

3.3.2 Prohibition of insider trading

The prohibition of insider trading is divided into two separate prohibitions. First, the regulation prohibits insider *dealing* and second, it prohibits *unlawful disclosure* of insider information. There is also a prohibition of recommending or inducing others to engage in insider dealing, but that is less relevant since it follows from the core prohibition.[87]

Insider information is defined as 'information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments'[88].

[85] Article 19 (8) MAR.
[86] Article 19 (11) MAR.
[87] Article 14 MAR.
[88] Article 7 (1) (a) MAR.

The prohibition of engaging in insider dealing is defined in Article 8 of MAR and the prohibited act occurs when a person possesses insider information and uses that information by directly or indirectly acquiring or disposing of financial instruments to which that information relates, for its own account or for the account of a third party.[89]

To unlawfully disclose insider information means that someone who is in lawful possession of that information shares it with someone else. The prohibition does not, however, apply when someone passes on that information in the normal exercise of an employment.[90]

3.3.3 Prohibition of market manipulation

It is forbidden to engage in market manipulation. Market manipulation was defined by the Union legislature by providing examples of activities that are unlawful because they in some way affect the market in an arbitrary way.[91] These unlawful manipulations of the market can be divided in different ways, here, they are divided into *transaction-based* and *information-based* manipulations.

Transaction-based manipulations include situations where someone, through an order or transaction, can give false or misleading signals about the supply, demand or price of a financial instrument. Information-based manipulations include situations when someone facilitates the spreading of false or misleading information about a financial instrument.[92]

3.4 Levels of capital markets

Currently in the Union, there are three main types of capital markets available for investors and issuers. These include regulated markets, MTF markets and SME Growth markets[93]. In this thesis, they are described as being on different

[89] Article 8 (1) MAR.
[90] Articles 8 (3) & 10 (1) MAR.
[91] Article 15 MAR.
[92] Veil (2017) p. 230.
[93] Definitions are found in Article 4 (1) MiFID II.

levels because they obligate their respective participants to abide by different levels of regulatory burdens.

The 'top' level of capital markets is the regulated market, defined in Article 4 (1) (21) in MiFID II. The two main organisational elements that distinguish it include that only 'market operators'[94] are eligible to run regulated markets, and that the market operator must comply with Title III of MiFID II which entails extensive requirements on the organisation. In comparison to regulated markets, MTFs do not put up the same organisational requirements on the actor running the market. MTFs can be run either by market operators or by 'investment firms' which falls under Title II of MiFID II and is less extensive.

When it comes to prohibition of market abuse, MAR prescribes the most extensive rules on companies listed on regulated markets. The obligations include all that is explained in the section 3.3 without general exemptions. Although MAR is fully applicable on MTFs as well, there are some regulatory alleviations in relation to the SME Growth markets. According to Article 17 (9) of MAR, companies listed om SME Growth markets do not have to publish insider information on their own websites but may, if the market operator offers it, publish on the market's website. Further, there is a less extensive obligation to keep insider lists according to Article 18 (6). In connection with the considerations about MAR, it should be noted that the European Commission is working on suggestions to further deregulate the rules on market abuse on SME Growth markets.[95]

As regards the aspect of disclosure, it is interesting to consider the prospectus rules. The Prospectus Directive does not distinguish between the markets as such, but it distinguishes between the sizes of companies, where smaller companies can take advantage of a simplified prospectus process and format.[96]

[94] Definitions are found in Article 4 (1) (18) MiFID II.
[95] 'Promoting SME Growth markets: Commission proposal for a regulation amending the market abuse regulation and the prospectus regulation', European Commission website, visited 2019-02-26.
[96] Article 26 (b) Prospectus Directive.

The fact that the alleviations in the prospectus regulation is applicable on smaller companies is interesting, because it highlights the underlying idea behind having different levels of markets. As described in Recital 132 of MiFID II, the Union legislature has considered it desirable to facilitate easier access to capital for small and medium-sized companies. Historically, the MTF markets has had that role, but with the adoption of the SME Growth market, the idea is that it will make it even more accessible for such companies.

3.5 Concluding remarks

Considering the different rules that have been outlined in this chapter, it is possible to deduct an idea of how these rules cooperate to create a well-functioning market. However, there are several interesting considerations to extract from the rules viewed individually because they represent different aims and tactics that have been adopted by the Union legislature. There is, of course, an indefinite amount of observations to be made in relation to what have been presented in this chapter, but with the aim of conducting an interesting assessment of the major holdings rules and not an exhaustive presentation of the entire regulatory system on capital markets, some remarks that are of particular interest will be made.

First, considering the prohibition on market abuse, there is a clear intention from the legislature to allow investors to maintain, or even improve, their trust in the capital market by ensuring that the markets have high levels of integrity. Integrity is here undefined, but it is submitted that it is closely connected with an idea of justice and non-discrimination for market participants. The financial industry is, without a doubt, an industry based on confidence. Although it could be argued that allowing trade on inside information and speculation on market manipulation will lead to prices stabilising on a proper level, the Union legislature is firmly convinced that preventing holders of inside information from speculating on that information as well as manipulating the market will improve the confidence in the market. This can be described as a long-term tactic that prefers wide participation by investors over a more liberal market where only the most knowledgeable actors might gain an advantage.

Second, a distinction is made between the prohibition rules and the disclosure rules. The distinction highlights two basic means for achieving a well-functioning market. On the one hand, there are the prohibitions which aim at preventing certain unwanted behaviour and allow the authorities to prosecute when such behaviour is committed. On the other hand, the disclosure rules have the aim of levelling out information asymmetries and, by doing so, also works as a preventative instrument regarding the unwanted behaviour regulated by the prohibitions.

Going into the disclosure rules a bit deeper, by comparing the prospectus rules with the periodic information rules, a distinction between different types of disclosure rules is made. The periodic information rules apply on a continuous basis and shall be published at a pre-determined schedule. On the contrary, the prospectus rules are disclosure rules that are based on some kind of *triggering event*, in this case issuing shares or bonds. This distinction is of importance because pre-scheduled disclosure rules seem to be easier to comply with because they are foreseeable to a larger extent. More examples of event-triggered disclosure rules are those on disclosure of inside information and directors' dealings.

Considering the prospectus rules, a distinction can be observed between qualified and non-qualified investors. The distinction is subject to the level of knowledge, where investors with the least amount of knowledge are considered to have a need for a higher level of information about the companies, and thus in extension, a higher need for protection. This distinction must be seen as the Union legislature, in essence, adhering to the research by economists accounted for in chapter 2.

