

## Corporate governance reform in Europe

### Introduction

On 12–13 November 2009, members of the European Audit Committee Leadership Network (EACLN) met in Berlin to discuss the 2010 agenda for audit committees<sup>1</sup> and the efforts under way in Europe to improve corporate governance. This document<sup>2</sup> reflects a summary of the key points raised on the issue of corporate governance reform during the course of the meeting, along with selected perspectives that members shared before and after the meeting. The guest for the session on corporate governance reform was Mr Klaus-Peter Müller, chairman of the Commission of the German Corporate Governance Code. For further information about the network, see “About this document” on page 9. For a full list of participants, see Appendix 1 on page 10. For a biography of Mr Müller, see Appendix 2 on page 11.

### Executive summary

The issue of corporate governance has been prominent in Europe for some time now, driven not only by the accounting scandals in the first few years of the century but also by the goal of integrating European capital markets.<sup>3</sup> Far from diverting the debate, the ongoing financial crisis has intensified it, introducing new issues while lending additional urgency to issues already on the agenda. The EACLN began addressing corporate governance reform at its April 2009 meeting in Paris and at the July 2009 summit in Washington.<sup>4</sup> In Berlin, members focused more closely on the current debate and its implications for companies and boards. Members discussed the following topics, which are developed in more detail on later pages:

- **The drive for reform** (*Page 2*)

Participants reflected on the general zeal for reform and the multitude of initiatives under way at both the national and international level. While they acknowledged the success of governmental action in averting an even deeper crisis, they expressed concern about the speed and magnitude of subsequent proposals for change in corporate governance matters. They also noted that, despite the broad-based, transnational interest in reforming corporate governance, differences in practice among European nations are likely to persist due to fundamental differences in company law and board structure.

- **Remuneration as a lightning rod** (*Page 4*)

Few issues have received as much attention as excessive executive remuneration, which policy-makers, regulators, the media and the public have identified as a key factor in causing the crisis. Meeting participants saw the focus on remuneration as a diversion of attention from a host of equally important

<sup>1</sup> European Audit Committee Leadership Network, “The 2010 audit committee agenda,” *ViewPoints*, 10 December 2009. Available at [http://www.tapestrynetworks.com/documents/Tapestry\\_EY\\_Euro\\_ACLN\\_Dec09\\_View22.pdf](http://www.tapestrynetworks.com/documents/Tapestry_EY_Euro_ACLN_Dec09_View22.pdf).

<sup>2</sup> *ViewPoints* reflects the network’s use of a modified version of the Chatham House Rule whereby names of members and guests and their company affiliations are a matter of public record, but comments made before and during meetings are not attributed to individuals or corporations. All quotes from the meeting appear in italics. Mr Müller, who was speaking in a personal capacity and not representing the views of any of the organizations with which he is affiliated, has given permission for his remarks to be attributed.

<sup>3</sup> For background on this topic, see International Finance Corporation, *The EU Approach to Corporate Governance* (Washington, DC: International Finance Corporation, 2008). Available at [http://www.ifc.org/ifcext/cgf.nsf/AttachmentsByTitle/EU+Approach+to+CG/\\$FILE/IFC\\_EUApproach\\_Final.pdf](http://www.ifc.org/ifcext/cgf.nsf/AttachmentsByTitle/EU+Approach+to+CG/$FILE/IFC_EUApproach_Final.pdf).

<sup>4</sup> The issue of *ViewPoints* covering the summit discussion, titled “Regulatory and governance reform,” can be found at [http://www.tapestrynetworks.com/documents/Tapestry\\_EY\\_Summit\\_View10\\_Jul09.pdf](http://www.tapestrynetworks.com/documents/Tapestry_EY_Summit_View10_Jul09.pdf). See also the discussion from the Paris meeting, European Audit Committee Leadership Network, “The future of financial regulation: a discussion with the chairman of the AMF,” *ViewPoints*, 8 May 2009. Available at [http://www.tapestrynetworks.com/documents/Tapestry\\_EY\\_Euro\\_ACLN\\_May09\\_View18.pdf](http://www.tapestrynetworks.com/documents/Tapestry_EY_Euro_ACLN_May09_View18.pdf).

causes, including mistakes in public policy and the performance of regulators. They agreed that boards and remuneration committees must review and adjust pay practices, but they warned that popular measures for addressing remuneration issues, such as increased transparency and say on pay, can also have unintended consequences, including elevating, rather than restraining, pay.

