DSW NEWSLETTER

from Germany's No. 1 Shareholders' Association

December 2008

The financial crisis – What should be done? DSW's 10 recommendations

The financial crisis which has its roots in declining home values in the US real estate market led to worldwide turmoils. For the past 30 years the world has lived under the spell that the market gets it right. This was the basis for economic and financial policies. The global financial crisis demonstrated however that if left alone, the market tends to get it wrong – not right. When the assumption has been proved wrong, the policies cannot and will not be kept in place unchanged.

DSW therefore calls for European legislators to draw consequences by enhancing regulation and transparency:

1. Ban on naked short selling

Short selling – a bet that a stock price will decline – is the practice of selling stock without owning it, hoping to buy it later at a lower price and thus make a profit. While short sellers are supposed to borrow shares before selling them, naked shorts do not borrow. This saves the cost of borrowing, though the trader is still vulnerable to losses if the share price rises. During the last few months the bets of such short sellers have forced the share price of numerous banks down and thus increased pressure on their financial stability.

DSW opines that short sellers should not be allowed to have such a strong influence on the market without holding a risk position on their own. Therefore, the provisional ban of naked short sales in banks that has been put in place can only be seen as a first step. It has to be further extended to all funds such as hedge funds and private equity funds.

2. Relocation of risks in derivatives

The case of Lehman Brothers has shown that the risk of a complete loss in case of an insolvency of the issuer really exists. DSW sees need for regulatory action: In case of an issue of certificates, the risks – at least parts of them – need an underlying equity capital of the issuer.

3. Back to basics

The case of Lehman Brothers furthermore has made obvious that the structure of certificates is

Content

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unknown to and too complicated for private investors. They did not know what they invested in and how the specific product worked. Transparency has been more than poor both on the sellers' side and the issuers' side. Therefore we need to go back to basics, to products which everyone understands.

4. Increased advisory services of banks

Neither the legal framework nor the EU Directives seem to be sufficient to provide for an adequate investment advice of banks for their clients. Still products are sold which do not match with the client's risk profile. Additionally we note that the burden of proving an incorrect investment advice is on the client's side not at the bank. Here, DSW recommends that banks should be obliged to keep written minutes of the investment consultation which should be signed by both parties and handed out to the client. Secondly, a shifting of the burden of proof from the client to the bank is recommended by DSW.

5. Limit securisations

The financial crisis is substantially due to banks selling their risks in packages. Such securisations became more and more en vogue. Against this background, DSW explicitly supports the demand of German politicians to require issuers to keep 20% of the securisations in their own books. This would require banks to limit their own risks and with that the risk of other market participants.

6. Additional risk buffer for private investors

Private investors are used as shock absorbers worldwide. They bear a large part of the risks for which the State should offer them an attractive return. Therefore, DSW recommends to leave long term capital investments in general tax free.

7. Board accountability

Shareholders need to be able to hold the boards accountable, particularly in the area of risk management. An increased transparency about the companies' risk management is an essential part of the solution. It is the task of the EU Commission to introduce in all Member States a direct liability claim of shareholders against wilful or gross negligent failures of board members.

8. Say on Pay

Excessive remuneration of management board members shall be restricted. Shareholders should have the possibility to be equipped with additional rights as they are the owners of the company so that they can enter into a productive dialogue with the company at the general meeting about the structure of board members' remuneration. Furthermore, the introduction of an advisory vote on the company's pay system for management board members is recommended by DSW. This should include a social and economical adequacy of directors' pay. This means that the remuneration of the company's peer group as well as the overall remuneration level within the company should be taken into account. Variable pay as well as share based remuneration shall be mainly long term oriented and the introduction of a long term bonus-malus system shall be considered.

9. Enhance Corporate Governance

Corporate Governance plays an important role in enhancing and/or restoring confidence. Securing shareholder rights' and developing transparency will help shareholders to exercise their rights in a responsible and informed way.

10. More competition among credit rating agencies

The credit rating agencies market is dominated by only three players. More competition is strongly needed, barriers for new entrants should be abolished as should conflicts of interests. Credit rating agencies should be obliged to disclose information they use to determine a rating. Additionally, a counterweight should be built to the US-dominated agencies by establishing at least one European rating agency.