The idea behind disclosing insider information is linked to the efficient market hypothesis and the moral hazards problem, described in section 2.3.2. and 2.3.3. The former because there is a clear intention of counteracting information asymmetries between the prominent figures representing the listed companies and the market, the latter because the disclosing of information disincentivises those same persons from speculating on the information they are holding in an immoral manner. The rules on disclosure of insider information aims to prevent insider dealings, as supposed to e.g. the rules on

disclosure of periodic information which are more aimed at counteracting information asymmetries.

Lastly, considering the three levels of capital markets, the reoccurring tension between the level of information and the knowledge of the investors can be observed. The regulated markets represent the markets where most of the ‘everyday investors’ go to invest their money, sometimes without having much or any background information about what they are investing in. The companies listed on regulated markets are usually well known and information about them is, because of the high regulatory burden, easily accessible for those that are interested. If the regulated market is viewed in contrast to the MTFs, the other side of the coin is represented. The companies are typically smaller and their organisational capacity to give information is typically smaller. This means that the investors that access these types of markets are those with some or plenty of experience when it comes to trade with securities. The SME Growth market is intended to work as an extension of this reasoning, facilitating a platform that has even less barriers for companies to access the markets in the form of compliance costs.

4 EU major holdings disclosure

4.1 Introduction

Because the purpose of the thesis is to examine whether there is a need to extend the major holdings rules to include the MTF segment, the rules described will be categorised by the level at which they operate. The explanations in this chapter are intended to be somewhat exhaustive, offering a real understanding of the current regime on major holdings rules, including their purpose and applicability. This will illuminate a regulatory gap on the MTF segment. Whether the gap is in need of filling will be examined in chapter 5 and further elaborated on in the finishing analysing chapter 6. The exploration of the major holdings rules will be most comprehensive regarding regulated markets because the rules were developed in this area.

A brief historical context will first be provided which also will highlight some of the more important considerations behind the rules that are in force today. Although extensive elaborations will be left out, the Lamfalussy-process is of practical importance for most aspects of capital markets law, and therefore its main features will be accounted for. To give a basic understanding of it will also help the reader to understand that the major holdings rules consist of several regulatory frameworks that operate on different levels of application and this is a direct result of applying the Lamfalussy-process.

As a result of the Lamfalussy Report[97], the Union initiated a new regulatory process when legislating within the area of financial services. The purpose of which was to improve the regulatory process by making it quicker and more effective. The most important element, for the purposes of this thesis, of Lamfalussy's regulatory process is that legal acts within financial services are divided into four levels. Level one contains basic laws adopted by the European Parliament and the Council based on proposals from the Commission, level two contains delegated acts and technical implementing measures adopted, adapted or updated by the Commission, level three

[97] Final Report of the Committee of Wise Men on the Regulation of European Securities Markets of 15 February 2001, hereinafter the 'Lamfalussy Report'.

contains guidelines from independent committees, such as FI and ESMA, and level four mainly contains certain delegated executive powers from the Commission to ensure enforcement of the rules.[98]

4.2 History and development

Although it is not strictly at the very beginning, the historical presentation of the major holdings rules will have its starting point in the report *The Development of a European Capital Market* from 1966, hereinafter the 'Segré report'. In this early stage of the Union (at that time the 'European Economic Community'), the Commission entrusted a group of independent experts to perform a study of the problems confronting the capital markets in the Union.[99]

Even though rules on disclosure of major holdings is not specifically addressed in the Segré report, it is of relevance because the report underlined the importance of adequate information to investors in order to facilitate the functioning of capital markets. The report also raised the perspective of the issuers of securities, arguing that an insufficient degree of information will make investors more cautious in the market, essentially preventing them from placing their savings where uncertainty is present. Another consequence of deficient information is that the public tends to assign more importance to factors that makes different securities distinguishable such as political or taxation factors.[100] One interpretation of this is that information about the companies is, to a large extent, what separates them and defines which company one should place one's savings in. Where such information is not available, other information, such as information about political or tax implications will be decisive in the choice between different investments.

Disclosure rules were thus early on considered likely to improve investor protection and the confidence in the market and therefore a part of establishing of a true capital market within the Union. Even as early as in 1979,

[98] 'Regulatory process in financial services', The European Commission website, visited 2019-02-26.
[99] Segré et al. (1966) pp. 5–6.
[100] Segré et al. (1966) pp. 225226.

there was a provision obligating companies to disclose information about changes in major holdings when publishing a new prospectus in relation to its latest.[101]

Regarding disclosure of major holdings specifically, they are the result of the conduct of the Italian industry and businessman Carlo de Benedetti during the 1980's. Through his company 'Cerus', he tried to take control of the biggest Belgian holding company 'Société Général de Belgique', which was listed on the Belgian capital market. In 1988, de Benedetti officially declared his ownership of 18,6 % and intention of acquiring another 15 % to the owners' grave dislike. In the end, the offer was technically counteracted by a decision to issue 12 million new shares, which were sold to a subsidiary company 'Sodecom SA'. This scenario caused a lot of debate in Belgium as well as Europe and led to the adoption of a rule obligating shareholders to give notification when they acquire more than 5 % of the shares in a listed company, what we now know as major holdings rules.[102]

In 1988, disclosure rules on changes in major holdings, as we know them today, were added to the Union legal system through the adoption of the Council Directive 88/627/EEC, hereinafter the 'Disclosure Directive'. At this time however, the rules were still under-developed from an international point of view and multiple member states, including Sweden, decided to adopt more extensive regulatory regimes than what was demanded by the Disclosure Directive.[103] From the Union's perspective, having a policy of adequate information to capital markets was still expressly a part of improving investor protection and ensuring that markets function correctly.[104]

As a response to the Disclosure Directive's mellow reception, in 2004 the Union legislature adopted the Transparency Directive 2004. The main intention was to enhance efficient, transparent and integrated securities markets by disclosing accurate comprehensive and timely information about security issuers.[105] The new directive was more comprehensive, including rules on

[101] Article 5 (c) Council Directive 79/279/EEC, the 'Stock Exchange Directive'.
[102] Olrog & Rickhamre (1992) pp. 102–104.
[103] Veil (2017) pp. 395–397.
[104] Recitals of the Disclosure Directive.
[105] Recital 1 Transparency Directive.

periodic information to about listed companies[106] and information for holders of capital admitted to trading on regulated markets[107].

