

# Corporate Governance for a changing world

Executive Summary

The Netherlands, 15 February 2016

Nyenrode Business University and Frank Bold<sup>1</sup> partnered to bring together experts from business, academia, regulators and civil society to discuss the future of big business. The roundtable event held under Chatham House Rule was part of a global roundtable series with previous events held in London, New York and Zurich and further events planned in France, Germany, Norway and Belgium. This summary captures the avenues of discussion that seemed to resonate with participants and does not exhaustively capture everything that was said.

## **Introduction, Tineke Lambooy, Nyenrode Business University<sup>2</sup>**

The two primary objectives of the meeting were:

1. to analyse corporate purpose and how Dutch corporate governance facilitates or blocks responsible business; and
2. review the new draft Dutch Corporate Governance Code<sup>3</sup> and comment on how it could be strengthened.

The results of the discussion on the draft Corporate Governance Code were translated into concrete amendments to the text, which are appended to this report.

## **Introduction, Filip Gregor, Frank Bold<sup>4</sup>**

Henry Mintzberg, a leading management thinker, recently asked ‘do we really need stock markets?’<sup>5</sup> He contrasted the entrepreneurial spirit and sense of purpose present in new companies with the pressure of capital markets to think in one-dimensional terms, namely by maximizing short-term share price. He calls this pathological, saying: “One-dimensional corporations, like one-dimensional people, are pathological: they are an invasive species that have no business in a healthy society. Why build compelling enterprises and then jettison their engagement? What kind of a society, let alone economy, does that render?”

Mintzberg’s advice to companies is to: (1) seek patient capital, (2) create a trust relationship with shareholders by issuing different classes of voting rights, and (3) protect their business model and purpose by certifying as a B corporation or by changing the business model to a cooperative. His concern about the short-termism of capital markets is shared by a number of thought leaders.

## **Plenary debate on corporate purpose – Moderated by Herman Mulder, Nyenrode Business University, Global Reporting Initiative (GRI)<sup>6</sup>**

Our understanding of good corporate governance needs to look beyond business as usual to consider two additional dimensions of the responsibility of the enterprise: the length of its entire value chain and its role in (adverse) impacts on society (i.e. beyond specific stakeholder groups).

Boards must consider risks in their entire value and supply chains, not just tier-one suppliers. For example, the board of a Dutch textile company involved in the collapse of the Bangladeshi garment factory at Rana Plaza needed to ask itself whether it was aware of the deficiencies, whether it was exposed to liabilities and how it should act going forward. The future of law is forward-looking to avoid and mitigate risk.

It has been confirmed that the OECD's *Guidelines for Multinational Enterprises* apply to fund managers and minority shareholders, in addition to companies and investors.<sup>7</sup> The OECD's complaint resolution mechanism has explored the extent to which institutional investors as minority shareholders have a responsibility to pressure investee companies to improve their human rights performance, or to divest.

Corporate governance is concerned with power relationships and the ability of groups to have a voice. While the Netherlands is well-known for its stakeholder model of corporate governance, it currently excludes the environment. Furthermore, there tends to be an excessive focus on risk management at the expense of innovation. We should look at examples where strong corporate governance has been embedded throughout the organisation, for example in B Corporations.<sup>8</sup>

One participant suggested that the objective of corporate governance should be to realise the purpose of the corporation and put incentives in place to achieve those ends. Others questioned the extent to which we can legislate for purpose. One participant also noted the distinction between purpose and consequence. Everyone agreed that companies should avoid causing bad consequences. It is however unclear whether the creation of beneficial societal outcomes is part of the corporation's purpose under the liberal market model. It may be that the question of purpose is bigger than can be solved by corporate governance. Furthermore, it may be misleading to speak about a corporation as having one single purpose. While this might be true of small companies, large corporations have diverse products and therefore have multiple objectives.

The debate about purpose is cyclical and we should therefore review existing literature on the legal debate about the 'corporation in itself' ('Unternehmen an sich') to build on what we already know. It was suggested that the main problem with a corporate purpose that espouses the creation of beneficial societal outcomes is that it allows managers to play different stakeholder interests against each other, which allows them to justify virtually any course of action or decision. A broad definition of corporate purpose must therefore be coupled with a strong managerial ethic. Indeed, virtuous managerial behaviour (Beamtenidealismus) - rather than selfish maximisation of personal wealth - was the fundamental assumption of the 'Unternehmen an sich' view in Germany and Switzerland during the 1920s and 1930s. Yet it may be that we should not return to these former understandings of the role of business in society but rather evolve to a new one.

Another participant thought that the question of corporate purpose reflected a shareholder model thinking frame. Since the Netherlands uses a stakeholder model, a company's purpose is/should be the outcome of the interests of all stakeholders. Similarly, Dutch politics are carried out within a coalition-consensus model.<sup>9</sup> The question then becomes in what forum should this weighing of interests be carried out; one idea that resonated was the use of stakeholder fora/assemblies.

