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REPORTING ON THE REASONS FOR THE ACQUISITION OF OWN SHARES¹

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Summary

Mere knowledge that the company has acquired own shares is not always of great importance. Information on the acquisition of own shares from dissenting shareholders or the squeeze-out of minority shareholders is not of great importance to the users of financial statements. In the first case, it is far more significant to disclose the significant event that allowed dissenting shareholders to resign from the company. However, the purchase of own shares due to certain reasons, such as the purchase of own shares at a premium in order to influence the market value of shares, the repurchase focused on preventing greater harm to the company, which is especially true at a time of financial crisis, or the repurchase of own shares as a means of disbursing shareholders, is of great importance to the users of financial statements. Therefore, modern legislation in developed countries obliges companies to disclose a range of information regarding own shares, including the reasons for the acquisition. The above is also proscribed by the relevant EU directives and national legislation. The paper points out that the legal norms governing the obligation of reporting on own shares in Serbia are not harmonized and that most public companies in Serbia, despite the legal obligation, do not disclose the reasons for the acquisition of own shares.

Key words: own shares, reporting, management report, notes to financial statements

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Introduction

The growing importance of capital markets and the liberalization of regulations has contributed to intensive purchase of own shares. Own shares can be acquired in order to reduce the shareholders' capital, which refers to a special acquisition of shares, or for any other reason, which refers to a general acquisition of shares, where the shares must be disposed of or cancelled within the statutory deadline (International Finance Corporation, 2008). In the United States of America today, the acquisition of own shares stands for the most commonly discussed topic in the field of finance during boardroom meetings (Henry, 2004). The above-stated belief is not surprising when one takes into account the fact that according to some estimates, over the course of years more shares have been purchased than issued (Todorović, 2008). Expansion of the purchase of own shares appeared in the United States of America after 1980s, primarily as a mechanism of shareholder disbursement, which led to the fact that the programs of the purchase of own shares started being viewed as a means of payment of excess cash to investors. Dominance of the purchase of own shares in the USA as an alternative to dividend payment has resulted in the fact that literature covering this field has expanded the term "dividend policy", so that this term no longer implies a profit distribution policy, but also the money disbursed to shareholders through the purchase of own shares (Pavlović, 2010). Therefore, American literature always places the purchase of own shares with the intention of disbursing shareholders in the first place when stating the reasons for the acquisition of own shares (Pavlović, 2010). However, there are many other reasons that guide companies towards the acquisition of own shares.

If it is legally possible, there can be several methods for the acquisition of own shares available to companies. The most commonly used methods are: the fixed price tender offer, the Dutch auction, the open market repurchase and the purchase of shares on the basis of direct negotiations with shareholders who own significant percentage of equity. Preference for the purchase method stems from the aim underlying the purchase and a specific situation that the company is facing.

Reasons for the acquisition of own shares

If there are no legal restrictions, companies purchase own shares for the following reasons: (1) disbursement to shareholders; (2) stimulating employees, primarily management of the company without increasing the total number of shares (stock options); (3) an increase in the stock exchange share price; (4) the acquisition of equity in other companies where the purchased shares are used as a means of payment or coverage for issued convertible securities, or bonds that can be converted into equity (convertible bonds), or as a coverage for the warrants issued; (5) the realization of the capital gain upon subsequent sales; (6) prevention of a hostile takeover; (7) the force of law; (8) supporting share liquidity maintenance agreement (Pavlović, 2010).

