



AFG-ASFFI

COMMISSION ON CORPORATE GOVERNANCE

RECOMMENDATIONS ON CORPORATE GOVERNANCE

Introduction

Originally, the concept of corporate governance arose out of the investment managers' concern to build the value of their clients' investments by exercising all their rights as shareholder, including active participation in the general meetings of listed companies.

In France, several factors have combined to lead market players to become concerned about corporate governance. Principal among them are privatization, the increasing presence of foreign shareholders - American pension funds in particular - the emergence in France of the pension fund concept, the desire to modernize the Paris financial market and the publication of the Vienot Report.

Through the equity investments they manage, professional asset managers represent a considerable percentage of Paris's stock market capitalization.

Consistent with their professional code of ethics, these managers exercise their fiduciary responsibilities with complete independence, in particular vis-a-vis the equity issuing companies, for the exclusive benefit of their clients.

This circumstance naturally lead to their taking a position on corporate governance.

With this in mind, the Board of Directors decided to create a Commission on Corporate Governance. The present recommendations are the result of its work.

The Commission is aware of the difficulties that could arise for certain companies from immediate application of its recommendations. Such application would be made easier, however, by measures to strengthen company shareholder structure and shareholders' equity through encouragement of long-term investor savings, such as French government initiatives in the areas of venture capital, employee savings, pension funds, and so forth.

The present recommendations apply to publicly-traded French companies and constitute company selection and shareholder voting criteria for use by firms belonging to AFG-ASFFI. They are not necessarily intended as the basis for new legislation.

In addition, the Commission takes the view that it would be advisable that discussion of these issues begin rapidly at the European level so that its recommendations constitute minimum corporate governance guidelines for all listed companies in the euro zone.

I -THE ASSET MANAGER AND SHAREHOLDERS' MEETINGS

The General Shareholders' Meeting is the preeminent occasion for the shareholder to exercise his company rights. This meeting is therefore a decisive element in a company's corporate governance.

In the Commission's view, it is particularly important that asset management firms develop General Meeting voting guidelines including voting criteria for resolutions; their confidential content is naturally left to the discretion of each.

This position is the logical consequence of the code of ethics governing portfolio managers which holds them to exercising the voting rights associated with the securities they manage and requires them to be able to justify their actions in this regard (clauses 14 and 15 of the AFG-ASFFI UCITS professional ethic (see appendix).

A -HOLDING GENERAL SHAREHOLDERS' MEETINGS

1. Deadlines for meeting announcements and holding shareholders' meetings

The Commission believes that shareholders should be informed as quickly as possible of their company's situation and, through their vote on resolutions, be in a position to react quickly to that situation.

In addition, the general meetings of publicly-traded companies should be held as soon as possible after the publication of their financial statements. The maximum delay between the closing of a company's annual accounts and the shareholders' meeting called to approve those accounts should be no more than four months. Aside benefit would be earlier payment of dividends.

To this end, the Commission supports consideration being given to the possibility of adopting a simplified formula for closing and approving accounts.

The Commission would also like to see the time period for calling the general meeting extended beyond 15 days so that documents and information, which on occasion may be complex, can be delivered to the shareholders sufficiently in advance of the meeting for them to review their contents. The Commission is in favour of extending this minimum delay to one month, in line with the delay for publishing general meeting announcements in the Bulletin of Mandatory Legal Notices (Bulletin des Annonces Légales Obligatoires, "Balo").

2. Place, date, and hour of the general meeting

The presence of the maximum number of shareholders at shareholders' meetings contributes to the interest of the discussion. Their participation should be encouraged.

The Commission recommends that, in determining the place, date, and hour of their shareholders' meetings, companies take utmost care in respecting this consideration.

For companies with adequate means, holding shareholders' meetings in more than one place may be one way of fulfilling this criterion.

3. Electronic conferencing resources

The Commission is favorable to the use of electronic means, such as video-conferencing to facilitate the holding of shareholders' meetings, making it possible, for instance, for shareholders in distant areas to attend without having to travel.

4. The practice of offering "gifts" to shareholders in attendance at general meetings

The Commission alerts companies to the misinterpretation that might be made of certain excesses associated with this practice.

B -SHAREHOLDER INFORMATION

The shareholders' meeting is the occasion when the Board of Directors renders its accounts to the shareholders on the exercise of its duties. The directors presence is therefore essential.

1. Participation guide for general meetings

The Commission recommends that companies draw up and distribute a guide for shareholders' participation in the general meeting.

2. Two reports, one in summary form, the other complete

The Commission is in favour of companies publishing two annual reports, one complete, the other in summary form making company information, and in particular the proposed resolutions, more easily accessible for shareholders that are less expert on the company. Every shareholder should receive the summary report, with the complete report available on request. These reports should also be available through electronic means, in French and in English.