The analogy has been used of corporate profit being akin to red blood cells, in that it is needed for survival, but the generation of profit is no more the purpose of the corporation than the generation of red blood cells are the purpose of human existence.<sup>10</sup>

In the 1990s, the key issues in corporate governance tended to be a formalistic discussion of the importance of the supervisory role of non-executive directors (NEDs), the topic of board composition, etc. while now it is recognised that culture and leadership play a crucial role in companies. Most seem to agree that the maximisation of shareholder value cannot be the only answer to the question of corporate governance. More recently, there has been a trend back from rule-based regulation to a principle-based approach.<sup>11</sup>

Martin Luther King said that "morality cannot be legislated, but behaviour can be regulated."<sup>12</sup> We have witnessed an enormous loss of public trust in business, as well as in civil leaders, due to failure to adequately regulate behaviour. The effects of this are potentially destabilising as they risk creating a power vacuum.<sup>13</sup>

One way to introduce checks and balances internally to prevent serious scandals would be to require boards to conduct an effective and systematic internal investigation in response to complaints of wrongdoing. Where companies have adopted ethical codes (gedragcodes) they should be adhered to. When a violation of either an internal code or the Corporate Governance Code is reported to the board of directors, they should seriously investigate the reported incident and ensure appropriate correction - and where relevant take appropriate action to manage the consequences.

## Scenario Exercise – Paige Morrow, Frank Bold<sup>14</sup>

Participants engaged in a backcasting exercise where they were asked to design a corporate governance innovation to address a challenge facing a mock company.<sup>15</sup> Each group was asked to assume a different position (board of directors, management, employees, accountants and institutional investors) and then develop a corporate governance innovation that could be implemented in the next five years.

### Board of directors

The group of directors said that it was important to develop a clear mission. Currently boards have too many functions and goals, and there is a lack of distinction between the roles of executives and non-executives. The board should have a clear separation of responsibilities and aim at ensuring the long-term continuity of the firm.

### Management

The group representing management discussed the creation of a matrix measuring the net positive impact value (NPIV) of business decisions to shareholders, stakeholders and society-at-large, and their alignment with the corporation's purpose. The matrix could be updated every 1.5 years. This would help the business to accomplish the following:

1. Establish a clear purpose, vision and strategy for the company;
2. Test their ability to make decisions in accordance with the purpose;
3. Build in flexibility to change the indicators but retain the corporate culture to take decisions that are fully in accordance with the corporate purpose.

The group felt that this innovation would improve the decision-making processes of organisations and increase the consistency of business decisions that are sustainable and mission-driven. It would also build trust both within the company and with its external stakeholders. Here it is interesting to look at B Corporation requirements for corporate governance and decision-making.<sup>16</sup>

### Employees

The employee group discussed the role of labour and agreed that board-level representation is important. The group explored the idea of creating a 'shadow board' of employees. The group also discussed a potential cap on the ratio between that of the CEO and lowest paid worker, which was unsuccessfully put to a Swiss referendum in 2013.<sup>17</sup>

### Accountants

The group of accountants discussed bringing civil society input to the board of directors and the CEO through additional non-financial reporting based on materiality.<sup>18</sup> It is important for this information to be comparable with like information from peers. This innovation would have the benefit of future-proofing firms'

value creation and bringing civil society input into businesses in a constructive way. Through the introduction of a self-assessment process and auditing process, the Board's ability to select and define goals and KPIs that represent all legitimate stakeholders' interests would be strengthened.

## **Institutional investors**

It was suggested that every company should develop a statement of purpose at the time of incorporation. This would be revisited at annual stakeholder meetings, which resemble annual general meetings with the additional of stakeholders. This would allow companies and stakeholders to arrive at a shared understanding of corporate purpose.

Additionally, institutional investors should be required to prepare integrated reporting<sup>19</sup> from the perspective of managing the expectations and interests of end beneficiaries, and should also require investee companies to adopt integrated reporting. One example is Unilever, which prepares a statement where they explain why they are on this earth for all stakeholders; however, one participant noted that it was uncertain what the role of the corporation was in this regard.

## **Discussion of Dutch Corporate Governance Code**

**Irene Heemskerk, member of the Dutch Monitoring Committee Secretariat,**<sup>20</sup> presented the Committee's proposal to revise the Dutch Corporate Governance and explained certain additions and changes. She emphasised that the application of the Code is limited to Dutch listed companies. The Code is focused on responsibility and transparency. Adherence is on an 'apply or explain basis' (a variation on the comply or explain principle typical to corporate governance) and reporting on compliance should be appended to the annual report. An interesting feature is the use of best practices – 129 in all – to provide concrete guidance to companies on how to implement their obligations under the Code.

The 2016 revision aims to address a number of matters:

1. Increased focus on long-term value creation;
2. Reinforcement of risk management;
3. New emphasis on effective management and supervision;
4. Introduction of culture as an explicit element of corporate governance;
5. Clarification and simplification of the rules on the remuneration;
6. Revisiting the relationship with shareholders and stakeholders; and
7. Clarification of requirements regarding the quality of explanations.

Participants then divided into working groups to analyse and provide concrete suggestions for principles that were relevant to the roundtable, namely long-term value creation, non-financial risk management, and culture.

## **Principle 1.1 Long-Term Value Creation**

Participants were positive about the inclusion of long-term value creation. They noted however that the Code does not define 'long-term' and it is left to each company to determine the relevant time horizon. It was suggested that it would be helpful to provide some guidance on the factors that should be considered.

