Executive summary

BlackRock supports the Commission's objective to regularly review the Code. Governance practices evolve over time in line with policy and market developments and we believe a regular review ensures the Code reflects best practice in corporate governance in Germany. We are supportive of enhancements to the Code that foster long-term, sustainable value creation by companies and responsible share ownership by investors. We provide our comments to the proposed amendments from our position as a fiduciary asset manager, voting and acting on behalf of our asset owner clients (including but not only, pension funds, insurance companies and individual investors).

Our key points follow (and are detailed in the next pages). We also provide a description of BlackRock's investment stewardship practices to better illuminate our views.

Shareholders' rights and duties

BlackRock believes that shareholders and institutional investors (asset owners and asset managers) have responsibilities in relation to monitoring and providing feedback to companies, sometimes known as 'stewardship'. BlackRock votes at shareholder meetings on behalf of those clients who have given us authority to do so and votes in their best long-term economic interests. We view thoughtful voting on supervisory board elections as one of our most important responsibilities as a fiduciary asset manager, acting on behalf of our clients. To fulfil this responsibility effectively, we believe shareholders have the right to sufficient and timely information, such as directors' credentials.

Supervisory board responsibilities and shareholder access

The performance of the supervisory board is critical to the long-term success of the company and to the protection of shareholders' economic interests. For this reason, BlackRock believes that discussions between the chairman of the supervisory board and shareholders can, from time-to-time, be critically important to ensure mutual understanding and any concerns shareholders might have about management performance.

Board composition and direction election

Given the role of the supervisory board, as the agents of shareholders in overseeing the strategic direction and operation of the company, we pay particular attention to board composition and voting on director elections. BlackRock believes all directors should first and foremost strengthen the competency of the board and we believe it is good practice for directors to stand for re-election on a regular basis. We expect there to be detailed and up-to-date disclosure of the relevant director credentials provided in advance so that shareholders can assess the caliber and relevance of an individual nominee. We assess directors nominated for election or re-election in the context of the composition of the board as a whole, and in doing so, consider the diversity of experience and perspective the nominee brings to the board and to the overall board quality. We also expect there to be a sufficient number of independent board directors to ensure objective debate and oversight that leads to decisions that protect and advance the interests of all shareholders. We believe that director elections provide the board with a sense of the level of shareholder support.

Say on pay and severance payments

In our view, awards should not be paid ahead of schedule in the case of premature termination of a management board member's contract.

BlackRock Investment Stewardship practices

As a fiduciary asset manager, BlackRock's pursuit of good corporate governance stems from our responsibility to protect and enhance the economic value of the companies in which our clients are invested.

Through our stewardship programme, we seek to protect the economic interests of our clients' assets, whether invested in actively-managed or index-tracking strategies. The core focus of the programme is engagement with companies, through voting at shareholder meetings on behalf of our clients and direct dialogue with board members and management. We aim to encourage business practices that support sustainable financial performance over the long term. We also seek to engage locally with regulators and commentators to understand and contribute to policy developments and emerging practices and trends.

BlackRock's Investment Stewardship (BIS) team of 30 specialists carries out the firm's activities in this area. The team members are based in the United States, the United Kingdom, Japan, and Hong Kong. They undertake analysis, engagement and proxy voting in relation to the companies incorporated in their respective regions – the Americas; Europe, the Middle East and Africa; and Asia-Pacific, in the context of a globally consistent and coordinated policy and process.

We engage in a constructive manner. Our aim is to build mutual understanding and ask questions, rather than tell companies what to do. Engagement, or direct dialogue, is core to our stewardship programme as it helps us to assess a company's approach to governance in the context of its specific circumstances. To that end, we engaged with approximately 1,500 companies globally in the past year on a range of environmental, social and governance issues. Such dialogue also helps better inform how we vote on behalf of our clients.

We undertake proxy voting as our broadest form of engagement. In the past year, we submitted votes at 16,941 shareholder meetings in over 90 markets worldwide. We make our voting decisions based on what outcome we consider would be in the best long-term economic interests of our clients. Our reference in making that analysis is our published corporate governance principles and market-specific voting guidelines, which are available on our website. We also take into account company-specific circumstances as well as research inputs, supplemented with the views of our active portfolio managers.[2]

Detailed comments

1. Shareholders' rights and duties

The Commission proposes a new section 2.1.3 to the Code stating that institutional investors are required to actively and responsibly exercise their ownership rights in accordance with a consistent and transparent framework of rules whilst also respecting the concept of sustainability / Corporate Social Responsibility.

BlackRock agrees with the Commission's assertion that ownership carries responsibilities which we fulfill on behalf of our clients through our Investment Stewardship activities. We believe there are certain fundamental rights, and duties, attached to share ownership. In our view, shareholders have a duty to monitor and provide feedback to companies. In order for shareholders to exercise these duties effectively, we believe shareholders have the right to sufficient and timely information to take an informed view of proposals, and of the performance of the company and management. Similarly boards have duties to their shareholders. Companies and their boards should be accountable to shareholders and structured with appropriate checks and balances to ensure that they operate in shareholders' interests.