When the issue of the acquisition of own shares in Serbia is taken into account, the current Companies Law ("Official Gazette of RS", No. 36/3011 and 99/2011) is the most liberal law so far. The legislator adopted a mixed system of the acquisition of own shares (public

or non-public). Specifically, the law enables joint stock companies to acquire own shares: (1) directly on the basis of the decision reached by the General Assembly of the company, where no specific reasons for the acquisition of own shares are stated; on the basis of this, the law joined the modern trend not to prescribe the basis for the acquisition of own shares (legal restrictions are listed), and, exceptionally, (2) based on the decision made by the board of directors or supervisory board if the management of the company is bicameral, but only if the acquisition of shares is based on one of the reasons explicitly stipulated by the Article 282 of the law. Therefore, the acquisition of own shares is allowed (1) if it is necessary to prevent greater and immediate harm to the company; (2) if the shares acquired are to be distributed to the company's employees or affiliates, or as a reward to the members of the board of directors or executive and supervisory board if the management of the company is bicameral, under specific prescribed conditions that must be met.

Therefore, the decision to acquire own shares should be made by owners in their own interest, which is close to reality if the decision is made directly at the shareholders' meeting. However, if the owners make a decision indirectly, through the representative acting on their behalf, at the meeting of the supervisory board (or otherwise) the owners' interest can be blurred or suppressed by distortions which are, in fact, different forms of agency problems resulting from the separation of ownership and management (Cvijanović et al., 2010).

Companies can acquire own shares without any special conditions defined by the Article 282 in the following cases: (1) the institution of protecting the rights of dissenting shareholders, in the following cases (Article 474): (a) by the change in the company's statutes that reduces shareholders' rights defined by the statute or the law; (b) by the change of the status; (c) by the change of the legal form; (d) by making a decision on the change in the duration of the company; (e) by making the decision on the approval of the acquisition or disposal of major assets; (f) the adoption of certain decisions that alter certain rights defined by the company's statute; (g) the decision on the withdrawal of one or more classes of shares from the regulated market or multilateral trading platform; (2) as a result of the exclusion of shareholders; (3) during unencumbered acquisition of own shares; (4) as a result of changes in status; (5) on the basis of a court decision; (6) if the shares are acquired for the purpose of conducting the procedure of capital reduction; and (7) squeeze-out of minority shareholders (Article 515).

The above-stated solutions represent a significant improvement in relation to the solutions provided by the previous law. In fact, previous Companies law ("Official Gazette of RS" No. 125/2004) also stipulated that companies can acquire own shares directly on the basis of the decision of the company's assembly, without stating special reasons for the acquisition of own shares, and exceptionally, based on the decision of the management board, with the purpose of distributing them to the employees of the company or affiliates and to prevent major and immediate harm to the company (Article 222). However, proscribing that the company can acquire own shares only with the method pro-rata, the legislator, in fact, prevented the acquisition of own shares aimed at preventing harm to the company (Pavlović, 2010). By proscribing the method pro-rata as the binding method, the legislator improperly

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operationalized the principle of equality of shareholders in the acquisition of own shares. Specifically, the above-stated principle is in contemporary legislations understood as equality of opportunities, and not of results (Parać, 2009). The acquisition of own shares with the intention of preventing harm to the company was made possible later, in an extremely inappropriate manner. In fact, on 19 January 2006, the Securities Commission issued an opinion (No. 3/0-04-617/8-05) which completely repudiated the mentioned provision and allowed the acquisition of own shares on the stock exchange (1) in the case of the need for prompt response due to market disruption in order to prevent serious and immediate harm to the company; (2) for the purpose of acquiring the missing number of shares after conducted public offering (Pavlović, 2010).

Some authors (Dittmar, 2000; Weston and Sui, 2003) point out those different motives dominates certain periods. Subsequent studies confirm that the level of economic activity affects the prevalence of specific motives for the acquisition of own shares, that is, that the motives for purchasing own shares are affected by the economic cycles (Albouy and Morris, 2006). Albouy and Morris confirm the hypothesis that during the period of low economic activity, companies purchase own shares primarily with the aim of removing information asymmetry, that is, sending the signal to investors that the shares are undervalued, while in the period of intense economic growth, companies purchase own shares primarily to avoid reducing earnings per share caused by issued employee stock options (Pavlović and Muminović, 2011).