One major issue with the Transparency Directive 2004 was that it targeted specific financial instruments, in this case shares[108]. By being specific in its wording, the Transparency Directive 2004 was subject to the mercy of market participants' creativity in developing new financial instruments that fell outside the scope of the directive. Therefore, the Union legislature decided to amend the directive by adopting the Transparency Directive 2013, which is in force today. As stated above, the Transparency Directive 2013 is an amendment to the Transparency Directive with an intention of counteracting circumvention of the disclosure rules. Because of this, the amended directive now covers all instruments with similar economic effects to shares and entitlements to acquire shares.[109]

4.3 The Transparency Directive

4.3.1 Introduction

It should first be submitted that the rules on disclosure of major holdings are not, in principle, difficult to grasp. However, by engaging in the legislative texts alone, one will need several readings and many times parallel readings of both the original Transparency Directive 2004 and its amendments in the Transparency Directive 2013. Here, the intention is making the presentation as simple as possible while still providing a comprehensive understanding of the regulatory framework. For clarity, when referring to the Transparency Directive alone, it refers to the legislation applicable today, when referring to either the 2004 or the 2013 Transparency Directives it is to highlight differences between the two but the 2004 is in force today with the amendments in the 2013 version.

[106] Articles 4–8 Transparency Directive.
[107] Articles 17 & 18 Transparency Directive.
[108] Cf. Article 2 (d) Transparency Directive on the definition of 'issuer'.
[109] Cf. Recital 9 Transparency Directive 2013.

4.3.2 Holder and issuer obligations and exemptions

The major holdings disclosure rules were developed, with heritage from the Segré report and the Belgian debacle regarding the hostile takeover situation, to facilitate a genuine single market by ensuring efficient, transparent and integrated securities markets in the Union.[110] To that end, issuers are to provide the market with a regular flow of information and to inform listed companies of acquisitions that result in changes of major holdings.[111]

The major holdings rules as constructed today are found in Articles 9–13 of the Transparency Directive. According to Article 9, which operates as the core of the rules, there is an obligation for the member states to ensure that '…shareholders notifies the issuer of the proportion of voting rights […] where a holder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached…', this applies where such proportions reaches, exceeds or falls below the thresholds of 5, 10, 15, 20, 25, 30, 50 and 75 %.[112]

The basic concept prescribed by the Transparency Directive is thus that a holder of voting rights in a listed company is to notify that company if the holder acquires or disposes shares and by doing so exceeds, reaches or falls below certain predetermined thresholds. The main obligation lies on the home member state, which means the state where the listed company is registered.[113] The aims underlying the regulations include enhancing investor protection and market efficiency by enabling shareholders to have full knowledge of changes in the voting structure of listed companies.[114]

Article 10 of the Transparency Directive provides for a notification obligation in certain specific cases where a natural person or legal entity has not yet, but is *entitled* to acquire, dispose of or exercise their voting rights. This includes for example situations where two or more persons are in

[110] Recital 1 Transparency Directive.
[111] Recital 2 Transparency Directive.
[112] Article 9 (1) Transparency Directive.
[113] See Article 2 (1) (i) Transparency Directive.
[114] Recital 1 Transparency Directive.

agreement to vote for a lasting common policy towards the management of a company[115] or when another entity or company is the formal holder of the voting rights but is under the control of the main person[116].

The main rule for notification of changes in major holdings is subject to exemptions. Because the purpose of the rules is to make public the structure of control, i.e. the voting rights, where someone acquires such voting rights without intention of using them, applying the rules defeats their purpose. There are certain actors who operate on capital markets without any intention of using their voting rights and thus are exempted from the notification obligation. These include market makers and clearing institutes that, because of their complexity they will be left out of further explanation.[117] Another exemption is the one applicable for custodians, holding shares for someone else and who cannot exercise their voting rights without written instructions from the main party.[118]

The process of disclosure, i.e. the actual process of giving the information to the market, consists of two parts described in Article 12 of the Transparency Directive. First, there is an obligation for the holder of the voting rights towards the listed company. This shall be done *as soon as possible* and no later than four trading days after the shareholder, natural person or legal entity learns about the acquisition or disposal of the voting rights[119]. Second, the listed company is obligated to publish this information to the market. This should be done within three trading days after receiving the initial notification[120] and is to be published so that it guarantees the market fast access in a non-discriminatory manner[121].

4.3.3 Counteracting circumvention

The Transparency Directive 2004 only provided for a so-called *minimum harmonisation*, meaning that the member states could allow more stringent rules

[115] Article 10 (a) Transparency Directive.
[116] Article 10 (e) Transparency Directive.
[117] Articles 9 (4) & 9 (5) Transparency Directive.
[118] Article 9 (4) Transparency Directive.
[119] Article 12 (2) (a) Transparency Directive.
[120] Article 12 (6) Transparency Directive.
[121] Article 21 (1) Transparency Directive.

than what was prescribed in the directive. This led to major differences between the application of major holdings disclosure between the member states which was considered to hinder cross-border investments. It was therefore decided that the member states would not be allowed to adopt more stringent rules than the directive when it comes to the calculation of voting rights. However, differences in thresholds should still be allowed.[122] This special concept is sometimes referred to as *maximum harmonisation* although the term is not strictly accurate since it only refers to the calculation of aggregate voting rights in respect of the notification obligation.

One important principle change that came through the Transparency Directive 2013 amendments was that the financial instruments covered by the directive was extended to include those giving their holder either the unconditional right or discretion to acquire shares that carry voting rights and to financial instruments that have similar economic effect as such.[123] Because of the open wording 'similar economic effect', the Union legislation now has wider applicability. However, certain legal uncertainty will always follow such legal craftsmanship. To mitigate the problems of uncertain application, ESMA published an indicative list[124] to give guidance to what financial instruments are included.

In the indicative list, financial instruments are presented to clarify what is covered by the Transparency Directive, apart from what is already explicitly stated in the Transparency Directive 2013. What is listed in the directive include transferable securities, options, futures, swaps, forward rate agreements, contracts for differences and any other contracts or agreements with similar economic effects which may be settled physically or in cash.[125] In the indicative list, ESMA further included the following to be considered as financial instruments: irrevocable convertible and exchangeable bonds referring to already issued shares, warrants, repurchase agreements, rights to

[122] Cf. Recital 12 Transparency Directive 2013.
[123] Articles 13 (1) (a) & (b) Transparency Directive 2013.
[124] ESMA, Indicative list of financial instruments that are subject to notification requirements according to Art. 13 (1b) of the revised Transparency Directive, 22 October 2015, ESMA/2015/1598, hereinafter 'ESMA indicative list'.
[125] Article 13 (1b) Transparency Directive 2013.

recall lent shares, contractual buying pre-emption shares, other conditional contracts or agreements than options and futures, hybrid financial instruments and a few more.[126] The indicative list is open in its wording, including a wide variety of financial instruments. For the purposes of this thesis it is not necessary to comprehend the meaning of the financial instruments described. What should however be deducted is the clear intention from the EU legislature and ESMA to provide a regulatory framework on disclosure of major holdings that covers all relevant aspects and is not easily circumvented.

