

Regierungskommission Deutscher Corporate Governance Kodex
By email: regierungskommission@dcgk.de

December 15th 2016

Dear Members of the Regierungskommission

Re: Proposed changes to the Corporate Governance Kodex

We are writing, as a major international institutional investor, to respond to the Regierungskommission's proposed changes to the Deutscher Corporate Governance Kodex. By way of background, Aberdeen Asset Management is a UK-based global fund management house, with over €360 billion assets under management (as at the end of September 2016). We are an active investor in the German market.

We welcome the opportunity to comment on the Regierungskommission's proposals, many of which we support. We are pleased to offer the following input to the Kodex amendment:

Role of Institutional Investors

We welcome the proposed call under 2.1.3 that institutional investors should actively and honourably carry out their ownership responsibilities. We at Aberdeen seek to do so and to provide input and support to the companies in which we choose to invest client funds. We call this process stewardship and we would support the Regierungskommission considering whether Germany should follow the lead of many other countries in formalising the ownership responsibilities of institutional investors in a Stewardship Code. We would expect to become signatories of such a Code, as we have of the dozen such Codes that exist around the world.

Supervisory Board contact with shareholders

In order for institutional investors to carry forward their ownership responsibilities effectively they need to have an active dialogue with representatives of the company. For many matters, particularly around business operational performance and future direction, the relevant counterparty should be the executive management – the executive board in the context of a dual board structure. But much of the appropriate dialogue should be about matters that are not the purview of executive management, such as effective governance and oversight, including of matters such as audit, succession and remuneration. For these issues the only appropriate counterparty is the supervisory board.

We therefore welcome the expectation being stated in the Kodex that the chair of the supervisory board should be ready to engage with investors. We believe, however, that this new paragraph in 5.2 is expressed too conservatively. We believe that other members of the supervisory board should also consider making themselves available for appropriate dialogue with investors, and that the Kodex should not set an expectation that the management board perspective will be interposed, and in effect substituted for the views of the supervisory board. Given that shareholders are invited to appoint and re-elect a portion of the supervisory board but have no role in relation to the appointment of the members of the management board, we would argue that the line of accountability between investors and the supervisory board is clearer than that between investors and the management board. We also note that active dialogue between investors and non-management directors is increasingly accepted as a natural and expected part of stewardship by companies around the world; our experience is that these directors welcome this dialogue and do not feel that our conversations in any way tread into inappropriate territory.

Board mandates

We recognise that this is not an issue currently considered in the Kodex, but we believe active consideration should be given to whether 5 year board mandates are appropriate. We acknowledge that it is not in long-term shareholders' interests to encourage short-term thinking on boards, and we see no need for annual elections in Germany. However, we believe that 5 year mandates are so long as to break a chain of accountability between the directors and shareholders. We are encouraging companies to shift their mandates to 3 year terms, which we believe sets an appropriate balance between accountability and long-termism. We would welcome the Regierungskommission giving consideration to this issue.

Diversity

We note that there is a discussion in 5.4.1 about gender diversity at the supervisory board level, and in 4.1.5 about targets for female participation in the management levels below the management board. These are welcome, but we cannot see any discussion about the need for targets for female participation within management boards themselves, which seems an unhelpful omission. We would welcome the Kodex directly addressing the issue of gender diversity on management boards.

We would also welcome this important gender issue being set alongside broader diversity concerns. We fundamentally believe that boards are stronger which enjoy the benefit of diversity in all forms, including geographical, skills, employment background and so on. Truly diverse boards draw on a range of skills and experience to challenge and debate issues and reach better decisions. Gender is an important element of this broader diversity, but only one element, and we would welcome the broader issues also being considered in the Kodex.

Compensation

We welcome the proposed change to 4.2.3 to disapprove of acceleration of the vesting of multi-annual variable pay awards following severance. However, we note that there is a maximum severance cap of twice annual total compensation set in the Kodex. This seems high when considered from an international perspective, and we would welcome a reconsideration of whether it is appropriate. Twice fixed pay, or one times total compensation, are more usual levels in other markets, and seem better suited to appropriately avoiding rewards for failure. We also note that this 'cap' is not in fact a maximum, but rather the Kodex supports a payment of 150% of this cap in cases of a change of control. This level of payment also appears inappropriate and unwelcome. We ask the Regierungskommission to consider whether changes should be made in these respects.

We trust that these comments will be useful to you in your further deliberations. We would welcome discussing them further if that would be useful to you.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Paul Lee', written over a horizontal line.

Paul Lee
Head of Corporate Governance