Weston and Sui (2003) claim that the main motive for purchasing own shares at the beginning of the 1980s was market undervaluation of shares. In the mid-eighties, motives related to the fiscal benefits and the defense from the takeover was dominant. The main motive for purchasing at the end of the 1980s, at the time of the stock market crash, was the acquisition of undervalued shares. Finally, since the late 1990s until the outbreak of the current financial crisis, the acquisition of own shares was mainly motivated by the prevention of the decrease in earnings per share due to the issuance of stock options (Pavlović and Muminović, 2011). The current economic and financial crisis has led to changes in the volume of acquisition of own shares, as well as to changes in the prevailing motives. In most cases, faced by strong influence of the financial crisis on the financial markets (Ljumović, 2009; Stevanović et al., 2010), companies have to acquire own shares in order to prevent harm to the company caused by the falling stock exchange share price.

The importance of reporting on the reasons for the acquisition of own shares

It is widely believed that from the investors' point of view, purchase of own shares has a positive connotation. Plenty of studies (Comment and Jarell, 1991; Bartov, 1991; Ikenberry et al., 1995; Dann, 1981; Grullon and Michaely, 2004; Li and McNally, 2000; Vermalean, 1981; Liano et al., 2003) have supported this widely accepted stance, arguing that mere announcement of the purchase or the purchase of own shares itself has a positive effect on the stock market value of the shares. Literature records the view that the positive aspect of the acquisition of own shares does not only have to be reflected in the stimulation of the growth of the market value of shares, but also in avoiding wrong decisions related to the

disposal of excess cash, such as, for example, irrational acquisitions. Specifically, it is a well-known phenomenon that management often supports the growth of the company in order to justify increasing income, thus increasing the company's importance on the financial stage. However, the purchase of own shares can be seen as a failure of management to find attractive investment projects, that is, the lack of development skills and vision. It is ironic that the assistance obtained from the United States for the revival of the economy prompted the purchase of own shares. Specifically, the companies used the money received for the purchase of own shares mainly, instead of investing it in the financing of production and consumption (Mitrović, 2009).

In the context of the negative perception of the purchase of own shares, it is important to point out the following fact. In the late twentieth century, the purchase of own shares was seen primarily as a form of payment of surplus cash to investors. In recent years, more and more companies have resorted to borrowing in order to finance the purchase of own shares, and some companies even finance entire purchase by debt. More often than not, the above practice has had consequences on the financial flexibility of companies, occasionally leading to a significant deterioration in the financial position of the company (Pavlović et al., 2011).

It is, therefore, not surprising that some recent studies suggest that the purchase of own shares results in the decline in return on total assets, with the company that made the biggest purchase recording the largest yield decline (Pavlović and Muminović, 2011).

Therefore, neither does the purchase of own shares in itself increase the value of shares, nor does it necessarily stand for a good signal. The expected effects of the purchase are directly related to the reasons for which the companies opt for the purchase of own shares, financing the purchase and the financial position of the company. It is, therefore, natural that the users of financial statements, especially investors, are interested in understanding the reasons for which the company acquires own shares, and subsequently to know the fate of these shares. In addition to the potential effect on the stock exchange share price, insight into the reasons for the acquisition of own shares allows the users of financial statements to better understand the position of the company. For example, the purchase motivated by shareholders disbursement may indicate the lack of development capacities.

The current crisis has particularly intensified the purchase of own shares. However, in crisis conditions, the acquisition of own shares motivated by preventing the falling of the stock market value of shares may go in favor of speculative investors, to the detriment of persistent investors, if the purchase of own shares does not achieve the desired effect. Therefore, in such circumstances, disclosure of the reasons for acquiring own shares gains growing importance.

The research subject is of great importance, especially when one bears in mind the frequent misuse in the process of acquisition and disposal of own shares that has been observed in current practice (The previous stance represents the attitude held by the Securities Commission; Opinion of the Securities Commission No. 2/0-03-117/2-12 from 07.05.2012.).