A ride through German capital market legislation in 2008

What's up in Germany? DSW gives a chronological overview on important measures that have been initiated by the German legislators during the last 11 months.

Draft Law to Modernise the Accounting Law – BilMoG

In May 2008 the federal cabinet adopted a **draft law to modernise the accounting law** which is supposed to come into force in 2009, the so called BilMoG. This law will have the strongest impact on accounting law since the adoption of the EU Directives in German law in 1985.
The aim of the law is among others

- to improve the information function of financial statements and to make German GAAP more comprehensible and attractive
- to reduce the reporting burden
- to implement/adapt some accepted rules from IFRS, e.g. the measurement of pension provisions or the fair value for financial instruments acquired for trading purposes
- to avoid IFRS as well as IFRS for SMEs for German entities for individual accounts and for unlisted companies as these reporting standards are considered as too complicated and too costly in contrast to German GAAP.
- to legally require a financial expert being member of the audit committee
- to introduce a real 'comply or explain' declaration with regard to the corporate governance declaration of conformity instead of the current 'comply and disclose' principle.

Draft Bill for an Act implementing the Shareholders' Rights Directive – ARUG

Also in May 2008, the Federal Ministry of Justice has submitted a **draft bill for an act implementing the Shareholders' Rights Directive in Germany**, the so called ARUG, which in November 2008 passed the Bundesrat and is supposed to come into force effective November 1, 2009.
The ARUG addresses the following four important areas:

- implementation of the Shareholders' Rights Directive
- partial abolition of audit of contribution in kind (not covered in this article)
- deregulation of proxy voting by banks
- measures against abusive shareholder claims (not covered in this article)

Regarding the implementation of the Shareholders' Rights Directive, the ARUG implements the possibility for online participation in the general meeting as well as postal voting. In future, the articles of association can allow for these possibilities. In the first draft, the problem of execution of shareholders' rights which are attending the general meeting not physically but online had not been addressed. Now, the second draft enables the company to let the shareholders in the general meeting decide which rights online participants shall receive: The possibilities range from the transfer of all rights to restriction to the mere right to cast the vote online. The reasoning for the possibility to restrict the rights of online participants is clear: In Germany, shareholders attending a general meeting have extensive rights if they want to prevent a proposal to be passed at the meeting; they can appeal against the proposal at court or even ask the court to declare a proposal being void. The Federal Government took these shareholder rights' into account when redrafting the bill.

Additionally, the disclosure requirements for companies prior to the general meeting will be enhanced, for instance companies in future will be required to include the concrete dates of the record dates and other deadlines in the convening notice. Documentation relevant for the general meeting, e.g. the annual report, does no longer have to be made available in hard copies prior to and at the general meeting. In future it will suffice to enable shareholders to view such documents electronically.

Since 1965, banks have to evaluate their own vote recommendations for their clients or to abstain from giving a vote recommendation to their clients. In recent years, more and more banks, especially the savings banks, refrained from giving vote recommendations to their clients because of cost benefit ratio. This led to a significant decrease in turnouts at German general meetings. Since 1998, the average turnout of the 30 Dax companies dropped from 61% to 46% in 2005. The introduction of the record date in 2005 had an opposing effect on the turnout development and led to an increase in turnouts which has been maintained until now: In 2008 the average turnout of the 30 Dax companies was 59%. However, it were mainly foreign institutionals who started voting at German general meetings after the introduction of the record date.

The ARUG in the current draft now tries to attract private investors by reforming the proxy procedures for banks: In future, banks can either propose their own vote recommendations or propose to exercise the clients' votes in line with the proposals of the company's boards. In any case, banks then have to offer to their clients to transmit the votes to a shareholder association, like DSW, or to a proxy representative. The latter is new, currently banks who exercise votes for their clients are not obliged to inform about other proxy representatives. Whether this measure will enhance private shareholders' participation in the general meeting can however be doubted.

The deadline for implementing the Directive in German law is 3 August 2009.

