STATE STREET GLOBAL ADVISORS

January 31, 2019

Regierungskommission
Deutscher Corporate
Governance Kodex,
c/o Deutsches Aktieninstitut
e.V., Senckenberganlage 28,
60325, Frankfurt am Main,
Germany

Via electronic submission: regierungskommission@dcgk.de.

State Street Global Advisors' response to the proposed amendments to the German Corporate Governance Code (Kodex).

Dear Sir/Madam,

State Street Global Advisors[1] welcomes the opportunity to respond to the Regierungskommission's (Commission) proposed revisions to the German Corporate Governance Code.

State Street Global Advisors is the asset management business of State Street Corporation, one of the world's leading providers of financial services to institutional investors. With over $2.51 trillion[2] (USD) of assets under management ("AUM") across a range of asset classes and investment styles, State Street Global Advisors is the world's third largest asset manager. In addition, State Street Global Advisors is one of the largest investors in Germany with more than $40.3 billion[3] (USD) of AUM invested in German listed companies.

State Street Global Advisors' approach towards proxy voting and issuer engagement is premised on the belief that companies that adopt robust and progressive governance and sustainability practices should be better positioned to generate long-term value and manage risk. As near perpetual holders of the constituents of the world's primary indices, we believe that the informed exercise of voting rights coupled with targeted and value-driven engagement is an effective mechanism of creating value for our clients. Therefore, on an annual basis we engage with over 680 companies globally on various ESG issues, including board effectiveness and executive remuneration. Since 2013, State Street Global Advisors has had approximately 3,600 engagements on environmental, social, and governance (ESG) issues with over 1,400 companies in our global portfolio.

While this consultation deals with a number of important corporate governance matters, we have chosen to address select proposed changes where we believe our feedback would be most meaningful for the Commission. Our comments below draw on our experience as an institutional investor that engages with a large number of companies globally, and we hope you find our views useful.

Terms of Office for Supervisory Board Members

State Street Global Advisors welcomes the Commission's proposal to reduce the current 5-year term of office for shareholder-elected supervisory board members to a 3-year term, which aligns with our call in 2018 for shorter director terms in Germany.

[1] State Street Global Advisors is part of State Street Corporation whose identification number in the European Transparency Registry is 2428270908-83.
[2] AUM reflects approximately $32.45 billion (as of December 31, 2018), with respect to which State Street Global Advisors Funds Distributors, LLC (SSGA FD) serves as marketing agent; SSGA FD and State Street Global Advisors are affiliated.
[3] AUM figure listed is as of 30/11/2018.

As a global investor that has active engagement and voting programs in key global markets, we find that annual director elections provide increased accountability and encourage board members to be more responsive to shareholder interests, thereby improving board quality.

In a recent paper, we also find that although the majority of markets in Western Europe now mandate annual board elections, Germany has the longest terms of office, thus lagging behind European peers, as directors stand for election only once every five years. In our view, this weakens board accountability, as no matter how dissatisfied shareholders are, they may have to wait several years to hold board members accountable.

Although we are supportive of the Commission's proposal to reduce the current 5-year term of office for directors to 3 years, in our view, this should not be seen as the end goal. We believe the Code should encourage companies to ultimately move to annual elections, allowing for a transition period where companies could choose to first shift from the current 5-year term of office to a 3-year term before moving to annual elections. This would allow time for the market to adjust and help companies make a smooth transition towards best practice.

Supervisory Board Independence

State Street Global Advisors believes that effective independent board leadership is a key component of good corporate governance and long-term value creation. A sufficiently independent board will effectively monitor management, maintain appropriate governance practices and perform oversight functions necessary to protect shareholder interests.

Currently, the German Corporate Governance Code is the only governance code in Western Europe that does not make a specific recommendation on the minimum level of independence for a company's supervisory board. Indeed, with the exception of Italy, all corporate governance codes in Western Europe recommend that boards should have a majority of independent directors. Therefore, we welcome the new requirement in the revised Code that more than half of the shareholder-elected directors must be independent from the company and management, and that at least two directors must be independent from the controlling shareholder. However, we believe that the proposed revision should be further strengthened by requiring a majority of shareholder-elected directors on the board to be independent both from the company and management, as well as from the controlling shareholder.

Furthermore, we support the Commission's intention to add a list of independence criteria to the Code that shall serve as guidance for supervisory boards as to when a shareholder elected director shall no longer be regarded as independent.

Board Committees

State Street Global Advisors believes companies should have separate board committees for audit, remuneration and nomination oversight. These committees play a key role in assisting the board to fulfil its corporate governance responsibilities and provide a vehicle for enhancing the participation of non-executive directors. They also help boards to pay more detailed attention to designated areas, which is not feasible in a full board meeting, and enable the board to function more effectively.

We believe that the role of the audit committee is more important than ever in representing shareholders' interests through its oversight of a company's financial reporting, internal controls and risk management. Shareholders rely on boards and especially on audit committees to execute their oversight duties while keeping up with an increasingly complex financial reporting environment and an ever-changing regulatory landscape. Therefore, we are not supportive of the Commission's intention to make the establishment of the audit committee optional, allowing audit committee-related matters to be dealt with by the full board instead.

Furthermore, State Street Global Advisors believes that the ability of the audit committee to exercise independent judgement is vital and expects all members of this committee to be independent. Therefore, we encourage the Commission to add a provision in the German Code that will specifically recommend that companies establish audit committees composed exclusively of independent, shareholder-elected directors.

Remuneration of the Management Board

State Street Global Advisors believes that boards should develop management incentive structures that are aligned with the long-term strategy of the company. We believe that long-term incentives should be based on at least a 3-year performance period and linked to drivers, such as, Total Shareholder Return performance relative to a competitive peer group, Return on Capital Employed or other relevant long-term metrics that reflect long-term strategy.

We welcome the Commission's decision to introduce a 4-year holding period requirement for long-term incentive awards. However, we believe that introducing annual performance targets under long-term incentives could have the unintended consequence of weakening the link between executive compensation, long-term strategy and value creation.

Incorporating ESG into Company Strategy

In a **letter** to global company boards sent in January 2017, State Street Global Advisors called upon boards to incorporate sustainability into their company's long-term strategy. As a long-horizon investor, we believe it is important for companies to assess the possible impacts of sustainability issues on strategy as a good business practice. We also believe that boards can play an important role in strengthening a company's approach to sustainability and that it is for the board, as part of its oversight of strategy, to ensure that management consider, and communicate, how these issues affect long-term strategy, if at all. Therefore, we support the revised Code in asking boards to address sustainability issues and ensure that the potential impact from social and environmental factors on company strategy and operating decisions are identified and addressed.

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We hope you find our feedback useful. For questions or comments, please contact Philip Vernardis, Assistant Vice President — Asset Stewardship or Robert Walker, Managing Director, Head of EMEA — Asset Stewardship.

Yours Faithfully,

Philip Vernardis

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