Normative framework of reporting on the reasons for the purchase of own shares

The reporting on own shares in Serbia is regulated by the Companies law (“Official Gazette” No. 36/3011 and 99/2011), the Law on Accounting (“Official Gazette”, No. 62/2013) and the Law on the Capital Market (“Official Gazette” No. 31/2011) which relates exclusively to the public companies.

In contrast to the Law on Companies of 2004 (“Official Gazette” no. 125/2004), which did not mandate the obligation of external reporting on the reasons for the acquisition of own shares, the current Companies law (“Official Gazette” No. 36/3011 and 99/2011) explicitly stipulates the obligation of external reporting on own shares. In accordance with the Article 289 of the law, the company which acquired or disposed of own shares during the fiscal year is obliged to fill the annual financial statements for that fiscal year with the following: (1) the reasons for the acquisition; (2) the type, the class, the number and the par value or the book value of shares without par value, own shares acquired and disposed of during that year, as well as their share in the share capital; (3) the price at which these shares were acquired or disposed of; (4) the type, the class, the total number and par value or the book value of shares with no par value, own shares of the company at the end of that fiscal year, as well as their share in the share capital of the company. The above-stated provisions apply equally to public joint stock companies, as well as the joint-stock companies whose financial instruments are not traded on the regulated market.

It can be stated that the above-stated solution stands for a significant improvement in relation to the previous Companies law (“Official Gazette” No. 125/2004), according to which external reporting on own shares was not required, but only informing of the shareholders assembly. Specifically, the previous Companies law (Article 289) mandated solely the obligation of the board of directors to inform the shareholders assembly at each annual meeting about the reasons for the acquisition, the number and par value of shares or the book value of shares without par value, an indication of whether the company has acquired shares with or without compensation, stating the amount and the number of own shares that the company already holds and the number of own shares that have been reissued.

The current law imposes an obligation on the board of directors of the public joint stock company, i.e. the supervisory board if the management of the company is bicameral, to inform the shareholders about the reasons and the manner of acquisition of own shares, the number and the total par value or the total book value of shares without par value, their share in the share capital of the company as well as the total price for which the company acquired them, but only if the shares were acquired in order to prevent serious and immediate harm to the company (Article 282). It remains unclear why the law did not proscribe the obligation to inform the assembly of the reason for the acquisition, if own shares were acquired for distribution to the employees or to reward members of the board of directors or executive and supervisory board if the management of the company is bicameral.

It is necessary to point out another flaw of the current Companies law. Specifically, the legislator requires the company to report on own shares in the financial statements, although the reporting on own shares can be done only through one financial statement, namely Notes

to the financial statements. What is more, it is far more appropriate to report on that issue in the Management report, which is not part of the financial statements.

Mandatory disclosure of the reasons for the acquisition of own shares in the Management report is required by the Directive 2013/34/EU within Chapter 5 – Contents of the management report, or the Directive 2012/30/EU (Article 24, paragraph 2) to which Article 19 (2) of the Directive 2013/34/EU refers. Obligation to disclose the reasons for the acquisition of own shares in the Notes to the financial statements relates only to the companies classified as small legal entities if their member state does not oblige them to draw up the management report (Article 19, paragraph 3 of the Directive 2013/34/EU).