▪ **The response of boards and audit committees** (Page 6)

Participants identified two important ways in which board directors should respond to the expected onslaught of corporate governance changes. First, directors must address the misperceptions of policy-makers, regulators, the media and the public regarding the role of boards, what boards can accomplish and how remuneration is determined. By speaking up more, they can narrow the “expectations gap” regarding what boards and independent directors can do, which has widened as a result of the crisis. Second, board directors must find ways to improve the board’s ability to challenge management. Methods include providing more director education, conducting regular board evaluations and improving diversity of thinking through board composition.

Appendix 3 on page 12 includes a list of discussion questions for boards and audit committees.

## The drive for reform

Contemplating the regulatory scene in the wake of the financial crisis, members and guests discussed the general rush to more regulation that has seized not only the governments of individual nations but also intergovernmental bodies such as the G-20 and the European Union (EU). The pressure to respond to public outrage has been intense, and the issue of corporate governance is central. As Mr Müller noted, *“Today, if [regulators or political bodies] are not focused on governance, one has to ask, why not?”* Indeed, the drive to introduce more regulation seems to be fuelled by an almost competitive zeal: *“There is a race between regulators, parliaments, politicians and journalists as to who has the best proposal and who does the toughest regulation,”* continued Mr Müller.

As a consequence, substantial changes are under consideration or are already under way: *“The magnitude and multitude of regulation is staggering,”* said Mr Müller. While the financial services sector is the main target of reform, many of the changes are broader in scope, and members fear they are likely to spill over into other sectors. The two key areas of focus are:

- executive remuneration
- the board and its work, including the frequency of its meetings, its composition and the assignment of responsibilities and liabilities.

Reform initiatives run the gamut from reviews of corporate governance codes, as currently formulated, to enactment of legislation requiring specific changes. A variety of organizations have joined the effort. At the national level, corporate governance bodies such as the UK’s Financial Reporting Council are reviewing and proposing changes to voluntary codes, while regulators are issuing new rules and governments are passing new legislation, such as the recent German law on remuneration. At the EU level, reviews are also under way, and the European Commission has issued several new recommendations with corporate governance provisions.

Meanwhile, efforts on the wider international stage are helping to drive these regional initiatives. The G-20 and the Financial Stability Board (FSB) have proposed a number of reforms that include recommendations

on corporate governance, particularly in relation to remuneration and risk management.<sup>5</sup> The G-8 has also embarked on an effort to develop common principles for corporate governance. Known as the Lecce Framework, after the Italian city in which the G-8 finance ministers met in June 2009, these principles are likely to be developed in partnership with the Organisation for Economic Co-operation and Development.<sup>6</sup>

### **The danger of excessive regulation**

Reiterating concerns expressed at the April 2009 meeting in Paris,<sup>7</sup> participants worried that the haste with which governments are pursuing more regulation presents real dangers. It is understandable to participants that governments wanted to move quickly as the crisis escalated, and governments deserve credit for preventing a complete collapse of the financial sector. Nevertheless, participants believe governments are now on the verge of going too far too quickly. As Mr Müller put it, *“To be fair, governments did a better job in helping banks than in 1929. They stopped AIG’s failure, which would have been a disaster. But now [politicians] are losing credibility; they are getting more into detail [of how we should implement corporate governance practices], and too quickly. I prefer quality over speed. The quality of regulation should not decline.”*

Mr Müller highlighted as an example the German remuneration law, which included a major increase in liability for non-executive directors. *“We now have a new law, which most non-executive directors haven’t even read, yet it makes them absolutely liable for what they don’t do ... The German Corporate Governance Code Commission was not fully consulted, even though we were established by the government. It was rushed [through], in the two weeks before the [general] election.”*