3. Explanation of the proposed resolutions

The Commission favors the practice of explaining the reason for and the consequences of the resolutions, in particular those related to appointments, the renewal of Directors' terms, and authority to carry out financial operations. The resume of these Directors and the number of shares they hold should also be included with the information.

The Commission takes the view that the number and total value of stock options held by the ten most highly paid executives of the company should be included in this information. This also applies to company's listed and unlisted subsidiaries. The total value of stock options granted to employees should also be published.

4. Submitting resolutions and raising questions at the general meeting

The Commission recommends that companies remind their shareholders of their right to submit resolutions to the general shareholders' meeting and to raise questions; in each case, the conditions needing to be met to exercise this right should be indicated. In this regard, it would be fitting to remind shareholders of the possibility to join together to reach the minimum amount of capital necessary to propose a resolution.

5. Follow-up after the vote on resolutions

Within the shortest possible delay following the general meeting, the Commission would like to see companies publish an extract of the meeting's minutes informing shareholders, in particular foreign shareholders, of the results of the votes on the resolutions, along with an analysis of those votes.

It is recommended that systematically, within 15 days at the latest following the shareholders' meeting, this report be sent (by electronic or other means) to all holders of registered shares and to shareholders present or represented at the meeting.

C -VOTING AND PARTICIPATION AT THE GENERAL MEETING

1. Blank proxies

While the practice of soliciting blank proxies certainly facilitates fulfilling quorum requirements, the Commission feels, nevertheless, it limits active shareholder participation. This limitation is all the more important as shareholders often are unaware that these proxies in principle favour management proposals.

Nonetheless, the Commission does not support elimination of blank proxies.

The Commission would like to see that when a company solicits proxies it specifies its voting intentions. It is clear that, in accordance with regulations, no blank proxies may be voted on any new resolution proposed at the time of the general meeting.

The Commission is likewise favorable to a standardization of voting forms to that the three voting procedures, blank, by mail, and by proxy, be presented explicitly and clearly, in particular with respect to the consequences of a blank vote.

2. Preferred shares

As is provided in relevant texts, the Commission would like to see that the rights of holders of preferred shares (excluding their participation in the general meeting) be respected based on the amount of capital they control in the company.

3. Double voting rights and "loyalty premium" dividends

The practice of double voting rights is assuredly a way to reward the loyalty of certain shareholders.

Nevertheless, the Commission takes the view that this practice, which can allow control of a company to be held by minority shareholders, can be abused and used in a manner contrary to the spirit of responsible corporate governance.

The Commission would like to see this practice abandoned excepting, however, during a period of five years from the date of the company's initial public offering.

The Commission is also against "loyalty premium" dividend payments to holders of shares for a specified period of time.

4. Anti-takeover measures (poison pills)

Out of concern for the interests of the minority shareholders, the Commission is generally not in favor of anti-takeover measures. They do not encourage open and responsible management, nor do they promote company performance.

5. Blocking share requirements (French law, requires that for shares to be voted in General Meetings, they must be suspended from trading prior to the General Meeting for a period of five days).

Blocking shares five days prior to the general meeting is contrary to the spirit and the objective of responsible corporate governance; it also constitutes a brake on the effective participation of shareholders at meetings.

This procedure may also present real difficulties for the exercise in the shareholder's interest of asset management activity.

The Commission is in favour of reducing or even eliminating this limitation so that any shareholder may exercise his voting rights. It is nevertheless aware of the need for a shareholder identification procedure and that the bearer share format represents a costly and unwieldy constraint.

Solutions should be sought through concertation with the share issuing companies and account administrators.

Three types of solutions are possible.

The first consists in reducing the share blocking period to two or three days, as seems to be the case with certain companies already.

The second would be to institute a revocable blockage where the shareholder could carry out share transactions at any time. It is recognized, however, that such a system could create problems for achieving a quorum and establishing share ownership.

The third solution is inspired by the American "record date" practice whereby the owners of shares are established at a specific date, for instance fifteen days before the Shareholder Meeting. Shares are thus "blocked" only one day, and shareholders identified that day may attend the Shareholders' Meeting.

A priori, the Commission is in favour of the "record date" system as it seems to meet the concerns of portfolio managers.

6. Electronic voting

As a practical matter, the Commission is in favour of electronic voting and would like to see that the most reliable and rapid system be used, while ensuring the shareholder the greatest degree of confidentiality.

II -THE ASSET MANAGER AND THE BOARD OF DIRECTORS

The Board of Directors is a strategic decision-making body whose choices affect the future of the company and involve the responsibility of its members. Its actions must be governed by openness, accountability, and effectiveness.

The portfolio manager's advisory role requires that his activity, and that of his employees, be governed by the principle of independence. He may therefore not serve as a member of the Board of Directors of any company whose shares are held in the portfolios he manages.

A -PRINCIPLES

1. The Board function

The Commission takes the view that, to the degree the Board of Directors is responsible to all shareholders, it must act over time in the interest and on behalf of all.

