

30 January 2019

Regierungskommission Deutscher Corporate Governance Kodex

c/o Deutsches Aktieninstitut e.V.
Senckenberganlage 28
60325 Frankfurt am Main
Germany

Submitted via email to: regierungskommission@dcgk.de

RE: Proposed changes for amendments to the German Corporate Governance Code

Dear Sirs,

BlackRock¹ is pleased to provide written comments on the proposed amendments to the Deutscher Corporate Governance Kodex (the German Corporate Governance Code, hereafter 'the Code'), issued by Regierungskommission Deutscher Corporate Governance Kodex (hereafter 'the Commission'), on 6th November 2018.

BlackRock supports the Commission's objective to regularly review the Corporate Governance 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 welcome amendments to the code that clarify the approach that companies should take to their disclosure.

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, banks, pension funds, insurance companies and individual investors). We also provide a description of BlackRock's investment stewardship practices to better illuminate our views.

BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates responsible growth of capital markets while preserving consumer choice and assessing benefits versus implementation costs.

We welcome the opportunity to comment on the issues raised. We would be pleased to contribute further to the Commission's work to improve the Code and are available for discussion of the points that we have raised.

Yours faithfully,

Steve Monnier
Investment Stewardship – EMEA

Amra Balic
Head of Investment Stewardship – EMEA

Joanna Cound
Head of Public Policy – EMEA

¹ BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

Detailed comments

Introduction of the 30 Principles and supported recommendations.

We support the structure of the draft revised Code, and its designation of principles (for obligatory implementation), recommendations (implementation on a comply-or-explain basis) and suggestions (voluntary disclosure). In our view, this helps clarify the approach that companies should take to their disclosures.

We also support the Commission's efforts to provide greater clarity with this revised format whilst providing companies, particularly smaller companies, a degree of flexibility in their material disclosure. The Commission should seek to ensure that the requirement to explain the application of the principles is not seen by companies as an onerous exercise that can only be addressed through formulaic responses, but instead as a way to demonstrate their commitment to the standards inherent in the principles.

Shareholders' rights and duties

BlackRock believes that shareholders and institutional investors (asset owners such as banks, insurers and foundations, as well as asset managers) have responsibilities in relation to monitoring and providing feedback to companies, sometimes known as 'investment 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 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 – Section A; principle 3; recommendation and suggestion A.2

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 either the chairman of the supervisory board or other relevant supervisory board representatives, particularly board committee chairs, and shareholders as permitted by applicable corporate and capital markets laws can, from time-to-time, be critically important to ensure mutual understanding and any concerns shareholders might have about management performance or fundamental governance related matters as covered by the Code. For example; it is counterintuitive, and a conflict of interest, that shareholders should have to discuss matters such as executive pay – which will increasingly become a facet of the discussions between shareholders and German companies following the transposition of the amended Shareholder Rights Directive into German law – with the executives themselves. Access to supervisory board members is therefore necessary.

Board composition and direction election – section B; principles 19 and 20; recommendation and suggestions B.1, B.4, and B15

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 supervisory board composition and voting on director elections. BlackRock believes all directors should first and foremost strengthen the competency of the supervisory board. In our view it is good practice for directors to stand for re-election on a regular basis. We therefore support the Commission's recommendation that supervisory board members shall be appointed for a period of not more than three years. We consider this to be a sensible compromise to begin the journey away from the current five year period.

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

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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.

Supervisory board member time and availability – section B; principle 21; recommendation B.5

The German corporate governance code and our own voting guidelines are applicable to the boards of directors of public listed companies. Both the Code and our own guidelines continue to evolve in a way that reflects developing governance practices and investor expectations. As the role of a supervisory board director becomes increasingly demanding, BlackRock believes that directors must be able to commit an appropriate amount of time to board and committee matters. Given the nature of the role, we believe it is critically important that a director has flexibility for unforeseen events. In fact through our engagement with supervisory boards, we are increasingly of the view that where a supervisory board director serves on more than three other public company boards (four in total), there may be a risk that the director could be over committed. In this regard, we agree with the Commission's assessment that a Supervisory Board Chair role counts as the equivalent of two listed company supervisory board positions. BlackRock also believes that a full-time executive of a third-party entity should have not more than one supervisory board member position and this should not be in the capacity of Supervisory Board Chair.

Supervisory board independence – section B; principle 21; recommendations B.7-B.16

BlackRock agrees with the Commission's view/proposal that a supervisory board should include a sufficient number of independent directors who are elected by shareholders (excluding government or employee representatives who might otherwise be legally required members). For non-controlled companies, consistent with the views of the Commission, we expect there to be a majority of independent shareholder elected supervisory board members and for controlled companies we would expect at least a third of the shareholder elected supervisory board members to be independent. We also agree with the Commission that the chair of the supervisory board, Chair of the Audit Committee and Chair of the Remuneration Committee be independent and these committees should also be comprised of a majority of independent supervisory board members. For the purposes of calculating the level of independent representation on the board or key board committee we exclude government or employee representatives in this calculation of independence.

