

Mr Rients Abma
Secretary, Corporate Governance Committee
Financial Markets Directorate
Ministry of Finance
Netherlands

2nd September, 2003

Dear Mr Abma,

Dutch Corporate Governance Code – invitation to comment

We thought that it would be helpful, as you suggested, to take the opportunity to write to you with our comments regarding the draft of the above. I hope that this feedback will be of use to you and the Committee in your deliberations.

Background

JPMorgan Fleming (“JPMF”) is committed to delivering superior investment performance to its clients worldwide. We believe that one of the drivers of investment performance is an assessment of the corporate governance principles and practices of the companies and markets in which we invest our clients’ assets and we expect those companies to demonstrate high standards of governance in the management of their businesses. We also view seriously our obligation to vote the shares in our clients’ portfolios in a prudent and diligent manner. So far as is practicable we vote at all of the meetings called by companies in which we are invested, both in the UK and overseas, including the Netherlands.

Comments

JPMF welcomes the new draft Principles of Good Corporate Governance and Best Practice Provisions and extends its congratulations to Mr Tabaksblat and the Committee for their efforts.

We would offer the following comments:

- We welcome the ‘comply or explain’ nature of the code, as we believe that principles-based guidelines, such as are found in the UK and now the Netherlands, offer fewer opportunities for abuse than a more inflexible, rules-based approach.
- We also welcome the fact that the code clearly defines both the powers and responsibilities of the various bodies involved.
- The proposals ensure the timely distribution of information which is essential in order for all participants, particularly overseas participants, to interact effectively.

- We welcome the inclusion of the option for a one-tier unitary board structure. We would go further and urge the Committee to consider empowering the general meeting of shareholders of companies with a two-tier structure to appoint and dismiss the Management Board in the same way.
- We are pleased to note the inclusion of strict criteria regarding multiple directorships, as well as explicit definitions of independence.
- We also find the code very robust in the area of remuneration; we welcome the provision which limits compensation on dismissal to a maximum of one year's salary, irrespective of the duration of employment, as well as the provision which prohibits modification to the exercise price or other conditions of share options granted to executives.
- Cognisant of the particular evolution of Dutch capital markets, and the historical structure of Dutch companies, we welcome the recommendation for the clear and effective separation of *Stichtings* from their respective companies. This should help eliminate potential conflicts of interest.
- The one area where we feel the code could have gone further is in relation to anti-takeover measures. We continue to view such devices as undesirable, as they entrench management and do not consider them to be in the best interests of shareholders at large. The requirement to survey and disclose any existing anti-takeover provisions, whilst not ideal, is at least a step in the right direction.
- Whilst not a corporate governance issue *per se*, we would once again urge the Committee to consider what can be done to eliminate the practice of blocking shares in order to vote. Although we recognise that great progress has been made in this area in the Netherlands, particularly with larger companies through such initiatives as the Shareholder Communication Channel ("SCC"), share-blocking still represents one of the major 'psychological' barriers preventing overseas investors from voting routinely in continental European markets.

I hope the above is helpful. Should you wish to respond on any of the above points, or discuss corporate governance further, please do not hesitate to contact me.

Yours sincerely

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