4.4 Concluding remarks

The European Union has been clear in its intention to provide rules that allow for investors on the market to view and, on their own volition, analyse the structures of who controls listed companies. The Union has provided explicit rules going back to as early as the late 80´s with traces reaching as far back as the 60´s with the Segré report. Since then, development has made the rules apply to more situations and although it is not to be analysed in this thesis, the same developments cannot be observed regarding many other aspects of capital markets law given the trend of deregulation since the 80´s. The point being that the major holdings rules seem to be considered both important and to have positive effects for the markets considering that they are given more space while other kinds of similar rules are being deregulated. This is further exemplified by the extended obligations in Article 10 of the Transparency Directive which includes situations where someone is entitled of gaining control of a listed company.

Considering the content of the law, the first obligation observed is that on the holder of shares or voting rights. For this person or legal entity, it is mandatory to give notification when the power of influence, i.e. the voting rights, exceeds, reaches or falls below certain thresholds. The thresholds differ among the member states, but the way they are calculated has been settled through the revised Transparency Directive 2013. Further regarding the notification obligation, the obligation lies on the holder towards the issuer and

[126] Point 3 ESMA indicative list.

this seems like the most convenient way of keeping track of the ownership levels.

The regulatory aims declared in the Transparency Directive, referring to enhancing investor protection by enabling full knowledge of changes in major holdings, have clear connections with the adverse selection problem, meaning that investors should know as much as possible about what they are investing in. This also relates back to the issue of counteracting problems of moral hazard which is exemplified by the situation in Belgium that led to the major holdings disclosure rules being invented in the first place. [127]

Following the notification from the holder, the issuer is under an obligation to publish the information to the public within three days. The publication should always be done in a manner that allows fast access for the market and in a non-discriminatory way. The non-discriminatory nature of publications is of major importance within the entire transparency system and relates to the disclosure of insider information[128]. Because the information, no matter if it regards insider information or a major holdings notification, is of such economic importance it is particularly important that all market actors receive it as close to simultaneously as possible to avoid providing one with an unfair advantage. This way of reasoning also relates to the moral hazards problem,[129] by evening out information asymmetries to avoid unwanted behaviour from the party with the 'upper hand'.

To try and define *what* is the core target of the disclosure obligation, it is submitted that it is changes in power structures in companies. On the aspect of providing some kind of legal certainty, it would be troublesome to use the wording 'changes of power structures' in the directives. Since the chosen direction has been to target financial instruments, the listed financial instruments in the directive as well as the ESMA indicative list should be visited in this regard. One should not however, read neither of them as exhaustive but only as examples.

[127] For more on adverse selection and moral hazard, see section 2.3.3.
[128] See section 3.2.4.
[129] See section 2.3.3.

5 Swedish major holdings disclosure

5.1 Introduction

Approximately at the same time as the Disclosure Directive was adopted at the Union level, similar rules were adopted in Sweden through self-regulations. Sweden applied major holdings rules as early as 1983 through recommendations adopted by the Swedish Industry and Commerce Stock Ex-Change Committee, hereinafter the 'Committee'.[130] In 1993, major holdings rules were added to Swedish law to fulfil the minimum requirements in the Disclosure Directive as a part of preparing for the Swedish accession to the Union. However, because the self-regulated Committee recommendations provided a higher level of information requirements, they remained in force and were reworked in 1994. The 1994 version is the first version that resembles the major holdings rules as we know them today.[131]

It was not until the implementation of the Transparency Directive 2004, which was executed in July 2007, that the self-regulations were finally revoked and the major holdings rules were fully transferred to law.[132] With the implementation of the Transparency Directive and the revoking of the self-regulations, the Swedish legislature deliberated on the fact that the Swedish system was a more stringent regulatory framework than was prescribed by the Union legislature. After weighing the transparency levels against the interest of being harmonised in relation to other member states, the Swedish legislature decided to implement the directive but attributing higher standards of disclosure obligations in accordance with the principle of minimum harmonisation.[133]

The latest revision of the Swedish major holdings rules was adopted in 2016 to implement the amendments in the Transparency Directive 2013 and the rules are found in chapter 4 of the Swedish Financial Instruments

[130] Sevenius & Örtengren (2017) p. 286.
[131] Prop. 2006/07:65 p. 157.
[132] Sevenius & Örtengren (2017) p. 286.
[133] Cf. Prop. 2006/07:65 p. 161.

Trading Act, hereinafter 'FITA'.[134] Because FITA is the result of an implementation of Union law, described in chapter 4 of this thesis, several provisions overlap. Therefore, focus will be on highlighting differences and similarities between Swedish and Union law. FITA will be presented alongside the delegated FI delegated act FFFS 2007:17, which is a level three act in the Lamfalussy system[135]. The FFFS 2007:17 is continuously updated and it is the current consolidated version 2018:19 that entered into force in January 2019 that is considered.

5.2 Regulated markets

As is the case in the Disclosure Directive, chapter 4 § 3 FITA places the initial notification obligation on the holder of shares. In the Swedish version, the legislature has even clarified this by inserting the words 'the one obligated to notify' in round brackets.

The lay-up of the disclosure system is the same as at the Union level. There is a basic obligation for the holder in chapter 4 § 3 FITA, to notify the issuer in writing of changes in holdings in shares or voting right in that issuer. The notification obligation is activated when such holdings reaches, exceeds or falls below 5, 10, 15, 20, 25, 30, 50, 66 2/3 or 90 % of all voting rights or shares.[136]

The notification is to be made from the holder to the company as soon as possible, but no later than three trading days after the holder has entered into the agreement making them liable for the notification. According to FITA, the notification should be made both to the listed company and to FI and this procedure differs somewhat from the one prescribed in the Transparency Directive.[137] What should be included in the notification is found in FFFS 2007:17 chapter 12 § 10, including name, date, number of shares or financial instruments, information about the instruments and other valuable information.

[134] Afrell, Financial Tradings Act (1991:980) chapter 4, Karnov, visited 2019-04-29.
[135] The Lamfalussy system is described in section 4.1.
[136] Chapter 4 § 3 FITA.
[137] Chapter 4 § 3 FITA.