Risk Limitation Act – RisikobegrenzungsG

In August 2008, the **Risk Limitation Act** has been passed. One of the core aspects of the Act is the extension of the scope of the so-called acting in concert provisions. **Acting in concert** will in future include certain other co-ordinations of shareholders' interests outside of the general meeting. This, however, requires that shareholders act in a coordinated way and follow a common strategy to substantially and permanently change the strategic direction of the company. This is the case if the shareholders co-ordinate their voting behaviour or if they join forces on the basis of a long term planned strategy for the joint pursuit of a change of the company's strategy. Agreements in individual cases thus do not lead to further attribution of voting rights, i.e. coordination between investors regarding a certain topic raised in a general meeting.

Under the previous law the **notification requirements** arising from voting rights of directly held or attributed shares and the aggregate number of voting rights of other financial instruments like options were independent from each other, e.g. a 2.99% shareholding and a 2.99% ownership in options was not required to be disclosed up to now. This distinction which has just been introduced by the European Transparency Directive Implementation Act in January 2007 will be abolished by the Risk Limitation Act. If shares and relevant other financial instruments are held, then these are totalled to all voting rights attributed to the shares of the company. As a result of the aggregation the new provisions will increase transparency for other investors and the capital markets.

These changes will come into effect on 1 March 2009. Effective from 31 May 2009 owners of significant shareholdings (more than 10% of the voting capital) will have to disclose their reasons for the acquisition of the voting rights and the source of funds used for the acquisition within 20 trading days unless this requirement is waived by the articles of association of the company. However, the Act does not contain any sanctions in the event that these rules are breached and, in particular, will not result in the voting rights being suspended.

The existing **sanctions for violations of notification requirements** have been further tightened. Previously a violation resulted in the loss of shareholder rights, in particular voting rights, until the breach had been cured which could even be done during the general meeting. However, the rights to receive dividends and the right to receive liquidation proceeds were restored with retroactive effect. In future, shareholder rights (except for the right to receive a dividend) will be suspended for a period of at least six months following compliance if the breach has been caused by gross negligence or wilful conduct. The sanctions are intended to prevent investors from secretly building up a stake between two general meetings and disclosing the required information just prior to the general meeting.

The **significance of the share register** shall be increased by implementing the shareholders' obligation to provide the company with the necessary data for the share register. In future, the registered shareholder must inform the company upon demand whether he himself owns the shares or, if applicable who he holds the shares for. This means that the company has the right to ask a nominee for information about the ultimate beneficial owner of the shares or, respectively, about any member of the shareholders' chain up to the ultimate beneficial owner of the shares. Voting rights will be suspended until the company has received the information. In addition, companies have the right to restrict or prohibit the entry of nominee shareholders into their share register in their articles of association.

Foreign Trade Act – AWG

In August 2008, the German government passed a draft amendment to the **Foreign Trade Act**. In future, any acquisition of a share of more than 25% of the voting rights in a German-based company by a non-EU/EFTA entity may be subject to formal investigations by the Federal Ministry of Economics and may be subject to restrictions. Voting rights held by third parties are considered if a joint exercise of the voting rights has been agreed. The draft amendment still needs to be passed by the German Parliament.

Financial Market Stabilisation Act – Finanzmarktstabilisierungsgesetz

The **Financial Market Stabilisation Act** which came into force on October 18, 2008, is Germany's response to the global financial crisis. Its aim is to create a sustainable package of instruments to stabilise financial markets, provide needed liquidity, restore the confidence of the financial market players and prevent a further aggravation of the financial crisis.

The Financial Market Stabilisation Fund which has been established by this law is a special estate of the Federal Republic of Germany for which the Federal Republic is fully liable. The Fund will be administered by a newly created public-law institution, the Financial Market Stabilisation Authority (FMSA) and intends to subsidise German financial sector companies including German subsidiaries of foreign financial sector companies or special purpose vehicles to which risks from financial sector companies have been transferred to. Three types of stabilisation measures are possible under the new law: guarantees (up to a total amount of EUR 400bn), recapitalisations and assumptions of risk whereas guarantees shall be the preferred type of stabilisation measure, while recapitalisations and assumptions of risk shall only be granted in cases where guarantees would not be sufficient.

The fund shall only support companies with a sound and prudent business policy. To ensure that this criterion is met, the Fund may impose conditions on the companies, subject to the principle of proportionality.