Remuneration of Management Board and Supervisory Board Members – section D; principles 25-28; recommendations D.1 – D18

BlackRock expects executive remuneration arrangements to demonstrate a clear link with the execution of strategy. When evaluating executive remuneration arrangements, BlackRock will take into consideration the balance of fixed versus variable pay, the choice of performance measures and their targets, the length of vesting and/or holding periods, the overall complexity of the schemes, as well as the overall level of transparency and disclosure provided to shareholders.

As such, BlackRock prefers all executive remuneration beyond salary and benefits to comprise variable remuneration based on relevant, challenging and measurable performance criteria that are clearly linked to the strategic objectives set by the management team. BlackRock generally expects the larger portion of this variable pay to be based on sustained performance over a multi-year period.

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We are supportive of the Commission's efforts to create a framework which encourages companies to consider carefully the split between fixed and variable pay and the relationship between short- and long-term incentives. The Commission should ensure that the framework is not considered by companies to be overly restrictive, however, and be clear as to the flexibility that companies have in determining their individual approach that reflects each company's individual strategy and circumstances.

The Commission's recommendation under D.9 that the short-term variable remuneration shall be based on targets set out in the operating annual planning appears prescriptive in its nature. We believe that there is no one-size that fits all in respect of executive remuneration arrangements. We believe companies should have flexibility to determine the short and long-term targets that are appropriate for the sustainable long-term objectives of the company.

We understand that the Commission views the requirement that long-term incentive payments be used to buy shares that are locked up for four years as incentivising sustained performance. We would however encourage further thought be given to how a portion of variable pay could be linked directly to performance measured over a number of years (rather than the achievement of one year's fulfilment of a longer-term strategy, as is currently the proposal for long-term incentives). We also believe that these performance measures should be majority financial that are based on quantitative and multiple criteria.

We view pensions as being part of the benefits offered by a company and therefore we do not believe that pensions and benefits should be used in the calculation of variable pay. Furthermore, since we consider pensions as a benefit offered by the company, we expect pension contributions for executives to be in line with the rest of the workforce. Contracts for new executives should reflect this alignment. Similarly, any downgrade of the workforce's pension should also be applied to the executives.

Remuneration of Management Board and Supervisory Board Members – section D; principles 29; recommendations D.20

BlackRock does not support performance based compensation for Supervisory Board members. In our opinion these arrangements have the potential to compromise the independence and objectivity that is critical for the supervisory board oversight of management. As a result, we have some concerns with this recommendation. We encourage the Commission to revisit its views on this topic and consider this proposal in the context of independence and objectivity of supervisory board members. For the avoidance of doubt, we support arrangements where a supervisory board member receives fixed compensation paid either in monetary terms, or the monetary equivalent in company shares when it is the accepted market practice as we do not consider this to be performance-related remuneration.

Other matters: Shareholder vote on takeover offer

We agree with the Commission's statement in the Foreword section of the draft revised Code that the principles of the Code have been designed to ensure the continued existence of the enterprise and its sustainable value creation. BlackRock's Investment Stewardship activities are focussed on protecting and enhancing the economic value of the companies in which we invest on behalf of clients. We believe that there are certain fundamental rights to shareholding. Effective voting rights are central to the rights of ownership and shareholders should therefore be able to vote on matters that are material to the protection of the investment.

As long-term shareholders we were concerned to see the removal of section 3.7 from the current Code about takeover offers. In light of the potential impact that a takeover could have on sustainable value creation, we believe its removal should not be seen as an acceptance that shareholders do not need to be consulted on major transactions. Given current German Corporate and Capital Markets Law, we recognise it is not possible in the absence of legislative change, to require in the Code that the Management Board convene an Extraordinary General Meeting at which shareholders could review the takeover offer and, if appropriate, decide on

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corporate actions. However, we believe this remains an important shareholder right and duty. We encourage the Commission to revisit the proposal to remove any reference to the issue from the draft revised Code.

BlackRock Investment Stewardship practices

BlackRock's pursuit of good corporate governance stems from our responsibility to protect and enhance the long-term 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. BlackRock's index strategies are designed to track the investment results of third-party indices. Third-party index providers determine which companies to include in the indices they create. On the other hand, our actively managed strategies employ rigorous fundamental and quantitative active management approaches to select the companies for these strategies.

The core focus of the stewardship 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 43 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 2,164 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 16,827 shareholder meetings in over 85 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

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.

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>.