When a notification has successfully been made to the listed company and FI, it is FI's responsibility to publish the notification and make it available to the general public. This is to be done no later than at noon the day after FI received the information from the holder.[138]

Exemptions provided for in FITA are more or less the same as those prescribed by the Transparency Directive, targeting such ownerships that will not lead to an exercise of voting rights for different reasons. This includes shares that are held for another and that person can only exercise the voting rights after given a written consent[139]. Further, the technical exemptions for clearing and market making businesses are also applicable in Sweden.[140]

Looking at what financial instruments are included, FITA holds that shares and financial instruments relating to shares are included. Further, depositary receipts for shares are also included if they entail a right to vote for those shares. Further, the formulation from the Disclosure Directive 2013 amendment has been included into FITA and thus financial instruments that entails a right to acquire shares or that gives similar economic effect as shares are covered by the rules.[141]

5.3 MTF markets

The Transparency Directive as well as FITA are applicable on shares and financial instruments relating to shares, issued by companies that operate on regulated markets.[142] Thus, shares and financial instruments relating to shares from issuers on MTF markets do not fall under the major holdings legal rules.[143] However, the capital markets in Sweden are partly self-regulated on a civil law-basis where the listed companies enter into what is called a 'listing agreement', which is an undertaking to comply with the specific capital market's rules. On this basis, market operators and investment firms that manage

[138] Chapter 4 § 10 FITA.
[139] Chapter 4 § 12 FITA.
[140] Chapter 4 §§ 12 & 14 FITA.
[141] Chapter 4 §§ 1 & 2 FITA.
[142] Article 1 (1) Transparency Directive; chapter 4 § 1 FITA.
[143] About different types of capital markets, see section 3.4.

capital markets in Sweden on the MTF segment are, to a large extent, free to regulate the activities on their as they see fit.[144]

As declared in the introduction (see section 1.1), there are currently three active MTF markets to trade on in Sweden. There are the NGM Nordic MTF, Spotlight and the Nasdaq First North. There are no rules obligating the traders on NGM Nordic MTF and on Nasdaq First North to notify or disclose changes in major holdings. However, on Spotlight[145], the investment firm running the market has, on their own volition, decided to include major holdings rules. Also, there is a segment on the Nasdaq First North market which is called 'Premier' that also has decided to integrate major holdings disclosure rules.[146]

The Nasdaq First North market is a market where companies typically aim to grow their business. The basic idea marketed by Nasdaq is that companies should choose to be listed on the First North market to access growth capital and sometime in the near or distant future, move on to the main market, Nasdaq Stockholm. This is offered by providing a market that is less regulatory burdensome for the companies but that still provides high levels of transparency to attract investors. The First North Premier list is a segment separated from the regular First North market and is intended to serve as a stepping-stone for companies listed on First North that wishes to enter the main market. The regulatory burden for companies listed on the Premier segment is higher and the idea is that when a company changes from Premier to the main market, the adjustments for the business in general are less intrusive and the quality of the companies entering from Premier are higher.[147]

When companies change list from First North to First North Premier, the First North Rulebook applies. However, there is a separate section, located in Appendix F in the First North Rulebook, that only applies for the Premier companies. Here, certain requirements can be found that separates the lists and prescribes a higher level of compliance burden for the listed companies.

[144] On the concepts of market operators and investment firms, see section 3.4.
[145] Chapter 4 § 20 Spotlight Rulebook.
[146] Appendix F § 3 Nasdaq First North Rulebook.
[147] 'Nasdaq First North', Nasdaq Inc. website, visited 2019-05-04.

This includes applying the International Financial Reporting Standards, always having 25 % of shares traded in public hands (compared to 10 % on First North), to have a market value of at least 10 million euros and applying the Swedish Corporate Governance Code.[148] Regarding transparency, all issuers on the Premier segment must comply with all disclosure rules applicable to the regulated market.[149] This means that all the disclosure rules described in chapters 3-5 above are applicable for the issuers.

Turning the attention to Spotlight, the investment firm running the market has chosen another path to regulate the disclosure system on the market. This also has to do with the fact that the main purpose of Spotlight is not to provide a market where the companies' intention is to move to another market such as the Nasdaq main market. Rather, Spotlight's idea is to provide a 'steady' market for growth companies where they can stay listed for a longer time.[150]

In the context of disclosure rules, Spotlight has chosen to adopt a complete regulatory framework that does not refer to the legal requirements, as First North Premier does. To the regulatory framework, Spotlight has attached comments to help interpreting the rules, thus arguably making the system more independent as regards credibility. The Spotlight Rulebook includes independent rules on major holdings disclosure, prescribing that issuers shall act to inform the market when a holder's portion of shares exceeds or falls below 5, 10, 15, 20, 25, 30, 50, 66 2/3 or 90 %.[151]

5.4 SME Growth markets

As explained briefly in section 3.4, with the adoption of MiFID II, the Union legislature created a new category of capital markets with the expressed purpose to facilitate easier access to capital for small and medium-sized companies.[152] Since, currently, legal major holdings disclosure rules are not applicable on MTF markets, they will obviously neither be applicable on this even

[148] Appendix F § 2 Nasdaq First North Rulebook.
[149] Appendix F § 3 Nasdaq First North Rulebook.
[150] Preface to the Spotlight Rulebook.
[151] Chapter 4 § 20 Spotlight Rulebook.
[152] Recital 132 MiFID II.

less regulated market. There are, however, other relevant regulatory aspects in which SME Growth markets differs from both the regulated and the MTF markets. All though this chapter focuses on Swedish national legislation, the following legislative acts stem from the Union. However, given their nature as regulations they are directly applicable in Sweden as law.

Firstly, in MAR, there are two alleviations for issuers on SME Growth markets. The first allows the issuer to publish insider information on the web-site of its market operator or investment firm and not on its own.[153] The second allows the issuer to keep a less extensive insider list.[154] The purpose of these alleviations is to design rules for SMEs that reduces regulatory burdens and that facilitates access to finance for such issuers.[155] Still, the Union legislature stated that the prompt disclosure of insider information is essential to ensure investor confidence in those issuers.[156]

Secondly, in the Commission Regulation (EC) no 809/2004, hereinafter the 'Prospectus Regulation' which implements the Prospectus Directive, there is another possibility in Article 26 (b) for SME companies to apply a simplified method for disclosing prospectus.

5.5 Concluding remarks

The major holdings rules in Sweden has been, compared to Union law, on the forefront of developments within the specific area of law. With the accession to the Union, the Swedish legislature had to consider if it should uphold the high levels of transparency that was prescribed according to Swedish law or if it should prioritise Union uniformity. The result was a mix, using the concept of minimum harmonisation to keep the integrity of the Swedish major holdings disclosure system.

Considering the regulated markets, it should be noted that the Swedish rules are more stringent in its thresholds, providing for both 66 % and 90 % of the votes or shares compared to the threshold of 75 % according to the

[153] Article 17 (9) MAR.
[154] Article 18 (6) MAR.
[155] Recital 6 MAR.
[156] Recital 55 MAR.