There are two time dimensions relevant to the 'long-term'. First, there is the long-term time horizon for the company itself, which may stretch to five years or beyond. Second, there is the very long-term relating to the business' impacts and value creation for 'societal interests, such as climate change. It was

suggested that the term ‘societal interests’ should be used as it is a broader concept than ‘shareholders’, ‘stakeholders’ or ‘civil society’, as currently in use in the Code. Both need to be considered.

Additionally, the value created should be for the long-term benefit of all stakeholders, including but not limited to shareholders and employees. Here it may be useful to refer to the OECD Guidelines for Multinational Enterprises, which acknowledge the importance of creating value for all stakeholders, including but not limited to shareholders.

The group further observed that changes on a very long time horizon (e.g. 50 years) are often believed to be greater than they are in practice. Conversely, and counterintuitively, changes to the company and impacts caused by the company on a mid- to long-term horizon (e.g. 5-10 years) are often under-estimated.

The idea was put forward to consult with stakeholders to create a materiality matrix to identify the most relevant issues of the company and then develop key performance indicators (KPIs) to measure progress on these key issues. Both financial and non-financial performance should be monitored and measured. Additionally values should be integrated into the KPIs. It was acknowledged that some accounting firms already use materiality matrices with their corporate clients.

Participants echoed the importance of supervisory board diversity that is emphasised in the draft Code (at p. 26 and Principle 2.1.5), in terms of multiple types of background, including gender and age. It was suggested that boards should also include young people, e.g. under 30 years of age, in order to include the (future) perspectives of the new generation in decision-making.

## **Principle 1.2 Risk management & Principle 1.4 Risk management accountability**

There was a question about who should have the responsibility for establishing the criteria for setting the risk appetite of the company and it was felt that stakeholders should have a more prominent role in this respect.

It was suggested that there is a need for more than vague statements on long-term value creation. Companies need to think practically to identify the concrete long-term value drivers and apply those to their strategic planning. Furthermore, while risk management is important, risk aversion needs to be offset by innovation and creativity. In the current business environment, innovation is under-prioritised. One solution could be to have someone on the board responsible for innovation and creativity.

With respect to environmental, social and governance (ESG) matters, the expertise of board members should be matched with achieving ESG goals and reporting on non-financial matters. Several participants asked how ESG matters would be monitored through ongoing due diligence<sup>21</sup> and reported on.

The current forward-looking approach asks for a guarantee that the company will exist in one year (in the control statement). It is unclear what this means for the liability of directors. There is a need to protect directors from the possible consequences of a future-oriented statement about being in control over the next year. It was asked whether boards should provide a vision, rather than a risk assessment.

In this context, the importance of board diversity was raised<sup>22</sup>. It was noted that a diverse board will reduce the possibility of group think and ensure there is a broad range of individuals with varying thresholds for risk.

With respect to the ‘in control statement’, it was argued that the current draft version of the Code is insufficiently aligned with the long-term view espoused in the rest of the Code and frames ‘control’

too much as financial control. This is unfortunate, as there is a sense of urgency across a wide set of stakeholders, including insurance companies, the director of the Dutch Central Bank (Klaas Knot), Mark Carney, Andy Haldane, Christine Lagarde (IMF) and many others that the future liabilities of intangibles like climate change impact, loss of biodiversity and ecosystems, stranded assets, costs of conflict, reputation damage etc. should be central to the way companies think and report about risks and, hence, control.

It was suggested that the Committee may wish to give further guidance to companies. For example, companies' risk appetite should align and refer to the stakeholder approach stipulated in Principle 1.1. Companies may achieve this by referring to social issues, human rights matters, the environment and corruption (as outlined in EU Directive 2014/95 on non-financial reporting). Companies may also choose to create a materiality matrix based on GRI G4 Aspects<sup>23</sup> or the International <IR> Framework<sup>24</sup> and then base their risk appetite decision-making on this.

### **Principle 1.3 Internal audit function**

It was suggested that the option to choose not to have a voluntary internal audit committee should be explained in the Code. It was unclear in the current draft why the internal audit committee reports to the board and not to the general audit committee. Further explanation could help to show how the independence of the internal audit would be guaranteed, especially for an audience familiar with one-tier boards where the independence of the internal audit committee is expected. As it stands, the draft text could raise questions in an international context. It may be appropriate to address this issue further in the next version of the Code when the Committee focuses additional attention on the distinctions between one-tier and two-tier boards.

### **Principles 2.5 Culture**

The 2016 Code is the first to put culture on the board's agenda. The addition of culture as a core principle is probably the first of its kind in any corporate governance code as no other code explicitly requires boards to take responsibility for it.<sup>25</sup>

Participants universally welcomed the newly introduced principle on culture, which they agreed was extremely advanced relative to other Codes. It was suggested that culture is the 'driving force' of the company and it is impossible to run a business without considering its values. Furthermore, accountability and openness are essential to the survival of the company because they help to gather information internally as well as on the external business environment, which is constantly evolving.