The company may for instance be required to restrict or abandon certain high-risk business areas; and to review its remuneration system. It may also be required to ensure that the remuneration for board members is not excessive. A total remuneration of more than 0.5m EUR p.a. is, as a rule, considered excessive. Additionally, the Fund can require the company to ensure that no dividends or other profit distributions are paid to shareholders other than the Fund.

For guarantees, the conditions are substantially less strict: only the condition with regard to the business policy is applicable.

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German Corporate Governance – recent changes

The Cromme-Commission published its German Corporate Governance Code (GCGC) in February 2002. Since then the 'standing committee' under the lead of Dr. Gerhard Cromme met regularly.

In its plenary meeting on June 6, 2008, the Commission made a number of amendments to the German Corporate Governance Code and resolved on personnel changes.

Specifically, the following new or augmented recommendations and suggestions were resolved.

Section 4.2.2: Management board – composition and compensation (changes in bold print)

"At the proposal of the committee dealing with Management Board contracts, the full Supervisory Board shall **resolve and regularly review the Management Board compensation system including the main contract elements.**"

Section 4.2.3, third and fourth paragraph (changes in bold print)

"In concluding Management Board contracts, care **shall** be taken to ensure that payments made to a Management Board member on premature termination of his contract without serious cause do not exceed the value of two years' compensation (severance payment cap) and compensate no more than the remaining term of the contract. The severance payment cap **shall** be calculated on the basis of the total compensation for the past full financial year and if appropriate also the expected total compensation for the current financial year.

Payments promised in the event of premature termination of a Management Board member's contract due to a change of control **shall** not exceed 150% of the severance payment cap."

Section 7.1.2: Reporting and Audit of the Annual Financial Statements (supplement in bold print)

"The Consolidated Financial Statements must be prepared by the Management Board and examined by the auditor and Supervisory Board. **Half-year and any quarterly financial reports shall be discussed with the Management Board by the Supervisory Board or its Audit Committee prior to publication.** In addition, the Financial Reporting Enforcement Panel and the Federal Financial Supervisory Authority are authorized to check that the Consolidated Financial Statements comply with the applicable accounting regulations (enforcement). The Consolidated Financial Statements shall be publicly accessible within 90 days of the end of the financial year; interim reports shall be publicly accessible within 45 days of the end of the reporting period."

In addition to the changes stated before, modifications were also made in the following Code section (marked in bold):

Foreword: page 2, paragraph 3:

"The **recommendations** of the Code are marked in the text by use of the word **"shall"**. Companies can deviate from them, but are then obliged to disclose this annually. This enables companies to reflect sector and enterprise-specific requirements. Thus, the Code contributes to more flexibility and more self-regulation in the German corporate constitution. Furthermore, the Code contains **suggestions** which can be deviated from without disclosure; for this the Code uses terms such as "should"; or "can". The remaining passages of the Code not marked by these terms contain provisions that enterprises are compelled to observe under applicable law."

Personnel changes

Effective June 30, 2008, Dr. Gerhard Cromme stepped down from his position as chairman of the Commission and left the Commission. Dr. Rolf-E. Breuer and Prof. Dr. Marcus Lutter left the Commission at the same time. They were succeeded by Klaus-Peter Müller, former spokesman of the management board of Commerzbank AG as a chair and Daniela Weber-Ray, partner in the law firm Clifford Chance.

Vote execution in Europe

Active shareholders are an effective control of a company's management. In order for this mechanism to work however a well functioning voting system must be in place. It is safe to say that on a national basis in Germany, such a system is well established, however, on a cross border basis, such a level playing field has not been established.

Difficulties arise already during the initial preparation of the annual meeting and continue on the way to the disclosure of the voting results after the meeting. For instance, the deadline to register for attendance at an annual meeting differs from 35 days in France to only 7 in Finland. Or take the percentage of shareholders required to adjourn an annual meeting which ranges from 5% to 20%.