The current Law on Accounting (“Official Gazette”, no. 63/2013) also imposes an obligation of reporting on the acquired own shares, but unlike the Companies law, it does not explicitly state which information relating to the company’s own shares must be disclosed. Specifically, Article 29 of the Law on Accounting imposes an obligation on the legal entities to compile Annual management report (with the exception of micro, small and medium-sized companies, excluding the public companies, which are not required to compile this report) and determines the content of the Annual management report, thus imposing an obligation in Paragraph 7 to disclose information on the purchase of own shares and their share in the share capital. It can be seen that in contrast to the Companies law, which requires reporting on own shares in the financial statements, the Law on Accounting imposes an obligation of disclosure of information on own shares in the Annual management report, which complies with the requirements of the Directive 2013/34/EU, that is, the Directive 2012/30/EU and certainly stands for a more appropriate solution. It is true that the Law on Accounting imposes an obligation of disclosure of information on own shares in the Notes to the financial statements, but only in relation to legal entities which are not legally obliged to draw up Annual management reports and are required to draw up Notes to the financial statements, which is identical to the solution proscribed by the Directive 2013/34/EU. It may be noted that the current Law on Accounting represents an improvement in relation to the former Law on Accounting and Auditing (“Official Gazette” No. 6/2006, 111/2009 i 99/2011 and 46/2006), which did not impose an obligation on companies to report on own shares. However, it would be even better if it was explicitly stated which information related to own shares companies are required to disclose, as has been done in the current Companies law on and the Law on the Capital Market.

Law on the Capital Market (“Official Gazette” No. 31/2011), just like the Companies law, explicitly requires public companies to report on the acquired own shares. This law proscribes an obligation of (1) the disclosure of information on own shares in the Annual management report, (2) public disclosure of the number of own shares in absolute and relative terms not later than four days after the acquisition or the disposal of shares.

Specifically, Article 50 of the Law imposes an obligation on public companies to draw up an Annual management report and determines the content of the Annual management report. What is more, it imposes an obligation of disclosure of information about the acquisition of own shares, in case the company acquired own shares during the fiscal year. The company

is also required to fill its Annual management report with the information concerning (1) the reasons for the acquisition, (2) the number and par value of own shares or the book value of shares without par value, (3) the names of persons from whom the shares were acquired, (4) an indication of the amount that the company paid with respect to acquisition or an indication that they were acquired without compensation, and (5) the total number of own shares that the company holds.

Therefore, just like the Law on Accounting and contrary to the provisions of the Companies law, the Law on the Capital Market imposes an obligation of reporting on acquired own shares in the Annual management report. Just like the Companies law, the Law on the Capital Market explicitly states which information regarding own shares acquired the company is obliged to disclose. Both laws proscribe an obligation of disclosure of reasons for the acquisition of own shares, the number and par value of own shares or book value of shares without par value, an indication of the amount that the company paid with respect to such acquisition or an indication that they were acquired without compensation and the total number of own shares the company holds. However, unlike the Companies law, the Law on the Capital Market does not require companies to state the type and the class of own shares acquired, neither their share in the share capital of the company. A serious flaw of this law is reflected in the failure to proscribe the obligation of reporting on own shares disposed and cancelled, and, accordingly, on the price at which acquired shares were disposed. However, the provisions of the Companies law apply to the public companies too, so that the public companies are obliged to disclose this information in the Annual management report, even though this obligation is not proscribed by Law on the Capital Market.

It turns out that the only novelty for the public companies, in terms of the content of the Annual management report, relates to their obligation to disclose the names of persons from whom the shares were acquired. Public companies, however, have the obligation to draw up Semi-annual management reports (according to the rules applicable to the Annual management report), whereas public companies whose securities are traded on the regulated market have the obligation to draw up quarterly reports too (Article 5 of the Rulebook on the content, form and manner of publication of annual, semi-annual and quarterly reports of public companies, “Official Gazette” No. 14/2012). Public companies have the obligation to publish the Annual and Semi-annual report on their websites (Article 6 of the Rulebook), while public companies whose securities are traded on the regulated market shall publish quarterly reports too on their websites.

Despite its shortcomings, it must be noted that the Law on the capital markets significantly improved the issue of reporting on own shares in relation to the Law on the market of securities and other financial instruments (“Official Gazette of RS”, No. 47/06) which did not regulate this area and whose provisions were applied until this law came into force.