The group noted that the aims of this principle are heading in the right direction but further guidance could be given on implementation. Culture is a broad term and corporate culture is embedded in the broader culture of the country. It was unclear whether culture should align with the country culture where the company is based, and indeed this may be difficult to identify in the case of large multinationals. It was noted that the OECD Guidelines on Multinational Enterprises requires Dutch companies to apply Dutch norms everywhere they do business even if local norms are lower.<sup>26</sup>

### **General Comments**

It was noted that there is sometimes confusion about the requirements of the 'comply or explain' principle. Participant welcomed the clear requirement that companies give "a reasoned explanation" for any deviations from the Code,<sup>27</sup> although some asked whether at least a portion of the Code's provisions should eventually evolve to become mandatory requirements. Additionally, several participants were troubled by the limited application of the Code to Dutch listed companies and felt that it should apply more broadly.

The question of monitoring and enforcement of the Code was raised. The proposed Code states that it is the role of shareholders “to call the management board and the supervisory board to account for compliance with the Code” (p. 56). Shareholders share the “responsibility” with companies for “good self-regulation according to the ‘comply or explain’ principle so that it can serve as an effective alternative to legislation”.

Several participants noted that enforcement has been a weakness of the ‘comply or explain’ principle in the Netherlands and elsewhere.<sup>28</sup> It was recommended that the responsibility of monitoring and enforcing the Code should be shared with other stakeholders. One suggestion was to introduce a communication channel for stakeholders to communicate directly with companies. Other participants suggested creating an index to measure compliance with the Code, thereby creating positive incentives for compliance. This would be more constructive than ‘naming and shaming’ companies that failed to comply. The Access to Medicine Index could be an interesting example to look at as it uses a relative ranking to encourage companies to constantly seek to improve their performance relative to other businesses, rather than giving a pass/fail grade.<sup>29</sup> Additionally, a self-evaluation process could be used to create an incentive for boards to look at their implementation and create a culture of self-improvement.

It was suggested that the Code should be reviewed more regularly. It seems that this is already foreseen under the new rules for the Code.

It was also asked whether a European Corporate Governance Code was an idea that should be developed.

## Appendix A

### Draft Provisions

Below is the suggested wording of changes to the text of the draft Corporate Governance Code.

#### Introduction

...Applicable to Dutch listed companies, the Code contains principles and best practice provisions for the governance of listed companies and the account to be rendered to shareholders and stakeholders (and societal interests) in that regard.

#### Preamble

Some companies have already integrated long-term value creation for stakeholders in their business models, which is laudable. At a minimum, companies should do no harm to their stakeholders and society at large when they carry out their business operations. Ensuring that the company does not make a negative environmental or social impact links to the long-term financial health of the company itself as these impacts can leave the company vulnerable to supply chain failures, regulatory investigations, exclusions and closures, litigation, mandatory regulation, finance and insurance risks, reputational/brand damage, talent recruitment and attractiveness for investors. [...]

#### Principle 1.1 Long-term value creation

The management board is responsible for the continuity of the company and its affiliated enterprise, focusing on long-term value creation for the company, its affiliated enterprise, and its stakeholders. The management board formulates and implements a strategy focus on long-term value creation that may, depending on market dynamics, continually require short-term adjustment. The strategy focus reflects the stakeholders' interests.<sup>30</sup> The supervisory board supervises this.

##### 1.1.1 Long-term value creation strategy

The management board has developed<sup>31</sup> a view on long-term value creation by the company and its affiliated enterprise for its stakeholders and has formulated a strategy to realise this view. The strategy reflects stakeholders' interests and pays attention to:

- i. the strategy's implementation and feasibility;
- ii. the business model applied by the company and the market in which the company operates;
- iii. opportunities and risks for the company;
- iv. the company's operational and financial goals and their impact on its future position in relevant markets;
- v. non-financial corporate issues relevant to the company, such as the environment, social and employee issues, respect for human rights, and fighting corruption and bribery; and
- vi. the outcomes of the stakeholder consultation process and societal interests.<sup>32</sup>

##### 1.1.2 Role of the supervisory board

[...] The supervisory board supervises the manner in which the management board realises the long-term value creation strategy. The supervisory board oversees the stakeholder consultation process to ensure that it is meaningful with outcomes that are reflected in the strategy. The supervisory board meets once per year to discuss the strategy aimed at long-term value creation, the implementation of the strategy and the principal risks associated with it. This discussion is mentioned in the report of the supervisory board.



## 1.1.3 Accountability

In the management report, the management board should give a substantive description of the view on long-term value creation, the strategy for its realisation and which contributions were made to the long-term value creation for the company's stakeholders in the past financial year, and which stakeholders were consulted. The management board reports on both the short-term and long-term developments with regard to long-term value creation for its stakeholders, and which categories of stakeholders were consulted.

## Principle 1.2 Risk management

### 1.2.1 Risk assessment

The management board identifies and analyses the risks associated with the company's strategy and activities. It establishes the risk appetite within which the company may accept risks and the control measures to counter those risks. The context for this analysis is determined by aspects such as the company's continuity, reputation, financial and non-financial reporting, funding, operating activities and long-term value creation for its stakeholders.