Transparency Directive. As a side-note, this has connections with certain Swedish corporate law rules where, for example, certain decisions on general meetings and rules on public takeover bids are affected by holdings of 66 % and 90 %. The timeframe for notifying the issuer is another example of when Swedish legislation is more stringent than the Transparency Directive.

Further, the Swedish disclosure procedure is quicker than what is prescribed as a minimum requirement in the Transparency Directive, which obligates the member states to ensure that the notification is made within four trading days and the publication to the public to be made within another three trading days – thus allowing for more than a week of trade on shares where relevant information has not been made public.

Both the exemptions and the types of financial instruments that are targeted by the rules are, however, the same as under the Union legislation. This could be a result of the Union having greater insights into previous circumvention practices from market actors and therefore being more ambitious in this regard.

Considering the MTF markets, major holdings rules are not directly applicable from legislation. However, as a result of self-regulation, some of the operators of MTF markets have decided to include major holdings rules in their regulatory frameworks.

One of the more important consequences of this is that such regulatory frameworks bind the issuers on that specific MTF market. The fact that the disclosure rules apply to the issuers is of relevance because this places all the liability to provide information on the listed companies, and nothing on individual holders. The responsibility to keep track of all major shareholders and their activity thus lands on the companies. This could mean that the major holdings rules have less effect because only one of two relevant parties uphold the disclosure system.

This problem is specifically evident when considering Spotlight's rulebook. The Spotlight major holdings rules is a version that differs somewhat from that applicable according to law and on First North Premier. First, it does not prescribe disclosure liability when companies reach the thresholds, only when they exceed or falls below. Second, the obligation is formulated as

an obligation to ‘act’ in a way prescribed in the rule, arguably meaning that it is not a strict obligation. It is questionable how effective the major holdings system on Spotlight is when just considering the set-up of the rules. However, according to statistics from the marketplace, there was at least 37 disclosure proceedings of major holdings in 2017[157], a year when there were 163 companies listed on Spotlight[158].

[157] Spotlight yearly report 2017, p. 18.
[158] Spotlight yearly report 2017, p. 4.

6 Summary and analysis

6.1 Introduction

This last chapter contains concluding considerations on the entirety of the thesis. These conclusions are based on what has previously been held in the concluding remarks to chapters 2–5. Therefore, parts of the analysis will be summaries put together, however, those conclusions together will enable a deeper understanding of the regulatory situation, its room for improvement, the possible upsides and downsides from increasing the regulatory burden and more other relevant closely-related issues.

There will be two sections that summarise and extract the most important observations from the descriptive chapters. The first section (6.2) seeks to establish some general opinions or paradigms that govern the way of reasoning when considering information flow, regulatory burdens and how that relates to capital markets. The second section (6.3) summarises the regulatory context in which the major holdings rules operate and highlights the regulatory gap that is the target for the thesis. This will be followed by conclusions where the considerations from previous sections are put together and an attempt to provide an answer to the question whether major holdings rules should be extended to cover MTF markets.

6.2 Reasons for increasing or decreasing access to information

The conclusions drawn from the Segré report has connections with the economic principles explained in chapter 2. By providing adequate information to investors it is likely that the activity on the markets will increase, bringing more investors to the table, because there is more information for investors to base their decisions on which leads to enhanced confidence in the market. This also relates to the concept of market participants and risk aversion, described in section 2.2.4, which provides that market participants are more willing to invest where there is more information available thus enabling a better risk analysis.

Further, as exemplified by the case Société Général de Belgique[159], disclosure rules may also serve indirectly as a preventer of hostile takeovers and although they do not explicitly prevent such takeovers, they will provide shareholders with information about the major owners. These considerations connect with the moral hazard problem given the fact that there are multiple reasons for initiating a hostile takeover in secret.

The economic considerations, which here are summarised as *more information to the market leads to more accurate, attractive and better functioning markets*, must still be weighed against the cons of risking to drive out smaller actors from the market. The market needs its issuers to function, the issuers want to enter the market to raise money, if the regulatory burdens are too grave, some actors will view the costs of complying with them as too high. If the price of raising capital is too high to attract issuers, complete transparency is not something to stride for.

Considering chapter 3, there are different approaches available to the legislature, including *prohibiting* behaviour such as market abuse as well as *promoting* behaviour, such as disclosure of insider information or financial reports. The major holdings rules promote behaviour by obligating market participants to notify and disclose changes in major holdings. However, the rules are also closely linked with prohibiting behaviour that overlap with market abuse, which can be the case if an acquisition of shares is of special importance. It should also be recalled that the major holdings rules are disclosure rules with a triggering event[160], arguably being more demanding to comply with.

Also extracting from chapter 3, which considered several rules that regulate behaviour on capital markets, it is of interest to deduct the bigger picture perspective of the system in which the major holdings rules operate. Putting it simply, the major holdings rules is a part of a bigger system of rules that have different backgrounds, underlying purposes and aims but that all operate in one capacity or another to improve the functioning of the markets

[159] See section 4.2.
[160] See section 3.5.

by enhancing confidence in its participants without putting too much regulatory pressure on them.

Analysing chapters 2 and 3 together, what should be deducted is that the economic theory presents certain explanations as to why increased levels of information are beneficial to markets, referring to the counteraction of information asymmetries and incentives for acting in immoral ways, as well as enabling better, faster and more accurate pricing of the assets on the market. The regulatory context in which the major holdings rules are based on these economic considerations and aims to promote them.

One might argue that the economic reasoning is outdated, referring to more complex explanatory tools as is used within behavioural economics for example. For the purposes of this thesis however, the ideas from economic research are not used to prove or disprove the economic benefits, rather they are used as an normative tool to asses better or worse versions of markets.

It is not submitted that major holdings disclosure rules necessarily alone form the core of well-functioning markets, but they are nonetheless an important part of the system aimed at facilitating a better market. Increased information should not, however, blindly be considered as always wanted. One must put the advantages of access to information in relation to the practical and economic implications from putting heavier regulatory burdens on market participants, i.e. the issuers.

6.3 Regulatory gap on MTF markets

Previously have been described a system of disclosure rules which forms a part of a larger *transparency system* and is built on economic theories and ideals relating to increased information flow in contrast to efficiency for participants. This section will now consider the major holdings rules in a bit more detail.

Since early days of the European Union, major holdings disclosure rules have been present as an idea for the regulation of capital markets. With the Union as the main legislature in the area of financial law, steps for uniformity is continuously being taken. Because of divergencies between the member states regarding historical aspects of running capital markets as well

as regards their ambitions as regulators, the Union has, as is the case in many areas of law, had to adhere to some kind of 'lowest standard' principle. Therefore, member states today still differ in what thresholds they apply for major holdings notifications.

