



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

December 15, 2016

Dear Sir/Madam,

We are writing in response to the Regierungskommission's Nov. 2, 2016, public invitation to comment on proposed revisions to its Kodex.

Sustainalytics is an award-winning global responsible investment research firm specialized in environmental, social and governance (ESG) research and analysis. The firm offers global perspectives and solutions that are underpinned by local expertise, serving both values-based and mainstream investors that integrate ESG information and assessments into their investment decisions.

Our governance suite provides investors with research and insights that tie key governance data and contextual analysis directly to a company's business strategy. By monitoring companies year-round and assessing governance-related investment risks and opportunities, Sustainalytics helps investors determine how companies' governance practices can impact shareholders.

Our comments are organized according to the sections of the Kodex that are proposed to be changed. Given that several of the proposed changes reflect changes in German or European laws and regulations, we have restricted our comments to the remaining changes that generally deal with more discretionary improvements to German best practice recommendations.

Section 1 (Introduction)

The proposed insertion is a positive measure that would stress the spirit of the Kodex alongside its concrete policy prescriptions.

Section 2.1.3 (Shareholders and the General Meeting - Shareholders)

As a provider of ESG and corporate governance research, Sustainalytics welcomes increased focus on responsible and sustainable investment, particularly with regard to the proposed Kodex text and generally with regard to a broader acceptance within the investment community.

Section 4.1.3 (Management Board – Tasks and Responsibilities)

The proposed clarification of the management board's compliance-related duties, as well as the proposed specification that compliance processes be published and that employees and other stakeholders be provided with an anonymous whistleblower function, would all positively contribute to the overall transparency, functioning, and oversight of the company's internal control and risk management functions.

However, while we note that section 5.2 lists risk management as a topic that the supervisory board chairman should regularly discuss with the management board, and notwithstanding the clear division of responsibilities

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inherent in Germany's two-tier board framework, we would nevertheless recommend that the Kodex' discussion of the supervisory board's role in the compliance and risk management process be bolstered. The reasoning behind this stance is that the supervisory board, as the sole corporate body that is directly accountable to shareholders through annual director elections, should be clearly accountable when it comes to this very central area of corporate governance.

Section 4.2.3 (Management Board – Composition and Compensation)

The proposed specification that variable compensation be based on future performance is uncontroversial.

Section 5.2 (Supervisory Board – Tasks and Authorities)

The proposed specification, that the supervisory and management boards engage with shareholders regarding issues within their purview(s), serves to underline the importance of shareholder engagement while respecting Germany's two-tier board structure, and can therefore be seen as a positive development.

Section 5.4.1 (Supervisory Board – Composition and Compensation)

The recommendation that the board set up a "profile of competencies" would contribute towards a more transparent and professional board nomination process, but could nevertheless be reinforced by explicitly stating that said profile should be made publicly available. While it is later noted that the implementation of the profile should be included in the corporate governance report, the publication of the profile itself would facilitate shareholders' understanding of whether a given firm has a medium- or long-term plan for how the board's composition should align with changing market conditions. Nevertheless, the proposed specifications regarding the content and timeliness of director nominee biographies are uncontroversial and positive from a shareholder rights perspective.

Should you have any additional questions, do not hesitate to contact Sustainalytics' representatives at the coordinates below.

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