### 1.2.3 Evaluation

The management board monitors the operation of the internal risk management and control systems and, at least annually, carries out a systematic review of the effectiveness of the systems' design and operation. Such monitoring covers all material control measures, including the financial, non-financial, operational, stakeholder and compliance aspects, and take account of weaknesses observed and lessons learned, signals from whistleblowers and findings from the internal audit function and the external auditor. Where necessary, improvements are made to internal risk management and control systems.

## Principle 1.4 Risk management accountability

### 1.4.1 Accountability

In the management report, the management board renders account of:

- iv. the execution of the risk assessment, with a description of the principal risks facing the company and the risk appetite of the company. These risks include strategic, operational, financial, compliance, stakeholder and non-financial risks; [...] - the scope of these systems with
- v. the design of the internal risk management and control systems and provide in a reasonable manner that the financial and non-financial reporting does not include incompleteness or inaccuracies for stakeholders and society at large.

### Principle 1.4.2 'In control' statement in the management report

The management board states in the management report, with clear substantiation:

- i. that the internal risk management and control systems with the goal of achieving long-term value creation worked properly in the financial year;
- ii. that the aforementioned systems provide reasonable assurance that the financial and non-financial<sup>33</sup> reporting does not contain any material inaccuracies; and
- iii. that the expectation is that the company's continuity has been safeguarded for the next twelve months.

## Principle 1.5 Role of the supervisory board and the audit committee

The supervisory board supervises the management conducted by the management board and the general affairs of the company and its affiliated enterprise. In so doing, the supervisory board also

focuses on the effectiveness of the company's internal risk management and control systems and the integrity and quality of the financial and non-financial reporting. The audit committee should prepare the supervisory board's decision-making regarding these specific elements of supervision.

## **Principle 1.5.1 Duties and responsibilities of the audit committee**

The audit committee's duties and responsibilities include monitoring the company's financial and non-financial reporting and the risk management conducted by the management board. In addition to what is laid down in legislation, the audit committee in any event focuses on monitoring the management board with regard to:

- i. relations with, and compliance with recommendations and following up of comments by, the internal audit function and the external auditor;
- ii. the funding of the company;
- iii. the application of information and communication technology of the company; and
- iv. the company's tax policy and
- v. the appointment of the internal auditor.<sup>34</sup>

## **Principle 1.5.3 Audit committee report**

The audit committee reports to the supervisory board on its deliberations and findings. In this report attention is paid to:

- i. an assessment of the effectiveness of the design and operation of the internal risk management and control systems referred to in best practice provisions 1.2.1 to 1.2.3, inclusive;
- ii. the methods used to assess the effectiveness of the internal and external audit processes;
- iii. material considerations concerning the financial and non-financial reporting; and
- iv. the expectation as to whether the company's continuity has been safeguarded for the next twelve months.

## **Principle 1.6 Appointment and assessment of the functioning of the external auditor**

### **1.6.2 Engagement**

The audit committee should submit a proposal to the supervisory board for the external auditor's engagement to audit the financial and non-financial statements. The management board should assist and facilitate. In formulating the terms of engagement, attention should be paid to the scope, materiality and remuneration of the audit. The supervisory board should resolve on the engagement.

## **Principle 1.7 Performance of the external auditor's work**

### **1.7.2 Audit plan and external auditor's findings**

The audit committee annually discusses with the external auditor:

- i. the scope and materiality of the audit plan and the principal risks of the financial and non-financial statements identified by the external auditor in the audit plan; and
- ii. based also on the management letter and the audit report, the findings and outcomes of the audit work on the financial and non-financial statements and the management letter.

### **1.7.3 Publication of corporate reports**<sup>35</sup>

The audit committee determines how the external auditor should be involved in the content and publication of financial and non-financial statements in the corporate reports other than the financial statements.

## **1.7.6 Provision of reports to the management board and supervisory board**

The management board and the supervisory board simultaneously receive the management letter and the audit report from the external auditor along with their findings and outcomes relating to the audit of the financial and non-financial statements and the management report and the management letter. The audit committee should be permitted to examine any material changes that have been made to the draft management letter or the draft audit report by the external auditor at the management board's request.

## **1.7.8 External auditor's attendance of supervisory board meetings**

The external auditor should in any event attend the meeting of the supervisory board at which the report of the external auditor with respect to the audit of the financial and non-financial statements is discussed.

## **Principle 2.4 Decision-making and functioning**

### **2.4.4 Induction programme for supervisory board members**

After their appointment, all supervisory board members should follow a formal induction programme geared to their role. The induction programme should in any event cover general financial and non-financial matters such as environmental, social, human rights, corruption-prevention and other legal affairs, financial and non-financial reporting by the company, any specific aspects that are unique to the relevant company and its business activities, the company, its stakeholders, its culture and the responsibilities of a supervisory board member. The chairman of the supervisory board should ensure that supervisory board members follow their induction programme.

## **Principle 4.1 The general meeting of shareholders**

### **4.1.7 External auditor's attendance**

The external auditor may be questioned by the general meeting in relation to his report on the fairness of the financial and non-financial statements. The external auditor should for this purpose attend and be entitled to address this meeting.