Some members fear that governments will craft new regulations before the causes of the crisis are fully understood. Contemplating the crisis and its impact, one member remarked in a pre-meeting conversation, *“We’re still waiting to hear what really happened. There’s a lot of generalization without deep analysis.”*

### **Persisting national differences**

Despite the broad-based public pressure for reform and the international-level initiatives to respond to this pressure, Mr Müller and network members do not expect strong convergence of corporate governance practices across countries, either within Europe or between the United States and Europe. Differences between national company laws and the consequent variety of board structures in use across countries make convergence unlikely, they feel. Mr Müller noted, *“In Europe, because we have totally different board structures, it means we will always have different corporate governance rules.”* He suggested that German supervisory boards, for example, will inevitably have more limited involvement in company management than do unitary boards in the UK, which means that practices will have to be different.

One member decried these differences: *“I’m sick and tired of these differences. Why does every country have its own rules?”* Another member quipped, *“Because we are Europe.”* Members broadly supported Mr Müller’s contention that Europeans need to agree on some basic guiding rules for corporate governance and that the EU was working on this goal through the European Corporate Governance Forum. Mr Müller also suggested that Anglo-Saxon practices might be less of an inspiration than they were in the past: *“Continental*

<sup>5</sup> See, for example, Financial Stability Forum, *FSF Principles for Sound Compensation Practices* (Basel: Financial Stability Forum, 2009). Available at [http://www.financialstabilityboard.org/publications/r\\_0904b.pdf](http://www.financialstabilityboard.org/publications/r_0904b.pdf).

<sup>6</sup> Paul Betts, “Europe must contribute more to corporate governance,” *Financial Times*, 18 June 2009. Available at <http://www.ft.com/cms/s/0/ffff1b6a-5b9e-11de-be3f-00144feabdc0.html>.

<sup>7</sup> European Audit Committee Leadership Network, “The future of financial regulation: a discussion with the chairman of the AMF,” page 5.

*Europe used to adopt practices from the Anglo-Saxon [approach] two years after they did so. But it is not always good. For example, quarterly reporting means CFOs are getting hectic if they are having a bad quarter, not a bad year.”*

## Remuneration as a lightning rod

Few governance issues have received as much attention in the wake of the crisis as the issue of executive remuneration, particularly in the financial services sector, where pay practices are widely perceived to have contributed to the crisis by encouraging excessive risk taking.

Recent revisions to the Dutch corporate code, for example, recommend “stronger control by the supervisory board over management board remuneration (by means of scenario analyses, the test of reasonableness and claw-back clauses).”<sup>8</sup> Sir David Walker’s review of corporate governance in UK banks states, “The remit and responsibility of board remuneration committees should be extended beyond executive board members to cover the remuneration structure and levels for all senior employees whose role puts them in a position of significant potential or actual influence on the risk profile of the entity.”<sup>9</sup> In France, the French Association of Listed Companies (AFEP) and the French Business Confederation (MEDEF) published a code of conduct in October 2008, and the regulator, Autorité des Marchés Financiers (AMF), is monitoring compliance.<sup>10</sup>

In some cases, legal mandates have been enacted. The new law on remuneration in Germany stipulates that remuneration decisions must be made by the supervisory board in a plenary meeting, and it extends the power of the supervisory board to “make cuts in the level of remuneration in the event that the company’s situation worsens.”<sup>11</sup> The German Federal Ministry of Justice notes that an explicit legal requirement is necessary since this right of the supervisory board could interfere with existing contracts. As Mr Müller mentioned, the law also raises the stakes for the supervisory board by increasing its liability for inappropriate remuneration.<sup>12</sup>

Members and guests approached the issue of remuneration from multiple angles:

- excessive pay as a distraction
- reforming remuneration policies
- doubts about say on pay

## Excessive pay as a distraction

Mr Müller argued that excessive pay has received too much of the blame for the crisis, diverting attention from other important factors: *“Subprime was not caused by pay schedules – even if they need correcting. First, it was the political will after 9/11 for every American to have their own real estate. Second, it was low*

<sup>8</sup> Dutch Corporate Governance Code Monitoring Committee, “Monitoring Committee presents updated Corporate Governance Code,” press release, 10 December 2008. Available at [http://www.commissiecorporategovernance.nl/page/downloads/Persbericht\\_DEC-2008\\_\\_uk\\_.pdf](http://www.commissiecorporategovernance.nl/page/downloads/Persbericht_DEC-2008__uk_.pdf).

