Government Commission
German Corporate Governance Code

Press release

April 21, 2006

Further increase in acceptance of German Corporate Governance Code

- **High level of acceptance in the DAX segment**
- **Significant improvement in the M-DAX and S-DAX segments**
- **New Code recommendations already accepted for the most part**

Acceptance of the recommendations and suggestions of the German Corporate Governance Code showed a further improvement in 2006. The ten new Code recommendations resolved in June 2005 have for the most part been established. This is shown in the latest study by the Berlin Center of Corporate Governance (BCCG) at Berlin's Technical University, said Dr. Gerhard Cromme, Chairman of the Government Commission on the German Corporate Governance Code, today in Düsseldorf. The study, which has been conducted regularly over the past four years on behalf of the Government Commission, was presented by Dr. Cromme together with the academic head of the BCCG, Prof. Dr. Axel von Werder.

Key statements of the study

At the end of 2006 and thus after this year's AGM season, on average 79.3 of the Code's 82 recommendations will be followed by the DAX companies. In the previous year the figure was 70.0 of the 72 recommendations then applying. This positive trend is also reflected in the two other indices: In the M-DAX segment, 75.7 of 82 (2005: 65.4 of 72) recommendations will be met. The S-DAX companies will meet on average 72.9 of the 82 recommendations, compared with 61.8 of the 72 recommendations in 2005. Improvements in the already high level of acceptance have also been observed for the unchanged 19 suggestions, with the exception of a slight decline in the S-DAX segment.

Further evidence of the high acceptance of corporate governance in Germany is the fact that of the ten new Code recommendations introduced in June 2005, eight will already be followed by over 90% of DAX companies by the end of 2006. Since the DAX segment sets the trend, improvements could be expected in the foreseeable future in the mid and small caps segments, too, commented Cromme. The ten new recommendations relate in particular to the independence of supervisory board members.

Current corporate governance debate

The Government Commission on the German Corporate Governance Code is a standing commission appointed by the Federal Justice Minister. It generally conducts an annual analysis of the development of national and international corporate governance and if necessary resolves amendments to the Code. The Code is a flexible and voluntary set of rules for the German business community to ensure the transparent presentation of corporate governance at listed stock corporations.

In 2005 the Commission introduced the ten new Code recommendations primarily against the background of the EU Commission's company law action plan. The EU Commission issued recommendations on the independence of supervisory board members. In implementing these recommendations, the Government Commission had to pay particular attention to the structural differences compared with the internationally prevalent one-tier board system.

Unlike the majority of other European countries, Germany has a two-tier board system comprising management board and supervisory board, which makes a much clearer distinction between the functions of management and management oversight than the one-tier board system, in which these functions are assembled in one body. In the German two-tier system the separation of management and oversight functions is established by the statutory provisions.

Independence of supervisory board members

Most of the new Code recommendations therefore related to Section 5 of the Code on the supervisory board. The new recommendations added in 2005 included the following:

- Elections to the supervisory board are to be made on an individual basis. Judicial appointments of supervisory board members are to be limited in time up to the next annual general meeting. Furthermore, proposed candidates for the position of supervisory board chairman are to be announced to the shareholders.

  Of these three recommendations, only the recommendation that the supervisory board be elected on an individual basis will remain below the 90% acceptance threshold at the end of the year, with acceptance reaching an average of 85.7% among the DAX companies. Nevertheless, the high acceptance is reflected in the fact that before the start of the 2006 AGM season only 57.1% of the DAX companies conducted elections to the supervisory board on an individual basis.

  The recommendation concerning the announcement of proposed candidates has met largely with approval, with an acceptance level of over 90%.

- The election of a former management board chairman or management board member as supervisory board chairman or chairman of a supervisory board committee should not be the rule. Any intention of this kind must be explained separately to the annual general meeting.

With 77.8% approval at year-end 2006, this recommendation on a switch of position likewise falls below the 90% threshold, but in practice it has been increasingly clear in recent appointments that the majority of companies provide very thorough reasons for proposing candidates for these prominent supervisory board positions.

Transparency of management board compensation

In 2005 the Government Commission did not make any amendments to the Code's recommendations relating to the transparency of management board compensation. The Commission was of the opinion that it needed to wait until the German law on the disclosure of management compensation (VorstOG) had been enacted, which is now the case. Like other countries – including Switzerland, the United Kingdom, France, Luxembourg and the Netherlands – Germany now also has a law requiring the individual disclosure of management compensation, the acceptance of a voluntary solution having fallen short of the government's expectations.

By the end of 2005, 20 DAX companies had announced that they would disclose management compensation individually and with a breakdown of fixed salary, bonus and variable, long-term incentive components. By the end of 2006 – and therefore before the law on individual disclosure enters into effect in 2007 – compliance with this recommendation will increase again from the current level of two thirds of companies to 77.8% of companies. It remains to be seen to what extent shareholders will use the option provided under the VorstOG law and authorize companies to dispense with the individual disclosure of management compensation.

This year the Government Commission will deal with the adjustment of the Code to the new legislation.

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The speeches by Dr. Gerhard Cromme and Prof. Dr. Axel von Werder can also be downloaded at http://www.corporate-governance-code.de.