[2] See, https://www.blackrock.com/corporate/en-gb/about-us/investment-stewardship/voting-guidelines-reports-position-papers and https://www.blackrock.com/corporate/en-gb/literature/fact-sheet/blk-responsible-investment-guidelines-emea.pdf.

In fulfilling our duty to monitor companies, our focus is on the performance and competence of the members of the supervisory board. Given the role in Germany of the supervisory board to "appoint, supervise and advise the members of the management board and is directly involved in decisions of fundamental importance to the enterprise"[3], we pay particular attention to board composition and voting on director elections.

2. Supervisory board – responsibilities and shareholder access

We welcome the Commission's efforts, under the proposed amendments to section 5.2 of the Code, to clarify the role and responsibility of the supervisory board chairman to discuss relevant topics with the company's shareholders. This is consistent with our view that shareholders' duties include engaging with the supervisory board members on corporate governance matters. Equally, we also believe it is the supervisory board chairman's responsibility to provide shareholders with access to the supervisory board members where this would ensure a more effective dialogue. BlackRock believes that discussions between the chairman of the supervisory board and institutional investors (asset owners and asset managers) can, from time-to-time, be critically important to ensure mutual understanding and any concerns the latter might have about management performance. In our experience, we have found these conversations to be equally useful for the company as it provides an opportunity for the company to explain their views on important matters.

Whilst we support the Commission's objective for access to the supervisory board chairman and for greater engagement between the supervisory board and shareholders, we are concerned that the proposed amendment to section 5.2, that the supervisory board chairman shall be prepared to engage with its investors "under appropriate conditions" and the engagement of supervisory related topics is to be "exclusively decided" by the supervisory board chairman, could potentially limit constructive engagement. The current language implies a more one-way dialogue which we think will not be in the best interest of the company or the shareholders they are engaging with. Therefore, we recommend the Commission removes the reference to "under appropriate conditions" to reflect that the range of engagement topics are mutually agreed between the supervisory board and shareholders, acknowledging that certain topics may be addressed by the supervisory board chairman or the management board chairman.

3. Supervisory board composition

We are supportive of the Commission's aims to enhance disclosure requirements regarding board composition as outlined in sections 5.4 of the Code. BlackRock believes that it is good practice for directors to stand for re-election on a regular basis. We also believe it is a fundamental right and duty of shareholders to vote on the election of directors nominated by the supervisory board at the general meeting.

Given the role of the supervisory board, we pay particular attention to board composition and voting on director elections. BlackRock believes all directors should first and foremost strengthen the competency of the board. Directors therefore should bring skills and expertise in more than just one area. We assess directors nominated for election or re-election in the context of the composition of the board as a whole. In this way, we are also able to assess the overall board quality. We expect there to be detailed and up-to-date disclosure of the relevant director credentials so that shareholders can assess the caliber and relevance of an individual nominee in advance of being nominated to the board. We also expect there to be a sufficient number of independent and diverse board directors to ensure the sound decision-making that contributes to the protection of all shareholders' interests. Finally, we observe that the issue of long-tenured directors is an area of increasing focus to ensure that individual directors, and the board collectively, possess and maintain the right level of skills.

[3] German Corporate Governance Code – section 1 Foreword of the Proposed Amendment, Page 1.

4. Say on pay and severance payments

Section 4.2 of the Code outlines that the supervisory board is responsible for determining the total compensation of the individual management board members. Whilst BlackRock is supportive of a degree of shareholder oversight in the area of executive remuneration, we believe it comes after the Supervisory Board has determined the appropriate pay policies, oriented to the company's long-term strategy, and performance targets to ensure alignment between pay and performance. Shareholders should not micromanage the issue and should, instead, be provided with adequate information to determine if remuneration seems appropriate. To that end, in their disclosure companies should make the link between remuneration structures, strategic objectives and the performance achieved.

BlackRock views executive pay as an output of corporate governance – pay that is not aligned with performance indicates a low level of director competency and insufficient oversight of the design and implementation of the pay by the supervisory board. In our experience, effectively setting and implementing pay policies requires a sound understanding of the business, a clear view on which *hard* and *soft* skills are required from management executives to deliver on strategy and, most importantly, competency and strength of character to be able to critically judge the appropriate pay for the individuals who can deliver. This should be assessed on the basis of what needs to be paid to get the job done. BlackRock does not believe this amount should always be "the most".

Turning to payments of variable compensation, we agree with the Commission that awards should not be paid ahead of schedule, such as accelerated vesting in the case of premature termination of a management board member's contract (section 4.2.3 of the Code). BlackRock believes that severance payments should not be made to executives whose contracts have been terminated as a result of poor performance or for serious cause. We expect severance payments to be limited to two years of salary (including bonus in markets where this is expected practice.) Outstanding awards, in the case of a good leaver, should vest pro-rated for time and performance in line with the challenging performance targets set by the supervisory board. In these circumstances, we also expect remuneration committees to use their discretion to ensure that payments truly reflect performance and take into account the condition of the company / broader operating environment, including its employee and shareholder experience.

Conclusion

We hope these comments are helpful to the Commission's deliberations. We appreciate the opportunity to address and comment on the issues raised by the Commission and are willing to engage on any specific issues which may assist in improving the German Corporate Governance Code.