Considering regulated markets, Sweden is one of the member states that adheres to more stringent major holdings disclosure rules than what is prescribed by the directive. This is most clearly exemplified by the thresholds used, where Sweden applies 66 % and 90 % compared to the 75 % threshold prescribed by the Transparency Directive. Further, it is exemplified in the timeframe for the disclosure process, according to which in Sweden it will take a maximum of four trading days including both notification to the issuer and FI and publication to the public. This is to be compared to the seven trading days that are possible to apply according to the Transparency Directive.

For some time, two types of capital markets have been active in Sweden, the regulated markets and the MTF markets. The regulated market is the highest 'level' of capital market where the biggest and most well-known companies operate and where the most stringent rules for transparency is applied.

MTF markets have historically been markets where companies go to grow and eventually move on to the regulated markets. On MTF markets there are less regulatory burdens to better suit the smaller companies that are listed on them. The idea is that smaller companies have less legal and financial expertise as well as less resources to spend on such services and there is a need to have markets that are fitting for such companies as well. The downside to this is that with less information about the companies, there is a greater need for the individual investors to learn more about the companies they plan to invest in on their own volition. One of the ways in which the MTF markets allow for regulatory alleviations is regarding the major holdings disclosure. In Sweden, MTF markets do not need to ensure that neither investors nor issuers supply the market with information about their holdings, hence, the regulatory gap. Some regulatory gaps, however, are not only accepted but wanted because they allow for another interest to be promoted.

6.4 Regulating or not regulating the gap

SME Growth market was introduced by MiFID II with the purpose of allowing easier access for small and medium-sized companies to the capital markets. The intention with offering this new trading venue was to enable the market actors that have previously been active on the MTF markets to enjoy more regulatory alleviations at the expense of transparency and consumer protection. At this point, it should be submitted that this is, in essence, a good idea and a good development in the regulations of the Union capital markets.

However, with the creation of the SME Growth market, a 'middle-segment' of capital markets appears, should the MTF markets not become obsolete. The question then arises, in connection to the main topic of this thesis, would the MTF market benefit from an increase in regulatory requirements regarding major holdings disclosure?

The potential downside of regulating is obvious and has been explained above, but to repeat; the risk is that certain issuers or companies thinking of issuing shares or other financial instruments decide that it is too burdensome to be a listed company if they, apart from all the other requirements they are currently abiding by, must also abide by the rules on disclosure of major holdings. If this was to happen on a larger scale, it would without a doubt be detrimental for that market and for the capital market in general. The following will consider some potential upsides of such regulation.

As a first observation that contradicts and represents a mirror image of what was stated as a potential downside, a positive effect stemming from adding major holdings rules in law for MTF markets would be that it would raise the confidence in the market by providing higher levels of transparency. The purposes behind adopting it for regulated markets, found in the Recitals to the Transparency Directive, apply equally to capital markets in general, including MTF markets. Providing a steady flow of information including information on changes in major holdings will increase transparency and market confidence.

Another advantage from adopting legal regulations, at least for Spotlight and First North Premier because they both apply ambitious disclosure

systems today, is luminated by the difference between self-regulations and legal regulations. Because of how the self-regulatory system is set up, the liability to abide by the rules only lies on the listed company and not on the individual shareholder. Thus, the full burden falls on the issuers to keep track of shareholders' holdings of shares. On a regulated market, law provides that there is (i) an obligation for individual shareholders to notify the issuer when their holdings reach, exceed or fall below the thresholds and (ii) an obligation for the issuers to publish that information. The legal system thus provides a two-fold control mechanism that seem to allow less transactions to 'slip through the cracks', thus arguably allowing greater market efficiency.

Apart from the issue of market efficiency, another important aspect to assess is whether there is an actual *need* to include major holdings disclosure on the MTF segment. Here, 'need to' refers to whether the kind of transactions that induces notification liability actually occurs on MTFs or if the structure of ownership on those markets is 'static'. All though more statistical evidence would be of major benefit for assessing this, judging from the information provided by Spotlight, there is at least some purpose in regulating the MTFs. In the case of Spotlight, the marketplace stated in its yearly report from 2017 that there had been 37 cases of major holdings notifications. This means that at least approximately one case for every fifth company listed on Spotlight. The term 'at least' is used because the number of notifications is likely to not include all such transactions given the fact that the shareholders themselves are not obligated to notify their holdings.

Notwithstanding the advantages explained above in this section, the issue of applying too much regulations for the companies should also be addressed. There are three main aspects to mitigate this effect that will be brought into light here. The first builds on that the SME Growth markets will provide a venue for smaller companies that cannot comply with higher levels of regulations. The second relates to how Spotlight has designed their marketplace, applying more stringent rules than prescribed by law. The third builds on the fact that Nasdaq has created a Premier segment for companies on the verge of moving to the regulated market.

Regarding the SME Growth market, the idea behind this new category of capital markets is to provide a platform for those smaller companies that have difficulties complying with high standards of regulations. Should the MTF markets become more stringent, it would entail a bigger market for the SME Growth markets to find issuers, potentially increasing the usage of SME Growth markets making the MTF markets a 'middle-segment'. Whether such a middle segment is wanted or not is off course up to the legislature to decide. Considering the reasons for creating the SME Growth markets, it seems somewhat unnecessary to create that new category of market if the intention was to deregulate an already existing one.

Accepting the idea of MTF markets being a middle segment, a higher level of transparency would be beneficial for the type of companies that are currently listed on Spotlight. These are the types of companies that are fine with operating on a smaller market than Nasdaq Stockholm (regulated market) because they might not be in need of very large capital base. Further, such companies could benefit from being listed on a market where more institutional investors are investing because of its higher level of information flow.

Regarding the First North Premier segment. More stringent rules on MTFs would make the transition from being listed on an MTF market to a regulated market smaller. This is the idea behind the Premier segment, and this could be better achieved by providing such a platform by law.

Further, merely by being registered as an MTF market, a stamp of quality would be assigned to the market. If a market operator or investment firm wants to target companies in need of less regulations and investors interested in such companies, by using the SME Growth market stamp it could in the same way send that signal to its participants.

6.5 Concluding remarks

The conclusions drawn are many and complex but the argument submitted is relatively straightforward. The SME Growth market has provided a third level of capital market and this is a welcomed initiative from the Union legislature, hopefully promoting easier access to outside capital for smaller companies

within the Union. By adding a third level of capital markets, the second level inevitably becomes the middle level and the argument presented here is that to differentiate the MTF market from the SME Growth market by including legal major holdings disclosure rules on them could be of benefit for the Swedish capital market and, in extension, potentially also the European capital market.