2. Accountability and independence

In the Commission's view, the Board's accountability to all shareholders requires that it be independent in relation to company management.

3. Separation between the functions of Chairman of the Board and Chief Executive Officer

The Commission finds that the separation of the oversight or supervisory function from executive function is favored by adoption of the Supervisory Board/Management Board corporate structure. The present recommendations are applicable as well for to the Supervisory Board function.

B -BOARD INDEPENDENCE

1. Outside Board Members

The Commission believes that board membership should include at least two outside members. These directors should be "free of any interest" in the company, which means they should have no conflicts of interest.

The Commission adopts a definition of free of any interest which is close to the Vienot Report's definition of the outside director, with the exception of the provision related to persons having left the company over the previous three years. Hence, in the Commission's view, a director free of any interest is one without any direct or indirect tie with the company or companies of the group and therefore may be reputed to participate with objectivity in board discussions. He must neither be now, or ever have been, an employee, nor chairman, nor chief executive of the company or of any company of the group. He must neither be a lead shareholder of the company nor of a company of the group, nor be related in any way to such a shareholder. Finally, he must not in any way

whatsoever be related to a significant or regular commercial or financial partner of the group or of any group company.

2. Director selection

The Commission favours each Board having a nominating committee responsible for proposing candidates to Board membership. This committee should be composed of from three to five directors and include the chairman and at least one outside director. This committee should draw up a report, with supporting information, on the recommendations it makes.

3. Standing committees

The existence of standing committees is a central element to corporate governance and hence to board functioning.

The Commission recommends the creation of at least three standing committees : a nominating or appointments committee, a compensation and performance committee, and an audit committee.

Each committee must be composed of at least three directors, including one outside director. Company executives or employees should not be members of the compensation and performance committee or of the audit committee. The members of these two committees should be free to call on and hear from company personnel.

Through the Shareholders' Meeting, the board should inform shareholders of the existence of these committees and the frequency of their meetings.

4. Cross shareholdings and reciprocal directorships

As a matter of principle, the Commission is against cross shareholdings unless they are the result of strategic alliances and part of an announced joint business undertaking.

Beyond such cases, this practice runs counter to openness and independent decision-making. No director representing cross shareholdings should be allowed to sit on the compensation and performance committee.

C -COMPENSATION

1. Investment in the company

All directors should have a significant minimum investment in the company, i.e. one year's directors' fees.

2. Executive compensation and company performance

Executive compensation and its adjustment up or down should be tied to the performance of the company and the value of the company's share.

The same should be the case for directors' fees, whose adjusted level should also take into account their attendance.

3. Disclosure of compensation

The board should deliberate on executive compensation and should publish its method of calculation and the existence, if any, of stock options.

The Commission recommends full disclosure regarding all forms and calculations of direct, indirect, or deferred compensation of executives and directors : stock options in France or abroad, pension plans, and so forth.

4. Stock options

The Commission would like to avoid the distribution of stock options on shares of unlisted subsidiaries, in France or abroad, of a group that itself is listed. The Commission is in favour of stock options that are awarded without discount.

5. Severance Pay

The Commission is opposed to severance payments that are not a function of the individual's time of service or of his compensation and of the company's intrinsic value during his period of service.

D -BOARD FUNCTIONING AND MEMBERS

1. Number of directors

Under French law, the board must be composed of at least three and no more than twenty-four members. The Commission recommends that the number of directors be kept at a reasonable number to ensure the board's proper functioning, with a limit of sixteen members.

2. Non-accumulation of directorships

Directors should be in a position to dedicate themselves fully to their responsibilities. The Commission recommends in this respect that board memberships be limited to three, including representation of legal entities as well as the director personally, excepting directorships held within one's own group. The recommended directorship limit for outside directors is five.

3. Self-evaluation of the board's openness

The Commission recommends that the board regularly evaluate its own degree of openness in terms of its membership, its organization, and its mode of functioning. It should inform shareholders of any measures taken as a result.

It also recommends that the board examine the status and situation of its members with regard to their functions and obligations.

The Commission further recommends that each year, in the annual report, the board publish the number of its meetings during the year, plus an attendance record, an evaluation of board

organization and functioning, and a detailed resume and list of directorships of each board member and of candidates to director posts.

4. Retirement age

In accordance with French law, a director's mandate may not exceed six years unless the General Meeting decides to renew up this mandate and directors older than 70 years may not exceed one-third of board membership.

The Commission recommends that the number of directors over 65 years not exceed one-third of the board membership.

5. Board charter to establish members' rights and duties

It is recommended that a charter consisting of a kind of director's code of professional conduct be established. At a minimum, it should include certain principles : the obligation to own company shares in one's personal capacity, to attend board meetings and shareholders' meetings, to respect the confidentiality of matters relating to company business, to abide by ethical standards applying to company employees regarding transactions in company shares, and to declare all transactions in company shares.
