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Dear Prof. Dr. Frijns,

Proposed changes to the Dutch Corporate Governance Code

I am writing on behalf of the Shareholder Rights Committee of the International Corporate Governance Network (ICGN). As you may know, the ICGN is a global membership organisation of institutional and private investors, corporations and advisors. The aim of the ICGN is to contribute to raising standards of corporate governance through the exchange of ideas and information across borders and the development of best practices. Our membership spans around 50 countries and the investor members are responsible for global assets of \$15 trillion. More information about the ICGN and its aims can be found at www.icgn.org.

The members of the ICGN have a keen interest in the quality and efficiency of capital markets and in particular how sound corporate governance practices can underpin corporate performance. Accordingly, the ICGN welcomes the initiatives taken by the Dutch Corporate Governance Code Monitoring Committee ('the Committee') and its efforts to keep the code applicable in the Netherlands at the leading edge of governance practice. We are pleased to have an opportunity to comment on the Committee's most recent proposals.

Before commenting specifically on the proposals we would like to make an over-arching observation, namely that a number of the changes to the governance framework in the Netherlands proposed by the Committee seem to be intended to restrict the activities of activist shareholders. We would note that this has the potential also to restrict engagement by all institutional shareholders or impose significant reporting burdens on them. The investor members of ICGN see themselves as having responsibilities to those whose money they invest to interact with companies in which they invest. Limiting their ability to act as share owners seems to be a backwards step given the efforts that have gone into encouraging more responsible share ownership. We did express these concerns in our letter to the Dutch Ministry of Finance in February this year, a copy of which is enclosed.

The management board

We note that the changes proposed to the sections of the Code covering internal risk management and control systems are not fully in line with the recommendations of the Committee in the 2007 monitoring report. Against the background of the current turbulence in financial markets, we are of the opinion that it is important for investors to receive adequate and comprehensive information on the risk profile of the company and on the internal risk management and control systems. Whilst we agree with your current proposals on management's responsibilities in this area, we think some additional provisions would be beneficial for companies and their investors. We would favour the integration of the recommendations of the 2007 monitoring report in the new Code (i.e. "explain the main risks related to the company's strategic objectives and its appetite for risks; describe the main strategic, operational, financial, legislative/regulatory and financial reporting risks of the company, including in any event the qualitative impact of these risks and a sensitivity analysis of the identified risks if it is reasonable to expect such an analysis in the light of the best practices in the sector concerned").

We welcome the proposed changes on remuneration, both in this section of the Code and in that on the role of the supervisory board. We expect that the scenario analysis will help shareholders understand the degree to which a remuneration policy meets its stated objectives, particularly in relation to linking executive pay to performance. We welcome also the claw back provision introduced to ensure that performance-based rewards paid to executives have actually been earned in light of subsequent developments, although the wording of this provision needs some fine-tuning.

The supervisory board

We welcome the extension of the supervisory board's responsibilities to include oversight of company-shareholder relationships. We believe that it is helpful for the supervisory board to receive regular reports of shareholders' views (usually gathered during capital markets days or similar events) and to ensure that the management board is addressing adequately any concerns expressed, either publicly or in private meetings, by shareholders. If the relationship between an investor, or a group of investors, and the management board has deteriorated such that it is no longer constructive we believe that the supervisory board, or at least its chairman, should intervene to prevent the situation worsening. Supervisory board members are in a strong position to mediate in these rare circumstances because they are objective but also well enough informed about the company and the management board's position to hold a balanced discussion with concerned shareholders.

We agree with the Committee that it is beneficial to evaluate the performance of the supervisory board, its committees and the management board as well as the performance of the individual directors. We would suggest that the report of the supervisory board on this process, and, ideally, its outcomes, should also cover the performance evaluation of the management board members individually and collectively.

We welcome the specific mention of the role of the vice-chairman. We would suggest that consideration be given to extending the remit of the role to include being the contact point for shareholders with concerns about the functioning of the supervisory board chairman or about the relationship between the chairmen of the supervisory and management boards. In our experience, when the leadership of a company is doubted a swift response is necessary and it is important that someone on the supervisory board sees it as their role to act.