<sup>9</sup> David Walker, *A review of corporate governance in UK banks and other financial industry entities: Final recommendations* (London: HM Treasury, 2009), page 13. Available at [http://www.hm-treasury.gov.uk/d/walker\\_review\\_261109.pdf](http://www.hm-treasury.gov.uk/d/walker_review_261109.pdf).

<sup>10</sup> Autorité des Marchés Financiers, “AMF publishes its report on executive compensation and implementation of the AFEP/MEDEF recommendations,” press release, 9 July 2009. Available at [http://www.amf-france.org/documents/general/9030\\_1.pdf](http://www.amf-france.org/documents/general/9030_1.pdf).

<sup>11</sup> German Federal Ministry of Justice, “Levels of management board remuneration to become more appropriate following adoption of new legislation,” press release, 16 September 2009.

<sup>12</sup> Ibid.

– 1% – interest rates. Third, there was a failure of politics – for example, with Fannie Mae and Freddie Mac underwriting any mortgages regardless of whether they could be repaid. But politicians don't talk about these public policy failures. They are off the agenda. Other players had a hand in causing the crisis as well. Regulators failed to regulate properly, and credit rating agencies were not as conservative as everyone thought.”

### Reforming remuneration practices

Nevertheless, members and guests agreed that remuneration practices need to be reviewed, and they discussed some of the specifics. Mr Müller mentioned the variation in practices and the need for guidelines that are reasonable and fair: *“In the governance commission, do we need to look at pay? At incentives? Yes. In the US, 12–15% of CEO pay is fixed; the rest is variable. In Germany, on average 30% is fixed. We need a general understanding of how pay should be done.”*

In addition to discussing the proportion of pay that is variable, participants also considered the percentage of variable pay that should be deferred, noting (but not necessarily endorsing) the FSB's recommendation of 60% or more for high levels of pay.<sup>13</sup> The length of the deferral also makes a difference, as do clawbacks enforced because of subsequent poor performance. There is also the question of what form the pay should take: should it be paid in options, stock or cash? Members were skeptical that clawbacks could actually work, particularly if bonuses have already been paid, but they supported long-term performance bonuses.

Mr Müller and several members warned of the potential pitfalls of some popular measures for addressing remuneration issues. For example, promoting greater transparency is often seen as a way to limit pay excesses, but transparency does not always work as intended. Mr Müller said, *“In 1997, facing globalization and a government calling for us to be more transparent, we published executive pay. What happened? In the next few years, pay climbed from between 10% to 30% a year. Politicians need to know this about transparency; in this case, it led to a leveling to the high end. Transparency does not always lead to modesty.”*

Members were also skeptical about an increased role for the audit committee in remuneration. In general, members continue to see remuneration as the domain of the remuneration committee and the full board. One member explained, *“We decided the detail needs to be prepared by the compensation committee, but [action] needs to be decided by the full board. Why? Because it needs to be linked to the performance of the company. And the whole board should set objectives. Having the full board discuss pay is a little messy, but there is a broader diversity of views, which helps. Plus, it helps get alignment on the [key objectives] between the board and executives.”*

### Doubts about say on pay

The drive to implement an advisory vote for shareholders, often called say on pay, was also viewed with some skepticism. Mr Müller noted, *“The DAX 30 companies already publish all compensation details. Investors can ask questions about pay at the shareholder meeting.”* Say on pay represents a shift in decision-making to the annual general meeting, which is a questionable forum for strategic decisions that should be the province of the board and management. Mr Müller said, *“I am very concerned that we are delegating too much power to the annual general meeting. It is taking accountability away from the board. A typical*

<sup>13</sup> Financial Stability Board, *FSB Principles for Sound Compensation Practices: Implementation Standards* (Basel: Financial Stability Board, 2009), page 3. Available at [http://www.financialstabilityboard.org/publications/r\\_090925c.pdf](http://www.financialstabilityboard.org/publications/r_090925c.pdf).

