

Eumedion spearheads letter 2006 AGM season

All companies listed on the AEX, AMX and AScX indexes

For the attention of the management board and the supervisory board

Dear members of the Management Board and Supervisory Board,

On 1 January 2006 Eumedion became the successor to the Foundation for Corporate Governance Research for Pension Funds and is now the primary representative of institutional investors in the field of corporate governance. The organization has 45 participants at present, who manage a total of approximately 800 billion Euro in invested capital. Eumedion would like to ask your consideration for the following.

The general improvement in the governance of the Dutch listed companies in recent years is a source of satisfaction to Eumedion. The changes in company law, the coming into force of the Netherlands corporate governance code (the "Tabaksblat Code"), and the discussions between the companies and their shareholders have borne fruit. Despite these positive developments, however, compliance with the Tabaksblat Code has been inadequate on a number of important points and Eumedion would like to draw your attention to these points by means of this letter. Eumedion and its affiliated participants expect you to take these points into account in the preparations for the coming general meeting of shareholders and when drafting the annual report on the financial year 2005.

1. The process surrounding the general meeting of shareholders

Eumedion has concerns regarding the process surrounding and the procedure at the general meeting of shareholders of the Dutch listed companies. The late provision of information, a defective infrastructure for voting in absentia, and lack of clarity about the agenda mean that an unnecessarily high number of votes is still being lost. Shareholder involvement remains limited as a consequence, doubts arise about the representativeness of the decision-making, and the required strengthening of checks and balances is not achieved. The quality of the discussion at the general meeting is subject to even more pressure if company management already knows before the start of the general meeting that it is assured of the support of a comfortable majority of shareholders who have voted "at a distance" in favour of a point on the agenda.

Eumedion suggests the following points for improving the process surrounding the general meeting:

- 1) publication of the agenda and the underlying documents (such as annual report and annual accounts) on the company website at least 28 calendar days before the start of the general meeting of shareholders;
- 2) a clear indication on the agenda of which points are for discussion only, and which points will be put to a vote;
- 3) facilitation of voting in absentia. Partly on the urging of Eumedion, the obligation on listed companies to place an advertisement in a national daily newspaper calling shareholders and holders of depositary receipts to attend the general meeting of shareholders will lapse in the near future; a statement on the website will soon suffice¹. Eumedion urgently appeals to the listed companies to allocate the funds released as a consequence to improving the electronic infrastructure for voting in absentia, for example through membership of the Shareholders Communication Channel (www.communicatiekanaal.nl);
- 4) the management board and the supervisory board do not have exclusive knowledge prior to the general meeting of the breakdown of the votes cast by the "distance" voters. This breakdown is only known in advance to an independent third party, such as the civil-law notary, or to everyone;
- 5) publication on the company website of the results of the voting on each point on the agenda at the general meeting of shareholders within 15 calendar days of the date of the general meeting of shareholders.

2. Non-compliance with the Tabaksblat Code

Eumedion concluded from the annual reports for the financial year 2004 that the reasons given for non-compliance with the Tabaksblat Code vary widely between companies and between best practice provisions. The reasons given for non-compliance can generally be described as summary, which makes it difficult for shareholders to observe principle I of the Tabaksblat Code that they take careful note and make a thorough assessment of the explanations provided for any non-appliance of the best practice provisions of the Code. According to the systematics of the Code, a company can only claim to observe the Code when failures to apply it have been approved by the general meeting of shareholders (paragraph 7 of the preamble to the Code). In the past year, the general meeting of shareholders of only four companies were able to vote on non-compliance with the Code.

Eumedion expects the following of the management board:

- 1) that the annual report for the financial year 2005 contains a clear and extensive account by the board of all deviations from the Tabaksblat Code, in addition to tenable reasons for these;
- 2) that major breaches of the Code at least, will be put to the vote at the 2006 general meeting of shareholders, unless this has already been done in a previous year.

3. Functioning of the supervisory board

The responsibilities of supervisory boards have increased significantly in recent years, under the influence of the Tabaksblat Code and amendments to legislation. The distance between the supervisory board and

¹ New paragraph 5 to article 2:113 of the Netherlands Civil Code (Bill to encourage the use of electronic means of communication in the decision-making process at legal persons; parliamentary papers 30 019).

the management board has been reduced in the classical Dutch dualistic model. A great deal of preparatory work is done in specialized committees set up by the supervisory board, such as the audit committee, the remuneration committee, and the selection and appointment committee. The work of the supervisory board is expected to be increasingly hands on.