There are several strengths associated with regulating, relating to enhancing market confidence and the smooth functioning, more accurate pricing of shares and preventing immoral behaviour on the markets. Weaknesses include the risk of putting too much pressure on the issuers, raising the 'price' on being listed beyond a level that is profitable for its issuers. With the adoption of SME Growths markets however, that risk is mitigated by offering a venue where regulations are less extensive, facilitating the needs of those issuers.

On the question whether there is a need to regulate, the answer will land somewhere between the affirmative and negative. It can be described as an opportunity to bring MTF markets to the regulated markets in organizational and reputational terms, thus fulfilling the need represented by Spotlight to have a more transparent MTF market and the need represented by First North Premier to act as a stepping-stone to the regulated market. A threat to this approach would be an overregulation of markets, meaning that there are too many alternatives to choose from, leading to a confusing situation for all participants.

It is finally submitted, that for the MTF markets to not become an obsolete option of the past, it would gain benefits from differentiating itself from the SME Growth market alternative. Since there now is a third option available, to use the strengths and opportunities from that regulatory situation and from there assessing what the future should hold is a reasonable place to start.

Bibliography

LITTERATURE

BOOKS

Bodie, Zvi, Alex Kane & Alan J. Marcus, *Investments,* 11th edition, New York, McGraw-Hill Education, 2018.
[Cited Bodie, Kane & Marcus (2018)]

Byström, Hans, *Finance*, 3rd edition, Lund, Studentlitteratur, 2014.
[Cited Byström (2014)]

Devlin, Alan, *Fundamental Principles of Law and Economics,* Abingdon, Routledge, 2015.
[Cited Devlin (2015)]

Ekelund, Karin & Daniel Stattin, *Kapitalmarknadsrätt,* Uppsala, Iustus Förlag, 2015.
[Cited Ekelund & Stattin (2015)]

Korling, Fredric & Mauro Zamboni (eds.), *Juridisk metodlära,* Lund, Studentlitteratur, 2014.
[Cited Korling & Zamboni (2014)]

Papadopoulou, Frantzeska & Björn Skarp, *Juridikens nycklar, Introduktion till rättsliga sammanhang, metoder och verktyg,* Stockholm, Wolters Kluwer, 2017.
[Cited Papadopoulou & Skarp (2017)]

Pierson, Graham, Rob Brown, Steve Easton, Sean Pinder & Peter Howard, *Business finance,* 12th edition, North Ryde, McGraw-Hill Education, 2015.
[Cited Pierson et al. (2015)]

Polinsky, A. Mitchell, *An Introduction to Law and Economics,* 2nd edition, Stanford, Little Brown & Co., 1989.
[Cited Polinsky (1989)]

Sevenius, Robert & Torsten Örtengren (eds.), *Börsrätt*¸ 4th edition, Lund, Studentlitteratur, 2017.
[Cited Sevenius & Örtengren (2017)]

Veil, Rüdiger (ed.), *European Capital Markets Law,* 2nd edition, Portland, Hart Publishing, 2017.
[Cited Veil (2017)]

ACADEMIC PAPERS

Akerlof, George A., 'The Market for "Lemons": Quality Uncertainty and the Market Mechanism', *The Quarterly Journal of Economics,* Vol. 84, No. 3, pp. 488–500, The MIT Press, Aug, 1970.
[Cited Akerlof (1970)]

Dembe, Allard E. & Leslie I. Boden, 'Moral Hazard: A Question of Morality?', *New Solutions,* Vol. 10, No. 3, pp. 257–279, Baywood Publishing, 2000.
[Cited Dembe & Boden (2000)]

Holmström, Bengt, 'Moral Hazard and Observability', *The Bell Journal of Economics,* Vol. 10, No. 1, pp. 74–91, RAND Corporation, 1979.
[Cited Holmström (1979)]

Karacuka, Mehmet & Asad Zaman, 'The empirical evidence against neoclassical utility theory: a review of the literature", *International Journal of Pluralism and Economics Education,* Vol. 3, No. 4, pp. 366–414, 2012.
[Cited Karacuka & Zaman (2012)]

McAlpine, Gwyneth E. 'Getting a Piece of the Action, Should Lawyers Be Allowed to Invest in Their Clients' Stock? *UCLA Law Review* Vol. 47, Issue 2, pp. 549–599, 1999.
[Cited McAlpine (1999)]

OTHER SOURCES

ELECTRONIC SOURCES

'Adverse Selection', Encyclopedia.com, <https://www.encyclopedia.com/social-sciences/applied-and-social-sciences-magazines/adverse-selection>, visited 2019-02-13.

'All Prizes in Economic Sciences', the Nobel prize website, <https://www.nobelprize.org/prizes/lists/all-prizes-in-economic-sciences/>, visited 2019-02-14.

'Definition of money market', Financial Times online lexicon, <http://lexicon.ft.com/Term?term=money-market> visited 2019-03-05.

'European Surveillance', Nasdaq website, <https://business.nasdaq.com/list/Rules-and-Regulations/european-surveillance/index.html>, visited 2019-03-13.

'Nasdaq First North', Nasdaq Inc. website, <https://business.nasdaq.com/list/listing-options/European-Markets/first-north.html>, visited 2019-05-04.

’Noterade bolag’, FI website, <https://www.fi.se/sv/marknad/noterade-bolag/>, visited 2019-01-30.

‘Regulatory process in financial services’, The European Commission website, <https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-reforms-and-their-progress/regulatory-process-financial-services/regulatory-process-financial-services_en>, visited 2019-02-26.

‘The stock market: from the “Ter Buerse” inn to Wall Street’, the National Bank of Belgium Museum website, translated from Belgian author De Clercq G., *Ter Beurze. Geschiedenis van de aandelenhandel in België, 1300-1990*, 1993, pp. 15–32, < https://www.nbbmuseum.be/en/2010/01/stockmarket.htm>, visited 2019-02-15.

‘Verksamhet’, FI website, <https://www.fi.se/sv/om-fi/verksamhet/>, visited 2019-03-13.

‘Who we are’, ESMA website, <https://www.esma.europa.eu/about-esma/who-we-are>, visited 2019-03-13.

AUTHORITY PUBLICATIONS

ESMA, Indicative list of financial instruments that are subject to notification requirements according to Art. 13(1b) of the revised Transparency Directive, 22 October 2015, ESMA/2015/1598.

Prop. 2006/07:65 Informationskrav i noterade bolag m.m.

Segré C., A. Batenburg, J. L. Blondeel, G. Della Porta, A. Ferrari, M. R. Franck, L. Gleske, M. J. Guyot, M. A. Lamfalussy, H. Möller, M. G. & P. Tabatoni, ‘The Development of a European Capital Market’, *Report of a Group of experts appointed by the EEC Commission*, Brussels, November 1966.
[Cited Segré et al. (1966)]