Certain information related to the acquisition and the disposal of own shares of public companies are disclosed on the website of the Belgrade Stock Exchange. Article 63 of the Law on the capital market requires public companies to disclose information on the acquisition or the disposal of own voting shares (independently or through a person acting

on his/her own behalf and for the account of a public company) as soon as possible and not later than four days after the acquisition or the disposal. In that case, the company is obliged to disclose the number of own shares in absolute and relative terms. The report (notification) on the acquisition, the report (notification) about the cancellation of own shares, or the report (notification) on the disposal is published on the website of the Belgrade Stock Exchange. One can hereby have a serious objection that the legislator did not proscribe the obligation of disclosing the reasons for acquiring own shares or the price at which the shares were acquired.

This issue is regulated by the Listing Rulebook (04/2 No. 3163-1/12) and the Belgrade Stock Exchange Rules (No. 04/2-1521-2/13). Specifically, the companies whose securities are listed on the regulated market are required to submit to the Stock Exchange the report on the held meeting of the issuer's authority at which the decisions on the acquisition and the disposal of own shares were made, as well as the decisions taken on the first day after adoption (Paragraph 2, Article 33 of the Listing Rulebook). The stock exchange is obliged to publish these decisions on the website of the Stock Exchange within three days. Companies whose securities are included in the Open Market are required to submit notification to the Belgrade Stock Exchange on the acquisition and the disposal of own shares (Article 67 of the Belgrade Stock Exchange Rules), which the Stock Exchange shall publish on its website pursuant to Article 218. With respect to own shares, flaws of the Listing Rulebook and the Belgrade Stock Exchange Rules are reflected in the fact that they do not require the disclosure of the reasons for acquiring own shares. Consequently, the reasons for the acquisition of own shares are in most cases not disclosed. The performed analysis has shown that the majority of reasons are reflected in the acquisition of own shares from dissenting shareholders and prevention of harm to the company. What is more, it is never subsequently disclosed whether the purchase of own shares actually prevented greater damage to the company.

Reporting on own shares of the companies in Serbia

As shown, until recently the Serbian legislation has not explicitly mandated the obligation of reporting on own shares. The Law on the capital market ("Official Gazette", no. 31/2011) came into force on 17 May 2011 and started being applied from 17 November 2011. The Companies law ("Official Gazette" No. 36/2011 and 99/2011) came into force on 4 June 2011 and started being applied from 1 February 2012, while the Law on accounting ("Official Gazette" no. 62/2013) entered into force on 24 July 2013 (the implementation of some provisions has been delayed, which does not relate to the provisions concerning the disclosure of information on own shares). The analysis has included all companies whose securities are traded on the Belgrade Stock Exchange and which acquired shares during 2012. Since the Companies law has been applied from February 2012, analysis of the adequacy of reporting on own shares has not been performed for the previous period.

During 2012, 43 companies (16 from the agrarian sector) and one bank acquired own shares. Out of this number, four companies (two from the agrarian sector) excluded their securities from the Stock Exchange (financial statements for 2012 were not published),

while two companies did not disclose financial statements (one from the agrarian sector). One company disclosed financial statements, but not the Management report. Three companies (one from the agrarian sector) issued a public call for the acquisition of own shares, but the purchase did not happen in 2012.

Of the total number of companies that acquired own shares in 2012, only 9 companies (21%), in accordance with the provisions of the Companies law and the Law on the capital market, published the reason for the acquisition (5 from the agrarian sector), while only two companies from the agrarian sector (4.65%), in accordance with the Law on the capital market, disclosed the names of persons from whom the shares were acquired.

Of the total number of companies that disclosed the reason for the acquisition of own shares, nine companies disclosed this information in accordance with the Law on the capital market in the Annual management report. In addition, two companies did that both in the Annual management report and the Notes to the financial statements (both from the agrarian sector), while five companies disclosed this information only in the Annual management report and two companies only in the Notes to the financial statements. Other companies reported on the legal basis of the acquisition instead of reporting on the reason for the acquisition of own shares. Specifically, reference to the number of the Assembly's decision on the acquisition of own shares represent the legal basis, and not the reason for the acquisition.