Proxy voting in different European countries creates further problems. Belgian and French companies for example have very strict limitations on having shareholder's votes represented by third parties: Here, it is common to restrict proxy voting to other shareholders, the chairman of the general meeting and/or to the shareholder's spouse. Italian cooperative banks also require proxy representatives to own shares in the company. Furthermore, there is a limitation as to how many shares they can represent. And in Switzerland, too, proxy voting can be restricted to other shareholders by the articles.

Most European countries do not any longer require shares to be deposited and blocked before the general meeting but established a record date. Nevertheless, in Belgium, the Netherlands, Portugal, and Switzerland, either companies or custodians require a share blocking during the deposit period.

The European Commission has realised that all the red tape is a significant barrier and consequently released the EU Shareholder Rights Directive on July 14, 2007. This Directive has to be transformed into national laws until 2009. In Germany, the implementation is covered by the so-called ARUG (see p. 3 for more information).

The goal of the EU Directive is to enable shareholders, regardless of their place of residence and the location of the annual meeting, to cast their votes. Shareholders should have enough time in advance of the general meeting to review the relevant documents and to make informed decisions. Legal hurdles with regard to electronic participation should be abolished as should restrictions to proxy voting. Unfortunately, fees charged by the custodians for the issuance of cross border proxy cards are not addressed by the Directive; neither does it cover a unified European proxy card.

The increasing Europeanisation of shareholdings by domestic shareholders was one reason for DSW, the German partner of ECGS – European Corporate Governance Services, to deal with the question of how an investor can perceive his rights at general meetings abroad and which requirements must be observed to exercise one of the most important rights an investor has at all. The outcome is the Manual "Shareholders' Meetings in Europe". The Manual draws a comparison of share voting and proxy voting rights as well as shareholder minority rights among 15 European countries. The preconditions for participation as well as for voting at a general meeting are detailed as well. The possibilities to appoint a proxy, as well as majority and quorum requirements at a general meeting are also analysed in the Manual. The Manual includes 15 country reports, and time bars to clarify the various deadlines prior to a general meeting for each country. Furthermore, it contains an in-depth analysis of the findings in each country.

The Manual shows the situation in the following countries: **Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the UK.**

DSW's special thanks are directed to **Georgeson**, who by sponsoring this manual, recognised the importance of this topic.

Interested parties can order the Manual at a price of € 195 plus VAT at: jella.bennerheinacher@dsw-info.de.

Proxy Season 2008 in Germany: The international investor's view

Globalisation is not a new topic to German companies: Today, the majority of the sales of DAX companies is raised abroad. A good example for this is Volkswagen: For the first time in 2008 the company sold more cars in China than at home in Germany.

Alan Mac Dougall: Managing Partner ECGS

Globalisation can also be felt in the ownership of German corporations. Today, 50% of the DAX equity is owned by foreign investors. And the share of foreign investors and, accordingly, the interest in German company's annual meetings, is increasing. In 2008, almost 60% of the share capital was represented at DAX company's annual meetings, last but not least due to an increased participation of foreign investors.

However, we need to note that globalisation has not reached its full potential within German blue chip companies' managements. Merely complying with the German Corporate Governance Code is no longer sufficient to meet the interests of international investors who frequently have different values and interests than their well-known German colleagues.

The AGM season 2008 has shown that foreign investors quite often disagree with the decisions of German managers and the composition of the supervisory boards and that they use the vote execution as a means to communicate with companies and managers. Here, they revert to proxy voting agencies, like the European Corporate Governance Service ECGS. ECGS provides fully independent corporate governance research and gives voting advice by assessing companies against accepted international standards of best practice such as OECD, ICGN and EU recommendations as well as against local best practice.

In 2008, DSW as the German partner of ECGS conducted a study regarding shareholder voting behaviour during the annual meetings of the 49 German MSCI Europe index-listed companies to reveal the crucial points for foreign institutional investors with regard to German companies. Capital measures, independence of the supervisory board and of the auditors are the three major points of criticism of international investors, ECGS surveyed.

Christiane Hölz: ECGS Head of Research Germany

Capital Measures

In Germany, usually more than 98% of shareholders agree with management decisions at annual meetings. From ECGS' point of view, resolutions with a majority of less than 95% therefore warrant a review. The 95% boundary was crossed several times in 2008, frequently failing to reach 75%. One major criticism was that resolutions regarding capital measures were not transparent enough for foreign investors and as a result foreign investors vetoed them.