## Appendix B

### List of participants

|                               |                 |   |
|-------------------------------|-----------------|---|
| Constantijn                   | Van Aartsen     | Maastricht University, PhD Corporate Law and Governance   |
| Martine                       | Verweij         | Club of Rome - Dutch Chapter  |
| Kenneth                       | Van Toll        | Director Institutional Funding & Program Partnerships at Global Reporting Initiative (GRI)  |
| Irene                         | Heemskerck      | Monitoring Committee Corporate Governance Code, Secretaris  |
| Bas                           | Steins Bisschop | Chairman of the supervisory board of Eurocommercial Properties N.V.<br>Lawyer at Steins Bisschop & Schepel  |
| Mieke                         | Olaerts         | Maastricht University, Prof. Comparative Corporate Law  |
| Gerhard                       | Schnyder        | King's College, Senior Lecturer in Comparative Management   |
| Marcello                      | Palazzi         | Co-founder B-Lab Europe   |
| Rebecca                       | Scholten        | Ernst & Young, Corporate Responsibility, EY Foundation, Sustainability Accelerator  |
| Franc                         | Van den Berg    | Ernst & Young, Partner Cleantech and Sustainability   |
| Jan Willem                    | Vosmeer         | Heineken, Sustainability and Reporting  |
| Hans                          | Van der Loo     | Global Resource Security & Resilience Initiative  |
| Wim                           | Leereveld       | Access to medicine index, Founder   |
| Arnoud                        | Kuijpers        | Partner at KPMG and board member Index Initiative   |
| Cristina                      | Cedillo         | RobecoSAM, engagement analyst   |
| René                          | Van der Kieft   | Chair Board of Directors of MN  |
| Gerard                        | Fehrenbach      | PGGM, Senior Advisor for responsible investment   |
| Erik                          | Breen           | Manager SRI at Triodos Investment Management  |
| Kris                          | Douma           | Director of Investment Practices and Reporting UNPRI  |
| Raymond                       | Van der Kort    | ING Corporate Legal Department, Senior Legal Counsel and Programme Manager  |
| Jet                           | Rutgers         | ING Trust Office, Senior lawyer   |
| Ronald                        | Jeurissen       | Nyenrode Business University, Prof. Business Ethics; Center for Entrepreneurship, Governance and Stewardship; Nyenrode Corporate Governance Institute |
| Frank                         | Van den Akker   | Board member NCD (De Nederlandse Vereniging van Commissarissen en Directeuren)  |
| <b>Regretted<sup>36</sup></b> |                 |   |
| Hans                          | Schenk          | Utrecht University, Prof. Economics   |
| Jan                           | Van de Venis    | Human Rights Lawyer JustLaw, Director LD WaterLex   |
| Robert                        | Van der Laan    | PWC, partner Sustainability and Integrated Reporting  |
| Leen                          | Paape           | Dean of Nyenrode Business University  |
| Maria Anne                    | Van Dijk        | ABN AMRO, Head of environmental, social & ethical risk & policy   |
| Vino                          | Timmerman       | Supreme Court, Advocate General, Prof. Corporate Law Erasmus University   |
| Kim                           | Van Kalleveen   | Monitoring Committee Corporate Governance Code, Secretaris  |



## Organisers

|          |         |   |
|----------|---------|---|
| Tineke   | Lambooy | Nyenrode Business University, Prof. Corporate Law; Center for Entrepreneurship, Governance & Stewardship; Nyenrode Corporate Governance Institute |
| Jeroen   | Veldman | Senior Research Fellow at Cass Business School  |
| Filip    | Gregor  | Frank Bold, Head of Responsible Companies Section   |
| Paige    | Morrow  | Frank Bold, Head of Brussels Operations   |
| Herman   | Mulder  | Nyenrode Business University, Center for Entrepreneurship, Governance & Stewardship   |
| Remko    | Reyes   | Nyenrode Business University, Center of Auditing & Assurance; Nyenrode Corporate Governance Institute   |
| Danielle | Melis   | Nyenrode Business University, Center for Entrepreneurship, Governance & Stewardship; Chair Nyenrode Corporate Governance Institute                |

## Support team

|          |              |  |
|----------|--------------|--|
| Rosalien | Diepeveen    | Nyenrode Business University, Center for Entrepreneurship, Governance & Stewardship; Nyenrode Corporate Governance Institute         |
| Carla    | de Roover    | Nyenrode Business University, Center for Entrepreneurship, Governance & Stewardship; support Nyenrode Corporate Governance Institute |
| Bart     | Jansen       | Nyenrode Business University, PhD Researcher   |
| Erik     | Van der Liet | Press officer at Nyenrode Business University & Communication specialist   |

