

September 28, 2016

Monitoring Commissie Corporate Governance Code  
p/a Ministerie van Economische Zaken  
Postbus 20401  
2500 EK Den Haag  
Via email: [secretariaat@mccg.nl](mailto:secretariaat@mccg.nl)

**RE: Proposal for Applicability Corporate Governance Code to One-tier Boards: An Invitation to Comment.**

Glass, Lewis & Co. ("Glass Lewis") appreciates the opportunity to comment on proposed additions to the Dutch Corporate Governance Code which builds upon amendments proposed in February 2016 by specifically addressing the application of best practice standards to one-tier boards.

About Glass Lewis

Founded in 2003, Glass Lewis is a leading, independent governance services firm that provides proxy research and vote management services to more than 1,200 clients throughout the world. While, for the most part, institutional investor clients use Glass Lewis research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.

Through Glass Lewis' Web-based vote management system, ViewPoint, Glass Lewis also provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and record-keep, audit, report and disclose their proxy votes.

From its offices in North America, Europe and Australia, Glass Lewis' team provides research and voting services to institutional investors globally that collectively manage more than US \$30 trillion. Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board ("OTPP") and Alberta Investment Management Corp. ("AIMCo"). Glass Lewis operates as an independent company separate from OTPP and AIMCo. Neither OTPP nor AIMCO is involved in the day-to-day management of Glass Lewis' business. Moreover, Glass Lewis excludes OTPP and AIMCo from any involvement in the formulation and implementation of its proxy voting policies and guidelines, and in the determination of voting recommendations for specific shareholder meetings.

## Glass Lewis Views on the Proposed Amendments to the Dutch Corporate Governance Code

Currently, the Dutch Code of Corporate Governance (the “Code”) primarily focuses on the two-tier board structure, since Dutch companies have normally adhered to this model, in which administrative and supervisory responsibilities are divided between the management board and the supervisory board. However, companies have increasingly adopted the one-tier model governed by one corporate body composed of both executive and non-executive directors. Further, in recent years, a significant number of large global, foreign-listed companies have chosen to reincorporate in the Netherlands, bringing with them the one-tier board structure – which is more common internationally.

Glass Lewis recognises that reference to this model was already included in the Code under articles III.8.1 through III.8.4. However, given the gradual increase in the number of one-tier boards and foreign-listed, Dutch-incorporated companies, Glass Lewis is supportive of the Dutch Corporate Governance Code Monitoring Committee’s (“the Committee”) decision to more specifically address the one-tier structure within the Code. Further, we note the Committee has also drafted an additional document providing specific and more detailed guidance in the application of the Code to one-tier boards which is intended to be published in conjunction with the new Code.

Having reviewed the new amendments to be made to the Code with respect to one-tier boards, Glass Lewis has noted the following:

### **1. Independence requirements**

Under the proposed revision, clarification is provided that non-executive members of a one-tier board shall be subject to the same independence requirements as a supervisory board, based on the independence requirements set forth in article 2.1.6 of the Code. Further, it is clarified that new provisions (proposed article 2.1.7) allowing a greater number of non-independent directors where such directors are major shareholders, will apply also to the one-tier board structure.

In this case, we believe the previous provisions under article III.8.4 left a considerable degree of ambiguity as to the independence requirements and exceptions for a one-tier board. With the addition of a new provision creating a clear expectation for one-tier board independence, the consistent adoption of best practice should see an increase. Further, where such practice is not implemented, shareholders and other market participants will have a clear standard against which companies may be assessed. Such clarity is of particular importance given that many companies with a one-tier board are listed on foreign stock exchanges or originated outside of the Netherlands and, as a result, are less familiar with Dutch best practice.

### **2. Non-executive chairman**

In the revised version of the Code, article 2.8.2 is extended to more clearly explain the tasks reserved to the chairman of the board of directors. He or she should take responsibility for the leadership of the board and should ensure its proper composition and functioning. Glass Lewis believes that there are some circumstances in which the role of a non-executive chairman of the board may be less clear than that of a supervisory board chairman. Therefore, we believe the setting of best practice standards for the scope and expectations of this role is of significant importance.

As far as his or her independence is concerned, revised article 2.8.3 unequivocally states that the chairman should be non-executive and independent. Glass Lewis views an independent chairman as better able to oversee the executives of the Company and set a pro-shareholder agenda without be

forced to consider potential conflicts of interest. This is of particular importance in a one-tier board given the less distinct separation of executive and non-executive directors.

### **3. Responsibilities of executive and non-executive directors**

Glass Lewis believes the depth and guidance provided with respect to the concept of collective and distribution of responsibilities within the board of directors will prove to be a particularly positive amendment.

Glass Lewis believes that a clear separation of the roles of executive and non-executive board members and better explanation of the distribution of responsibilities can improve the functioning of the board. Further, assigning the responsibility for certain decisions exclusively to non-executive directors, in particular with regards to issues concerning the executive compensation and board nominations, would guarantee a more independent decision-making process by the board, thus protecting shareholder interests. Further, Glass Lewis believes that shareholders would particularly benefit from a best practice which allows non-executive directors the final say with respect to the external auditor appointment and situations involving a conflict of interest with interested parties.

### **4. Rendering of account by non-executive directors**

Perhaps the most striking amendment provided by the Committee's proposal is the inclusion of article 2.8.5 requiring non-executive directors "to account for the supervision conducted over the past financial year."

Dutch law stipulates that companies are only obliged to provide a management report. While best practice calls on a supervisory board to submit a distinctly separate report, no such consistent practice can be observed amongst one-tier boards. As noted by the committee, in practice, at some one-tier Dutch companies' non-executive directors draw up a separate report included in the annual accounts, while others believe that one integrated throughout the annual report is sufficient. Therefore, the Committee's proposal to provide some guidance for non-executive members in a one-tier system without stipulating an exact approach seems reasonable.

We believe that the preparation of an account by non-executive directors, whether through a separate report or jointly with executive directors in the annual report, will be beneficial. Glass Lewis is in favor of provisions which underline the importance of non-executive directors' answerability to shareholders and the importance of clear communication with the shareholder population. Encouraging non-executives to report on their specific responsibilities and activities provides a more independent and objective point of view on issues regarding the company's development and clearly separating executive responsibilities from the supervisory tasks.

## **Conclusion**

On the whole, Glass Lewis supports the Monitoring Committee's decision to include more specific provisions relating to the corporate governance practices of one-tier boards. Direct and unambiguous guidelines for complying with the high corporate governance and transparency standards set by the majority of Dutch companies are welcome. We find that the proposed changes will help to ensure a greater level of consistency in governance best practices across Dutch companies, regardless of governance structure.



Glass Lewis welcomes this opportunity to comment on the proposed amendments to the Code and is available to answer any questions the Committee may have regarding the comments provided above.

Respectfully submitted,

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