Proxy Season 2008 – Selected Vote Outcomes

company		agenda item	reason for OPPOSE vote of ECGS	vote outcome
Commerzbank	7g	Appoint supervisory board member Müller	Not independent, as he is the former CEO. Insufficient independence representation on the board	94,82%
	11	Authorised Capital 2008	Dilution of up to 27.5% possible	71,59%
	12	Conditional Capital 2008	Dilution of up to 24% possible	76,99%
Daimler	11	Authorised Capital II	Dilution of up to 19% possible	90,23%
Deutsche Bank	12	Preparations to spin off investment banking business within two years (shareholder proposal)	Investment banking division carries a high yield for the company	5,29%
Deutsche Postbank	6a	Appoint supervisory board member Appel	Not independent as he represents the major shareholder. Insufficient independence representation on the board.	94,32%
Douglas Holding	9a	Appoint supervisory board member Jörn Kreke	Not independent as he is the former CEO and representative of the major shareholder. Insufficient independence representation on the board.	90,63%
	9e	Appoint supervisory board member Henning Kreke	Not independent as he represents the major shareholder. Insufficient independence representation on the board.	92,62%
Heidelberger Druck	11	Authorised Capital 2006	dilution of up to 30% possible	76,75%
Hochtief	6a	Appoint supervisory board member Altozano	Not independent as he represents the major shareholder. Insufficient independence representation on the board.	90,10%
	6b	Appoint supervisory board member Keitel	Not independent as he represents the major shareholder. Insufficient independence representation on the board.	90,06%
	6c	Appoint supervisory board member Verdes	Not independent as he represents the major shareholder. Insufficient independence representation on the board.	91,38%
Hypo Real Estate	5	Amend articles: extend the supervisory board	Depfa acquisition does not necessitate an extension of the board; smaller boards work more efficiently than large ones.	88,90%
	8	Authorised Capital I	Dilution of up to 30% possible.	89,85%
MLP	8	Amend articles: restrict share-holders' right to ask questions at the AGM	Possibility to restrict the shareholders' right to ask question at the general meeting negatively affects shareholders' sights.	94,25%
Premiere	7	Authorised Capital	Dilution of up to 20% possible.	73,23%
	8	Conditional Capital I	Dilution of up to 20% possible.	73,58%
	9	Conditional Capital II	Dilution of up to 20% possible.	73,28%
Puma	7	Conditional Capital for share options	No other performance hurdles except for share price development.	93,28%
	9	Opting-out from individual disclosure of management board members' remuneration	Not a sign of good corporate governance.	88,37%
SAP	6	Appoint supervisory board member Liautaud	Not independent as he is founder and CEO of a major acquisition of SAP. Insufficient independence representation on the board.	90,08%
Siemens	5b	Discharge supervisory board member Cromme	Member of the audit committee (corruption affair).	87,21%
	5c	Discharge supervisory board member Heckmann	Member of the audit committee (corruption affair).	89,74%
	5k	Discharge supervisory board member Hawreliuk	Member of the audit committee (corruption affair).	89,81%
	5t	Discharge supervisory board member Schulte-Noelle	Member of the audit committee (corruption affair).	89,95%
	6	Appoint auditor	New auditor would have given the company a clean start (corruption affair).	93,44%
TUI	3	Discharge Management Board	Management board has failed to provide a steady long-term strategy for the company.	69,20%
	6	Withdrawal of confidence Dr. Frenzel (shareholder proposal)	An inconsistent strategy and low performing share price as not sufficient to support a vote of no confidence.	28,40%
	11	Dismissal Krummnow (shareholder proposal)	No reasoning for the proposed dismissal is given by the shareholder. Opposition recommended due to lack of information.	42,76%
VW	9.2	Amend articles: delete regulations concerning the voting cap at 20%, as well as the designation right of the Federal State and the Land of Lower Saxony	Proposal to retain the blocking majority of 20% weakens shareholder rights.	42,75%

A good example for this problem occurred at Commerzbank's annual meeting: the company proposed to increase its authorised capital. Apparently, the information given for this proposal led especially foreign investors to oppose the proposal, which was in line with ECGS's recommendation. ECGS argued that the equity expansion would lead to an excessive dilution. Consequently, the necessary three quarter majority could not be reached as only 71.59% voted for the proposal of the company.