It is important to point out that some companies, contrary to the Law on accounting and the Law on the capital market does not publish Annual management report, disclosing information to be presented in this report in the Notes to the financial statements. In fact, some companies associate the term "annual report" with the set of financial reports, audit report, management report and the statements of the persons responsible for the preparation of the annual management report, in accordance with the provisions of the Law on the capital market, whereas others associate this term with the Annual management report. This phenomenon was undoubtedly caused by the legislator. Specifically, the Law on the capital market imposes an obligation on public companies to disclose the "Annual report" (Article 50), whose integral part is the Annual management report. In another segment of the same law (in Article 26), the Annual management report appears under a different name. The Law on companies refers to the Annual report in terms of the Law on the capital market as the "Annual management report" (Articles 367, 369), whereas the Law on accounting recognizes only the Management report that accompanies the financial statements, but not the Annual report in the sense of the Law on the capital market.

Six companies indicated that they acquired shares from dissenting shareholders, two companies stated that they did so to prevent the occurrence of significant damage to the company, one company acquired shares from dissenting shareholders and in order to prevent harm to the company, while one company stated that the shares were acquired without any compensation. All companies from the agrarian sector stated that they acquired shares from dissenting shareholders.

Lack of understanding of the proscribed obligation to report on own shares can be illustrated

by the example of a company from the agrarian sector that stated in the Management report that it did not acquire own shares in terms of the Companies law. However, in this way, Article 284 of the Companies law, which provides for exceptions to the acquisition of own shares, excludes the application of the provisions of Paragraphs 2 to 5 of Article 282, but not of Article 289 that proscribes the obligation to report on own shares.

The analysis indicates that the companies' reports disclose the number of acquired shares, their par value, share in the company's share capital and the total amount that the company paid for them. However, this information is often not disclosed in the Annual management report, according to the Companies law and the Law on the capital market, but in the Notes to the financial statements.

The analysis indicates that companies adequately disclose information regarding cancellation of own shares. This was certainly caused by the provisions relating to the protection of creditors due to the reduction of share capital, and concerning the reduction of capital by cancellation of own shares (Article 320 of the Companies law).

The analysis indicates that companies typically do not disclose the reasons for the acquisition of own shares in the public call for the acquisition of own shares. Non-stipulation of explicit statutory obligations of disclosure of the reasons for the acquisition of own shares in the public call for the acquisition can be regarded as a failure of the legislator.

Companies that issued a public call for the acquisition of own shares and failed to purchase in the same fiscal year did not disclose in the Managements reports that they started the process of acquiring own shares. The lack of legal obligation of reporting on the same can be considered a failure of the legislator.

Conclusion

It may be noted that the new Companies law, the Law on accounting and the Law on the capital market stand for a significant improvement in relation to previous laws that regulated the issue of acquiring and reporting on own shares. By passing these laws, the legislator for the first time recognized the need to report on own shares, so that the Companies law and the Law on the capital market explicitly proscribe an obligation to report on the reasons for the acquisition of own shares. However, as shown in this paper, provisions of the laws that regulate reporting on own shares have not been harmonized.

