Exchange House
Primrose Street
London EC2A 2NY

Tel: +44 (0)20 7628 8000
Fax: +44 (0)20 7628 8188
bmogam.com

The Corporate Governance Code Monitoring Committee
F.a.o. the Secretariat, Ms Irene Heemskerk
P.O. Box 20401
2500 EK The Hague

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BMO Global Asset Management's comments on proposals for revision of the Dutch Corporate Governance Code

Dear Members of the Monitoring Committee,

BMO Global Asset Management is a global asset management firm with assets under management of EUR 204bn (as at 30 December 2015). As well as acting for our own portfolios, **we also represent the interests of over 25 major third-party investment institutions with approximately EUR 72bn of assets** (as at 30 December 2015)**, many of whom Dutch asset owners**.

Thank you for the opportunity to comment on the amendments to the Dutch Corporate Governance Code (the Code). We welcome many of the proposed changes and, in particular, the additional attention the proposed Code attributes to long-term value creation, corporate culture, diversity, the effectiveness of the internal risk management and control systems, as well the emphasis on good succession planning. We also welcome the greater focus on the quality of explanation provided by companies under the 'comply or explain' principle and support the specific provisions for explanation in certain areas.

We believe that the proposed regular revisions of the Code, to take place at least every three years, will allow the Code to incorporate evolving areas of best practice. We welcome this proposal.

We would like to provide specific feedback on some of the proposed amendments and make further comments on ways in which we believe a number of elements could be strengthened under the new Code.

Role of the Supervisory Board

Accountability for internal audit and risk management

We welcome the position of the Monitoring Committee (the Committee) assigning greater importance to risk management. We support the proposed provisions relating to the internal audit function but believe that additional provisions are necessary to ensure accountability of internal audit and risk management. In our view, the audit committee of the supervisory board should be accountable for the proper oversight of risk management and internal controls, including the review of all significant financial and extra-financial risks.

We also expect supervisory boards to report on the key issues raised by the external auditor and on discussions between the audit committee/supervisory board and the external auditor on how these points were addressed. We strongly urge the Committee to include provisions to this effect in the new Code under sections 1.5.3 and 2.3.11.

Supervisory board oversight and effectiveness

We are concerned that a number of proposals would, if implemented, detract from the principle of independent supervision by the supervisory board:

1. The proposal to increase the number of non-independent members that will serve on the supervisory board (draft provision 2.1.7) in the context of the classification of shareholder representatives as independent;
2. The proposal to grant supervisory board members remuneration in the form of shares and/or rights to shares (draft provision 3.3.2);
3. The proposal to allow non-independent supervisory board members to sit on a special transaction or takeover committee (draft provision 2.7.5).

We have welcomed the high levels of independence achieved by Dutch boards under the provisions of the current Corporate Governance Code in recent years. These exceed independence levels in most other European markets. We believe that the composition of the board is of the utmost importance and encourage our investee companies to view each board appointment as an opportunity to enhance board effectiveness through improving the range of competencies, skills, talent, experience and relevant perspectives present at the board table. It is our view that non-executives should normally be wholly independent of the company.

However, we recognise that, in certain cases, connected non-executives have a valuable role in building an effective board. Therefore, for widely held companies, we do not object to the presence of non-independent board members as long as at least 50% of members are independent non-executive directors who ensure appropriate balance of independence and objectivity.

- In this context, we do not consider major shareholders and representatives of major shareholder or any special interest group or affiliated company to be independent. **We strongly urge the Committee to reverse its proposal to treat as independent supervisory board members representing a legal entity that holds ten percent** of the shares in a company (draft provision 2.1.6). It is also unclear to us why these members should be treated differently to members who may holds a significant interest directly (draft provision 2.1.7) given that they are equally in a position to exert significant influence on the company in the interests of the entity they represent which could conflict with the interest of minority investors.