## References

1. Frank Bold is a purpose driven law firm using the power of business and non-profit approaches to solve social and environmental problems. It leads the Purpose of the Corporation Project, a strategic and open-source platform for leading thinkers and organisations interested in promoting the long-term and sustainability of companies to share their knowledge and foster multi-stakeholder collaboration.
2. Tineke Lambooy is Professor of Corporate Law at Nyenrode Business Universiteit. She conducts multidisciplinary research projects which focus on the implementation of sustainability standards by private actors (corporate social responsibility, CSR). One special focus area concerns the participatory stakeholder model of social enterprises. Another subject of research regards natural capital and the role of business in that context. She was trained as a corporate lawyer and conducted her PhD study on the role of legal norms and corporate best practices in regard of the development of CSR standards. Tineke is a board member of the Club of Rome - Dutch Chapter and a member of the Round Table of World Connectors.
3. The unofficial English translation is available at <http://www.commissiecorporategovernance.nl/download/?id=2835>.
4. Filip Gregor is Head of the Responsible Companies Section at Frank Bold. Since 2007 he has represented Frank Bold in the Steering Group of the European Coalition for Corporate Justice where he has coordinated global research projects focused on the policy and regulatory framework for global business operations. He is also a member of the Eminent Persons Group overseeing the Human Rights Reporting and Assurance Frameworks Initiative organised by the Shift Project and Mazars.
5. Mintzberg, Henry (2016) "Do we really need stock markets?" available at [www.mintzberg.org/blog/stock-market](http://www.mintzberg.org/blog/stock-market).
6. Herman Mulder is an institutional adviser, speaker, lecturer and author on sustainable finance issues. He is most notable for being an advocate, expert in international law and has been attributed to be a key player in the development of corporate responsibility, impact investment and the ESG integration. He is currently a chairman of the True Price Foundation, member of the Board of the Dutch National Contact Point for the OECD Guidelines for MNE's, former chairman of the Global Reporting Initiative (GRI) and member of the TEEB Advisory Board. A former Director-General, Head of Group Risk Management at ABN AMRO Bank (1998-2006) and Head of Global Structured Finance (1995-1998), Herman Mulder was the initiator of the Equator Principles (2002/2003: the first voluntary, global sector code on environmental and social issues for the financial sector).
7. For example, in a complaint brought against the South Korean company POSCO and two of its investors, the Dutch pension fund ABP and its pension administrator APG, the Dutch National Contact Point confirmed that the OECD Guidelines apply to financial institutions that have minority shares in multinational enterprises. Although ABP/APG held less than 1% stake in POSCO, they had an obligation to prevent or mitigate any violations carried out by the investee company.
8. B Corporations are companies that have been privately certified as meeting social and environmental performance standards. See Cummings, B. (2012). Benefit corporations: How to enforce a mandate to promote the public interest. *Columbia Law Review*, 578- 627 at p. 594.
9. Andeweg, R. B., & Irwin, G. A. (2014). *Governance and Politics of the Netherlands*. Palgrave Macmillan at p. 141.
10. Ed Freeman, a trustee of Conscious Capitalism Inc. said: "We need red blood cells to live (the same way a business needs profits to live), but the purpose of life is more than to make red blood cells (the same way the purpose of business is more than simply to generate profits)."
11. J. Van Bekkum, J.B.S. Hijink, M.C. Schouten and J.W. Winter, 'Corporate Governance in the Netherlands', 14 *Electronic Journal of Comparative Law* 3 (2010).
12. Martin Luther King, Jr., "On Being a Good Neighbor." In *Strength to Love* (Cleveland, Ohio: William Collins, 1963), 35.
13. Edelman, 2016 Trust Barometer, available online at <http://www.edelman.com/insights/intellectual-property/2016-edelman-trust-barometer/>.

14. Paige Morrow is Head of Brussels Operations at Frank Bold, where she specialises in corporate governance and company law, and an external lecturer in corporate governance at the University of Kent BSIS. Paige is a Canadian-qualified lawyer who previously advised clients and litigated human rights, employment and commercial law matters at McCarthy Tétrault LLP. She has also held positions at the Centre for the Study of Human Rights at the London School of Economics and Political Science (LSE), the Kenya National Commission for Human Rights and the South African Legal Resources Centre.
15. Based on a scenario exercise developed by the Drucker Institute and used with its permission. For a general explanation of backcasting, see e.g. Quist, J., & Vergragt, P. (2006) 'Past and future of backcasting: the shift to stakeholder participation and a proposal for a methodological framework' *Futures* 38(9): 1027-1045.
16. See B Lab <<http://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/performance-requirements>>. For an examination of social purpose, see Lambooy, T. and Argyrou, A., *Improving the Legal Environment for Social Entrepreneurship in Europe* (April 24, 2014). *European Company Law Volume 11 Issue 2*; University of Oslo Faculty of Law Research Paper No. 2014-03. Available at SSRN: <http://ssrn.com/abstract=2428706>.
17. The Young Socialists of Switzerland collected the requisite 100,000 signatures required to trigger a referendum on the question whether CEOs' salaries should be capped so that they would not earn more in one month than the average earned by the lowest paid worker(s) in that company in the entire year. The referendum ultimately received only 34.7% of support. See <http://www.bloomberg.com/news/articles/2013-11-24/swiss-voters-reject-strictest-executive-pay-limits> for more information.
18. In accordance with the requirements of the Non-Financial Reporting Directive and the Dutch Corporate Governance Code.
19. Including reporting on both financial and non-financial information. The International Integrated Reporting Council (IIRC) defines integrated reporting as "a process that results in communication by an organization, most visibly a periodic integrated report, about how an organization's strategy, governance, performance, and prospects lead to the creation of value over the short, medium and long-term. See PwC (August 2013) *Integrated Reportign: Going Beyond the Financial Results*; available at <https://www.pwc.com/us/en/cfodirect/assets/pdf/point-of-view-integrated-reporting.pdf>.
20. Irene Heemskerk is Secretaris (Secretary) of the Dutch Corporate Governance Code Monitoring Committee. She prepared the proposals for revision of the Corporate Governance Code and is involved with the ongoing monitoring activities of the Committee. She started her professional career at the Ministry of Transport in The Hague, where she was trained as a legislative lawyer. Irene joined the Dutch Central Bank in 2005 and subsequently took on positions as a legal counsel, a supervisor, and senior policy advisor on integrity and governance issues in the financial sector. She was also closely involved in the parliamentary inquiry into the Financial System. In October 2014, Irene started a secondment as the Secretaris (Secretary) of the Dutch Corporate Governance Code Monitoring Committee.
21. For example, with respect to due diligence for social impact the UN Guiding Principles on Business and Human Rights, Principle 17 states: "In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, and tracking responses as well as communicating how impacts are addressed."
22. The Netherlands introduced legislation that requires the boards of large Dutch companies to be of at least 30% women and 30% men. However, this requirement applies on a comply or explain basis. Principle 2.1.5 of the proposed Code asks companies to explain any failure to meet the 30% target. According to the 2015 Dutch Female Board Index, only 7.8% of executive board members and 21.3% of supervisory board members are women: <https://www.tias.edu/docs/default-source/Kennisartikelen/femaleboardindex2015.pdf?sfvrsn=0>
23. The Guidelines organize indicators (or Specific Standard Disclosures) into three Categories - Economic, Environmental and Social. See Global Reporting Initiative (2014). *G4 Reporting Principles and Standard Disclosures*. For further reading on materiality and its application beyond financial accounting into integrated reporting, see Edgley, Carla. "A genealogy of accounting materiality." *Critical Perspectives on Accounting* (2013).