*German shareholder meeting may last 10 hours – we have up to 5,000 people there, of which 40 bank and fund representatives control 80% of the vote, and they sit in the back of the room.”*

However, some members were supportive of say on pay. One member observed, *“The effect is, companies spend more time talking to the main shareholders about potential pay structures.”* However, the member stated, *“that does not exonerate the board from its role in setting pay.”*

## The response of boards and audit committees

Members and guests discussed how boards should respond to the new demands to control remuneration and the emerging proposals on reforming corporate governance. The discussion yielded a two-pronged approach: on the one hand, boards should try to correct widespread misperceptions about the role of directors, and on the other hand, they should work to improve their effectiveness in challenging management.

### Speaking up about remuneration and the role of directors

Members discussed an emerging “expectations gap” between what the public expects of boards and directors and what directors can realistically accomplish while remaining independent. One member noted, *“This is a big issue: the misconception of expectations on non-executive directors. Prosecutors also misunderstand the role of non-executive directors.”* Another member mentioned the situation of audit committees at financial institutions: *“Regulators expect audit committee chairs and members to be deeply involved at the moment. Accountable even. That’s a strong word. Not only accountable, but exposed.”*

Members said it was important that directors try to counter misperceptions. As one member put it, *“What is happening in financial institutions will happen in other sectors. We need to educate the regulators and shareholders about what non-executive directors do.”* Another member reflected on the pressure on audit committee chairs to intervene: *“Is the audit chairman the shadow CFO? Are we in danger of crossing the line [to] management?”*

Directors have also failed to speak up about the specific issue of remuneration and the widespread misperceptions about how pay is determined. In this case, the misperceptions are less about unrealistic expectations than about the fact that boards, not CEO’s, determine pay for the most senior officers. Mr Müller noted that few non-executive chairmen have clarified that executives do not set their own pay: *“People are left with the thought that the CEO sets his own pay.”* Members tended to agree, with one pointing out that *“CEOs and board members [have] never said [clearly that] it is the responsibility of the board to determine CEO pay.”*

Mr Müller summed up the situation: *“There is a perception that boards did not do their job. Non-executive chairmen have not spoken up against that view. So, people think non-executive chairmen are not controlling their CEOs. As a result, people think there is need for board reform.”*

Members also discussed the trend toward direct communications between boards and shareholders, which can help enlighten key stakeholders about the board’s actions on remuneration as well as other issues.<sup>14</sup>

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<sup>14</sup> Members of the North American Audit Committee Leadership Network discussed board-shareholder communication in June 2008. See Audit Committee Leadership Network, “Board-shareholder communication,” *ViewPoints*, 7 July 2008. Available at [http://www.tapestrynetworks.com/documents/Tapestry\\_EY\\_ACLN\\_Jul08\\_View22.pdf](http://www.tapestrynetworks.com/documents/Tapestry_EY_ACLN_Jul08_View22.pdf).

However, members differed somewhat on the advisability of meeting directly with shareholders. One member discussed a meeting between the board's committee chairs and the company's top investors in positive terms: *"Each committee chair made a 10–15-minute presentation. Then we had 10–15 minutes of Q&A. It was with our top 25 investors. They rarely asked a question that the committee had not considered. But they asked good questions, like what were my three key priorities. We'll do it again next year. It's only on governance matters. No executives are present."*

Other members saw potential problems with such meetings. One noted, *"We need to be careful with privileged information."* Another felt that such meetings should be limited, and management should be present: *"It should be a golden rule: no non-executive director should talk directly to shareholders, except if there is a formal request for such a dialogue. The dialogue should have structure, and the CFO should be present."*

## Improving the board's ability to challenge management

While agreeing that the public perception of boards is inaccurate, members also saw merit in efforts to improve board performance in the area of challenging management. They suggested:

- **Providing better board education.** Members feel that education – particularly around how the business makes money – would enable board directors to ask more probing questions and challenge management assumptions. Boards are also bringing in outside advisers to help directors form a clearer picture of the company, management, performance and risks.
- **Conducting board evaluations.** Members see the value of conducting formal evaluations of board and committee performance, but they stressed that such evaluations must be carefully executed. A member commented, *"Having director evaluations done by third parties can be challenging. But a peer evaluation can work. However, it needs to be designed carefully, in case it affects board dynamics."* Members disagreed about whether individual directors should be assessed, though one member said, *"This is a fundamental job of the non-executive chairman. They need to talk to individual non-executive directors about other directors. If necessary, they need to tell directors they are not contributing, and if there's no change in behavior, they should be asked to leave the board."*
- **Improving board composition.** Members took up the debate on what types of background directors should have, including the question of how much sector expertise boards should seek and how this objective could conflict with others. One member warned, *"We need to be careful not to fill boards with sector experts. We'll end up with retired executives from smaller competitors to avoid conflicts, and they will get out of touch quickly."* In pre-meeting discussions, members reflected on the tensions that seeking diversity can create. A member remarked, *"Because of pressure to recruit people of diverse backgrounds, boards are using gimmicks to meet the criteria, whatever the competencies are. That's not the right direction – diversity of thinking is more important than diversity of nationality, gender or race."*
- **Reviewing age restrictions and term limits.** Members discussed whether age restrictions or term limits could add to board vitality. In France, for example, no more than one-third of the board can be aged 70 or more, whereas in the Netherlands, a law requiring directors to be under 72 years of age was seen as discriminatory and repealed. On term limits, Mr Müller noted, *"In Germany, typically director terms are five years – that is rather long. In the US, it's one year – that's too short."*

## German supervisory boards

Members want to understand how the two-tier board system in Germany is changing in response to pressures for reform. Mr Müller addressed this question head-on:

- New laws and regulations are giving the supervisory board more powers and greater responsibility. For example, the law on remuneration extends the power of the supervisory to reduce remuneration in the event of poor company performance, and in the financial services sector, the German Federal Financial Supervisory Authority (BaFin) has given the supervisory board a right to request information directly from the internal audit department.<sup>15</sup>
- Even prior to these new laws, there was a general trend towards improved supervisory board discussion of strategic issues. Mr Müller stated: *“It used to be the case that supervisory boards did not have good strategic discussions. That’s changing. They are meeting more, and there is heavier lifting in committees.”*
- While the presence of employee representatives (co-determination) used to inhibit discussion, employee representatives are now more prepared for meetings and engaging more in the deliberations. As Mr Müller noted, *“Employee representatives used to be happy not to be involved in major issues. This has changed.”*
- At the same time, co-determination continues to present challenges. The employee representatives discuss details of board matters with their unions, and as Mr Müller pointed out, *“the employee representatives often do not speak English, which makes it difficult to get foreign directors as we have to have board meetings in German.”*

## Conclusion

The wave of regulatory reform sweeping Europe includes a substantial focus on corporate governance. Even if reform is necessary, members see both the speed and magnitude of current efforts as alarming, raising the specter of hasty and ill-conceived regulations. Furthermore, despite the international scope of interest in reform, new rules and regulations are unlikely to achieve strong convergence in corporate governance practices in Europe, because fundamental board structures still vary significantly from country to country.

The issue of remuneration has been of particular concern, a development that many directors think is diverting attention from equally important causes, including failures of public policy. Members acknowledge the need for changes in remuneration practices, but remain skeptical that popular measures such as greater transparency and say on pay are the best approach. To respond constructively to the drive for reform, directors need speak up more about what boards actually do while also considering a variety of approaches that will improve the board’s ability to challenge management.

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<sup>15</sup> German Federal Financial Supervisory Authority, “New Minimum Requirements for Risk Management (MaRisk): BaFin implements international risk management standards,” press release, 14 August 2009. Available at [http://www.bafin.de/nr\\_720788/SharedDocs/Mitteilungen/EN/2009/pm\\_\\_090814\\_\\_marisk\\_\\_new.html](http://www.bafin.de/nr_720788/SharedDocs/Mitteilungen/EN/2009/pm__090814__marisk__new.html).