As a consequence of these increased responsibilities, Eumedion expects a more extensive account of the supervisory and advisory tasks performed by the supervisory board to be provided in the report of the supervisory board (which is part of the annual report, on the grounds of best practice provision III.1.2 of the Tabaksblat Code). The report of the supervisory board should also include more information on the functioning and activities of the committees appointed by the supervisory board.

Eumedion expects the supervisory board to provide more extensive information about the following issues at least, in its report on the financial year 2005:

- 1) the nature of the discussions on corporate strategy and the risks of the business (best practice provision III.1.7), stating - if applicable - the grounds on which (changes to) the strategy, the operational and financial objectives, and the parameters to be applied in relation to the strategy were approved (best practice provision II.1.2);
- 2) the substance and nature of the discussion of the effectiveness of the internal risk management and control systems, any significant shortcomings in these and the action planned to remedy these shortcomings (best practice provisions II.1.4/III.1.8);
- 3) the reasons why the supervisory board believes the remuneration policy pursued is effective. Specifically, the relationship between remuneration and performance must be made transparent, not only after but also before the financial year concerned (in accordance with the recommendation of the Corporate Governance Code Monitoring Committee in the monitoring report on the financial year 2004);
- 4) the results of the annual evaluation of the functioning of the supervisory board as an organ and of the individual supervisory board members. Criteria include independence, expertise, availability, integrity, reputation, discernment, and the presence of the various specialisms on the board (best practice provision III.1.7);
- 5) explanation, when recommending the appointment of a new member of the supervisory board or the re-appointment of a current member, of why the board believes that the person in question qualifies for (continued) membership of the supervisory board on the grounds of the criteria referred to above (principle III.3);
- 6) the results of the annual evaluation of the functioning of the management board as an organ and of its individual members (best practice provision III.1.7);
- 7) the training courses and programmes of study attended (best practice provision III.3.3);
- 8) the activities of the committees appointed by the supervisory board (best practice provision III.5.2).

4. Issue of depositary receipts

Eumedion is pleased to conclude that there has been a fall in the number of companies with depositary receipts listed on the stock exchange. There is an increase in the number of trust offices that issue proxies

without limitation and under all circumstances to depositary receipt holders who so request. Furthermore, various trust office managements have convened meetings of holders of depositary receipts, at which the independence and legitimacy of the trust office was discussed with respect to the holders of depositary receipts, in accordance with best practice provision IV.2.1 of the Tabaksblat Code. In Eumedion's opinion, however, the transparency of trust offices regarding their activities is inadequate and must be improved.

In concrete terms, Eumedion requests the trust offices that hold (ordinary or financing preference) shares in listed companies to disclose the following information:

- 1) the information as referred to in paragraphs a to j inclusive of best practice provision IV.2.7 of the Tabaksblat Code;
- 2) an endorsement of the principle that the issuing of depositary receipts for shares should not be used as an anti-takeover measure, and - in the case of this principle not being endorsed – a clear explanation for this non-compliance and an indication of the circumstances under which the principle will in fact be endorsed;
- 3) an indication of the circumstances under which it may be possible to end the issue of depositary receipts for shares;
- 4) a statement that the management of the trust office will be guided primarily by the interests of the depositary receipt holders when exercising its voting rights;
- 5) an explanation of the way in which the management of the trust office has determined whether it enjoys the confidence of the depositary receipt holders;
- 6) a statement that the management of the trust office is independent in the sense of best practice provision IV.2.2 of the Tabaksblat Code, and that the meeting of holders of depositary receipts may make recommendations to the management of the trust office for the appointment of persons to the position of manager.

The fact that a trust office has no website or annual report does not constitute a reason for failing to supply the information referred to above. If the trust office has no website or does not publish an annual report, the listed company with whose cooperation the depositary receipts for (financing preference) shares have been issued must publish the required information on its website or in the annual report; cf. best practice provision IV.2.6 of the Tabaksblat Code. Furthermore, on the grounds of section B of Appendix X of the General Rules of Euronext Amsterdam, listed companies which are "Issuers" of depositary receipts for shares have an obligation to include information on the trust office. Irrespective of this, the listed companies which are "Issuers" of depositary receipts for shares must disclose the following information at least:

- 1) in the case of financing preference shares, a statement that the issue of depositary receipts is a tool to achieve a balance between the voting rights on these financing preferential shares and the capital contribution, or that this position is actively communicated to the holders of the financing preference shares;
- 2) an indication of the circumstances in which it might be possible to end the issue of depositary receipts.

We look forward with interest to reading your annual report and to the coming general meeting of shareholders, in the expectation that the above points will have been taken into consideration.

Yours sincerely,

Rients Abma,
Executive Director