Despite the legal obligation, the performed analysis indicates that only 21% of companies that acquired own shares during 2012 disclosed the reason for the acquisition of own shares, while only 5% of companies disclosed the names of persons from whom shares were acquired, pursuant to the provisions of the Law on the capital market. Companies generally disclose if the shares are acquired from dissenting shareholders and if the shares are acquired in order to prevent greater harm to the company. Disclosure of the purchase of own shares from dissenting shareholders can be interpreted as the obligation of reporting on a significant event, while the reason for the disclosure of another reason may be looked for in the wrong interpretation of Article 282 of the Companies law. Specifically, this

Article imposes an obligation on the board of directors of a public joint stock company, i.e. the supervisory board if the management of the company is bicameral, to inform the shareholders about the reasons and manner of the acquisition of own shares, but only if the shares were acquired in order to prevent serious and immediate harm to the company. However, as shown, the above-mentioned Article proscribes the obligation of reporting to the shareholders assembly only if the shares were acquired in order to prevent serious and immediate harm to the company, and does not concern the obligation of reporting on the reasons for the acquisition of own shares in the Annual management report, which is explicitly required by Article 289 of the Companies law and Article 50 of the Law on the capital market.

With respect to the companies from the agrarian sector, out of the twelve companies that acquired own shares during 2012, five companies (42%) disclosed the reason for the acquisition. Out of this number, four companies (33%) disclosed the reason for acquiring in the Management report, two of which disclosed this information in the Notes to the financial statements too, and one of which disclosed the reason for the acquisition in the Notes to the financial statements only. Despite the more frequent reporting on the reasons for the acquisition of own shares of the companies from the agrarian sector compared to the companies from other industries, it cannot be concluded that companies from this sector more adequately reported on own shares, since all companies from the agrarian sector that disclosed the reason for the acquisition of own shares indicated that they purchased shares from dissenting shareholders. More definite conclusions could be drawn only if the reasons for the acquisition of own shares of the companies that did not disclose that information were known.

Non-stipulation of explicit statutory obligation of disclosing the reasons for the acquisition of own shares in the public call for the acquisition, disclosing that the company issued a public call for the acquisition and stating the reasons for acquiring own shares in the Annual management report can be considered a failure of the legislator. In the case of the acquisition of shares motivated by preventing greater harm to the company, a significant omission may be reflected in non-stipulation of the obligation of disclosure in the Annual management report whether the acquisition of own shares actually prevented the emergence of greater harm to the company, or the purchase of shares did not stop the decline in the value of shares since the purchase of shares was performed at the expense of persistent shareholders.

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IZVEŠTAVANJE O RAZLOZIMA STICANJA SOPSTVENIH AKCIJA

Vladan Pavlović⁵, Janko Cvijanović⁶, Srećko Milačić⁷

Sažetak

Saznanje da je kompanijasticala sopstvene akcije samo po sebi nije uvek od velikog značaja. Informacija o sticanju sopstvenih akcija od nesaglasnih akcionara ili o prinudnom otkupu od manjinskih akcionara nije korisnicima finansijskih izveštaja od velikog značaja. U prvom slučaju je daleko značajnije obelodanjivanje značajnog događaja koji je omogućio nesaglasnim akcionarima istupanje iz društva. Međutim otkupljivanje sopstvenih akcija usled pojedinih razloga, kao što je otkupljivanje sopstvenih akcija sa premijom kako bi se uticalo na berzanski kurs akcija, sticanje sopstvenih akcija usmereno na spečavanje veće štete po društvo, što je posebno aktuelno u vreme finansijskih kriza ili otkupljivanje sopstvenih akcija kao sredstvo za povrećaj novca akcionarima je za korisnike finansijskih izveštaja od velikog značaja. Zbog toga savremena zakonodavstva razvijenih zemalja obavezuju kompanije da obelodanjuju niz informacija u vezi sopstvenih akcija, među kojima obavezno i razlog sticanja. Navedeno je predviđeno i relevantnim direktivama EU kao i domaćim zakonodavstvom. U radu se ukazuje da zakonske norme koje regulišu obevezu izveštavanja o sopstvenim akcijama u Srbiji nisu usaglašene, a da većina javnih društava u Srbiji, uprkos zakonskoj obavezi, ne obelodanjuje razlog sticanja sopstvenih akcija.

Ključne reči: *sopstvene akcije, izveštavanje, izveštaj o poslovanju, napomene uz finansijske izveštaje.*

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