24. The <IR> Framework uses a principle-based approach and does not prescribe specific KPIs but rather identifies the process for determining materiality. Eccles, Robert G., and Michael P. Krzus. *The integrated reporting movement: Meaning, momentum, motives, and materiality*. John Wiley & Sons, 2014, ch. 5.
25. The Draft King IV Report on Corporate Governance for South Africa 2016, which opened for public consultation on 14 March 2016, also addresses culture. The Draft King IV Report is available at <http://bit.ly/KingIVdraft>.
26. See Dutch NCP statement on the situation in the Philippines.
27. The Code sets out at p. 56 of the proposed Code the five elements that companies must give in their explanation of why a best practice principle was not applied, which are: 1. how the company departed from the best practice provision; 2. the reasons for the departure; 3. a description of how the decision to depart from the best practice provision was made within the company; 4. if the departure is of a temporary nature and continues for more than one financial year, an indication of when the company intends to comply with the best practice provision again; and 5. where applicable, a description of the alternative measure that was taken and either an explanation of how that measure attains the underlying purpose of the best practice provision or a clarification of how the measure contributes to good corporate governance of the company.
28. In the UK, compliance with the Corporate Governance Code is a requirement of the listing rules of the London Stock Exchange, albeit on a comply or explain basis. See e.g. Keay, A. (2014). *Comply or explain in corporate governance codes: in need of greater regulatory oversight?* *Legal Studies*, 34(2), 279-304.
29. The Access to Medicine Index, an independent initiative, ranks the world's 20 largest research-based pharmaceutical companies according to their efforts to make their products more available, affordable, and accessible in developing countries. See Hogerzeil, H. V. (2013). *Big Pharma and social responsibility—the access to medicine index*. *New England Journal of Medicine*, 369(10), 896-899.
30. We recommend including in the explanatory comments that management is expected to organise a meaningful stakeholder consultation process that should be described in their reporting.
31. As a general comment that applies to all provisions and best practices, we recommend every norm be written in the current tense in order for the comply or explain mechanism to fulfill its objective. For example if the text states 'should...' or 'will...', the company can say that it complies because it will do so in the future. We noticed this occurring for the Diversity provisions in the old Code relating to board diversity. We noticed that many companies that had no diversity in place still considered themselves compliant because they had plans to comply in the future ('will').
32. We recommend adding into the explanatory text that management should discuss how they have consulted with stakeholders. Some companies have begun to report the stakeholders they consulted with and this may be taken as best practice in order to give investors an understanding of how meaningful the consultation process has been.
33. In the Preamble, the Commission states that it deleted the term 'CSR' because it is deemed to be integrated in the strategy and elsewhere. Hence, everywhere that a Principle or Best Practice uses the term 'financial', the words 'and non-financial' should be added. Thus, the Commission's new vision should be applied consistently. Eventually, we hope to see a complete integration of CSR into the Dutch Van Maanen Corporate Governance Code, in line with the South African Corporate Governance Code (King III).
34. We recommend that the audit committee be made explicitly responsible for the appointment of the internal auditor, or at least consent to the appointment. This responsibility should not be held by the management board alone.
35. We recommend that the term corporate report be used as it more accurately reflects the integration of both financial and non-financial information into reporting.
36. These people regretted to cancel their active participation on the day itself due to personal and/or professional reasons.