The shareholders and general meeting of shareholders

Although we recognise that the chairman needs to be able to manage the meeting of shareholders so as to ensure that it runs smoothly and that all matters of business are covered we would be concerned if the new provision to allow chairmen to limit speaking times resulted in a restriction of interaction at the general meeting. We would hope that chairmen would not set a speaking limit at the start of the meeting but perhaps use this new authority to deal with speakers who persist in repeating points or making speeches unrelated to the business at hand.

We welcome the recommendations on contact with shareholders outside the general meeting and the responsibilities of shareholders and institutional investors. We agree that non-application of the Code should be a matter for discussion between the company and any concerned shareholders, who should give proper consideration to the company's approach. We support the position of the Committee that shareholders with concerns about company or management performance ought to engage directly in advance of submitting items for the agenda of the shareholders' general meeting. Similarly, we agree that where a shareholder has put a resolution on the agenda of the general meeting they should explain its purpose and debate the matter with those present.

However, one of the proposals causes us some concern, namely, allowing management a 180 day period to respond to resolutions proposed by shareholders on matters of strategy or board change. Given that shareholders must already submit any resolutions at least 60 days in advance of the general meeting this provides management with 8 months or so to consider how, or whether, to address these issues. Perhaps this will serve to allow management time to make change without disrupting business. However, in our experience, shareholders concerned about company performance or the quality of management or supervisory board members will expect commitment to change sooner rather than later. Thus, this proposal, combined with the 3% threshold to put a resolution, may prompt certain shareholders seeking change to go straight to the media with their case rather than taking it to management and other shareholders first. It may also lead to generally more aggressive engagement, with shareholders frustrated with management or performance proposing resolutions at an early stage rather than having informal, friendly discussions about concerns. We are concerned that there is a considerable risk that this proposal will not thwart those with a short term focus and may well prompt a pre-emptive strike from those who would otherwise take a conciliatory approach to engagement with companies.

That said, if the Monitoring Committee is of the opinion that a response time is necessary we would ask that the parameters are reconsidered. Firstly, we believe that having the response time only in the corporate governance code may result in uncertainty in terms of implementation and enforcement. Although it may be assumed that the response time would be seen as a derivation of the 'fairness and reasonableness rule' it is not absolutely clear whether the provision extends to all shareholders (i.e. institutional or private, Dutch and foreign) or how breaches would be dealt with by the courts. More certainty about the legal implications and interpretation in practice of the response time would, we believe, be beneficial to companies and investors alike.

Secondly, we believe that a response time of 240 days is excessive and suggest that 100 days in total (i.e. including the existing requirement to submit proposals 60 days before the general meeting) is sufficient. In addition, we believe that the response time provision should only be exercisable in relation to shareholder proposals seeking to change strategy, which we agree management should be given time to engage on with investors. Changes to the management or supervisory boards ought to be subject only to the existing provisions on the basis that shareholders

should be able to take urgent action when they have major concerns about the calibre of directors, who after all are the agents of the shareholders. Allowing directors an extended period of grace does not seem appropriate in these extreme circumstances.

Takeovers

As outlined in the Committee's report, it is timely to set out guidance on the responsibilities of the management and supervisory boards in the event of a takeover bid. We agree with the recommendation that the supervisory board should be involved as soon as a takeover bid emerges and that its role is to ensure that negotiations are conducted properly, with due consideration of all those with a legitimate interest in the company. However, given the Dutch corporate governance framework, we are not sure that the proposed provisions should be part of the Code. Currently, all rules governing takeovers are part of the Dutch takeover legislation. For the sake of consistency, we would prefer that the proposed provisions be implemented through the takeover legislation.

We commend the Committee on its report and its commitment to engaging on these matters and ensuring the Code remains relevant to users. We hope you find our comments helpful. If you would like to discuss them further, please do contact our Executive Director, Anne Simpson, by telephone on either + 44 20 7612 7098 or by email at execdirector@icgn.org.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Michelle Edkins', with a long horizontal line extending to the right.

Michelle Edkins
Chairman
ICGN Shareholder Rights Committee