- It is our view that prolonged board membership of over 12 years can jeopardise a director's independence and, most importantly, impede board refreshment, thus creating a possibility that over time the board may not be equipped with the experience and skills necessary for effective oversight. We agree with the Committee that regular board refreshment helps bring in the necessary skills and experience, ensures diversity; it also helps address concerns over independence and allows for effective succession planning while maintaining continuity on the board. We encourage the Committee to consider recommending **reduction of supervisory board member terms from four to three years, where possible, to facilitate the achievement of this goal. Furthermore, we encourage the Committee to recommend annual re-elections as a condition of the re-appointment of long-serving members.**

- We do not agree with the Committee's proposal to no longer permit the chairman of the supervisory board to be the chairman of the selection and appointment committee (draft provision 2.3.4). We consider that the chairman of the supervisory board carries a key responsibility for good succession planning and for the effective functioning of the management board and the supervisory board and therefore, his or her involvement in the selection and appointment committee, particularly at smaller companies, may be appropriate.

- We believe that performance-related pay, stock options, pensions, jeopardise the independent judgment of non-executive directors. Therefore, we are **not supportive of the any changes to the Code which would permit the grant to supervisory board members of rights to shares which could be linked to company performance** (draft provision 3.3.2).

- Finally, we do not agree with the Committee that supervisory board members, who are not independent, either due to the length of their tenure, relationship with a major shareholder, or other reasons, be allowed sit on the special transaction or takeover committee (draft provision 2.7.5). We believe that **the takeover committee should be fully non-conflicted directors only to ensure robust independent supervision**.

Management Compensation
While we support the overall intent to encourage simplicity in remuneration policies, we strongly urge the Committee to **refrain from its proposed deletion of a large number of best practice provisions on remuneration under the exiting Code sections II.2 and II.3**, which have contributed to a good level of transparency of compensation disclosure in the Dutch market. We have been encouraging company Remuneration Committees to follow these provisions while also proactively seeking investor views.

We stress our expectation that the Code continue to require improvements in remuneration policies and plans for management board members, including:

- Specific prospective performance targets under annual and long-term incentive plan and meaningful analysis of the extent to which the targets are actually met;
- Where performance targets are too commercially sensitive under annual bonus awards, disclosure of the targets and the level to which they were met can be provided retrospectively to justify corresponding payouts.
- In the event of a takeover, legal merger or demerger, unvested awards for management board members are prorated for both time served and performance achieved ahead of the takeover offer.

Further suggestions on issues that the Code may clarify and strengthen:

- We welcome the proposed provision that the supervisory board should evaluate its performance at least once per year (draft provision 2.2.6). We encourage the Committee to also recommend periodic evaluation under external guidance. In our view, regular externally-facilitated board evaluations, which can be held every three years, are an essential component of a robust board evaluation strategy which is forward looking and able to identify and address skill gaps on boards and ensure that the board is fit for the challenges and opportunities businesses face.
- We find that the proposed provision 2.1.4 which recommends that at least one supervisory board member with specific expertise in technological innovations and new business models to be potentially too restrictive. We agree with the Commission that board members need to have sufficient expertise for the fulfilment of their duties, but consider the provision has potential to result in difficulties for boards trying to appoint directors with a narrow skill set. Equally, we recognise that even a broadly constituted and well-experienced board cannot necessarily be expected to have expertise in every aspect of a broad and complex business but non-executive directors should be enabled to call on appropriate professional advice, although the directors will always remain ultimately and collectively accountable for all the board's decisions.

We would greatly appreciate it if the points we have set out above were taken into consideration in the adoption of the final new version of the Corporate Governance Code. We would welcome further discussion with you on both the specific and general issues raised in this letter and look forward to hearing from you. My contact details are below.

Yours sincerely,

V. Bakh

Vicki Bakhshi
Head of Governance and Sustainable Investment
BMO Global Asset Management (EMEA)
Tel: +44 (0)207 011 4473
Email: Vicki.bakhshi@bmogam.com
http://www.bmogam.com/corporate/about-us/responsible/

For any follow-up and questions, please contact:

Kalina Lazarova
Associate Director, Governance and Sustainable Investment
BMO Global Asset Management (EMEA)
Tel: +44 (0)207 011 4282
Email: kalina.lazarova@bmogam.com