## About this document

The European Audit Committee Leadership Network is a group of audit committee chairs drawn from leading European companies committed to improving the performance of audit committees and enhancing trust in financial markets. The network is convened by Ernst & Young and orchestrated by Tapestry Networks to access emerging best practices and share insights into issues that dominate the new audit committee environment.

*ViewPoints* is produced by Tapestry Networks to stimulate timely, substantive board discussions about the choices confronting audit committee members, management and their advisers as they endeavor to fulfill their respective responsibilities to the investing public. The ultimate value of *ViewPoints* lies in its power to help all constituencies develop their own informed points of view on these important issues. Anyone who receives *ViewPoints* may share it with those in their own network. The more board members, members of management and advisers who become systematically engaged in this dialogue, the more value will be created for all.

*The views expressed in this document represent those of the European Audit Committee Leadership Network, a group of audit committee chairs drawn from Europe's leading companies committed to improving the performance of audit committees and enhancing trust in financial markets. They do not reflect the views nor constitute the advice of network members, their companies, Ernst & Young or Tapestry Networks. Please consult your advisers for specific advice. Ernst & Young refers to all members of the global Ernst & Young organization.*

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## Appendix 1: Meeting participants

The members of the network participating in the meeting sit on the boards of nearly 40 large-, mid- and small-capitalization public companies. Network members participating in the meeting included:

- Dr Werner Brandt, Audit Committee Chair, Lufthansa
- Mr Aldo Cardoso, Audit Committee Chair, GDF SUEZ
- Mr Daniel Lebègue, Audit Committee Chair, SCOR
- Mr Anders Nyrén, Audit Committee Chair, Sandvik and SCA
- Sir Ian Prosser, Audit Committee Chair, BP
- Mr Pierre Rodocanachi, Audit Committee Member, Vivendi
- Ms Guylaine Saucier, Audit Committee Chair, Areva and Danone
- Mr Kees Storm, Audit Committee Chair, Anheuser-Busch InBev and Unilever
- Mr Jack Tai, Audit Committee Chair, ING
- Dr Bernd Voss, Audit Committee Chair, ABB
- Mr Mario Zibetti, Audit Committee Chair, Fiat Group

Ernst & Young was represented by Mr Tom McGrath, Managing Partner, EMEIA Financial Services; Mr Mark Otty, Managing Partner, EMEIA; and Mr Christian Mouillon, Global Vice Chair, Assurance.



## **Appendix 2: Short biography of Klaus-Peter Müller**

Klaus-Peter Müller is chairman of the German Corporate Governance Code Government Commission and chairman of the supervisory board at Commerzbank. He is also chairman of the executive committee of the German Transport Forum as well as an honorary professor at the Frankfurt School of Finance & Management.

From 2005 to March 2009, Klaus-Peter was president of the Association of German Banks. Prior to becoming chairman of the supervisory board at Commerzbank, he was chairman of its board of managing directors, serving from 2001 to 2008. During Klaus-Peter's career at Commerzbank, which began in 1966, he has also served as head of the department in charge of the bank's East German operations, as head of the corporate banking department and as executive vice president and joint manager of the New York branch. He joined the board of managing directors in 1990.

### Appendix 3: Questions for boards and audit committees

- ? What kind of changes in corporate governance codes or laws do you expect to have to apply at the companies on whose boards you sit, and what challenges will these changes present?
- ? What changes in codes or laws would you welcome? What changes would worry you? What should companies do to make their views on potential changes known?
- ? Will voluntary codes and comply-or-explain survive the current reviews of corporate governance across Europe? Do you see a shift in favor of more regulatory or legal approaches to corporate governance?
- ? Is your board or audit committee changing the way in which it oversees remuneration? Are there changes you believe would be beneficial?
- ? What misperceptions about boards and audit committees are the most problematic? What steps might help to correct them? Should boards speak directly to shareholders or other stakeholders?
- ? What kinds of ongoing or initial training should directors receive?
- ? What forms of board evaluation are most helpful? How should evaluations be designed?
- ? How can changes in board practice or composition encourage more challenge of management by independent directors? How can directors be equipped to ask more challenging questions?
- ? What difficulties are boards experiencing in achieving the optimal board composition? Do the various goals for board composition conflict?