This example shows the increasing influence of international proxy agencies such as ECGS. ECGS therefore recommends that already in advance of their annual meetings, companies should clearly and transparently state their capital budgeting plans in order to avoid a possible veto as a result of a lack of understanding.

Besides the authorised capital, criticism of international investors during the AGM season 2008 also referred to conditional capital measures as well as to and share buybacks. Regarding share buybacks, proxy agencies and the investors advised by them especially review the price range for the share buyback to guarantee an equal treatment of the shareholders and to avoid a damage of shareholders' assets.

Shareholder Proposals

Another instrument, institutional investors from abroad used increasingly during the AGM season 2008 was the shareholder proposal. The quorum of 5% required to put forth a petition to be voted on has been reached much more frequently than in previous years.

Good examples are investors' proposals at Deutsche Bank to divest of its investment banking arm or at TUI to replace the supervisory board chairman. In the case of TUI, 42.67% of the shareholders present at the general meeting voted for the dismissal of the board chairman. If share performance is negative and the investors' dissatisfaction with the operational results is high such investor proposals find their way and are likely to have a significant effect with regard to the voting outcome.

The lack of transparency in capital budgeting is one of the most commonly discussed points for foreign institutional investors but not the only one. The independence of the supervisory board is also being seen more critical than in recent years.

Jella Benner-Heinacher: Chairwoman of ECGS

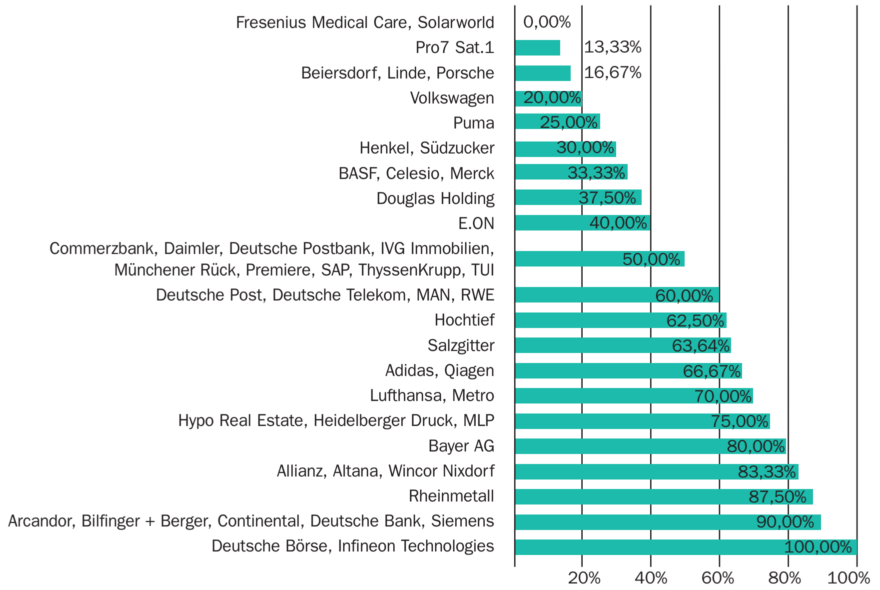
Independence of the Supervisory Board

Frequently, the German two-tier board system leads to confusion and misunderstanding for foreign investors as they are used to the widespread one-tier board system.

ECGS takes the different board structures into consideration when giving its voting recommendations. Notwithstanding the two-tier board structure, independence of the supervisory board plays an important role when assessing German companies.

ECGS does not consider that it is necessary for each non-executive director or supervisory board member to be independent. For example, it may benefit the company to retain a former management board member in a non-executive capacity, although the individual will not have an outsider's independent perspective. However, in order to ensure that there is a strong independent voice on the board, at least half of the supervisory board members elected by the general meeting should be independent. Consequently, this makes obvious that employee representatives on the supervisory board are not considered as being independent. They therefore were not taken into account in the ECGS survey.

Proportion of independent Supervisory Board Members



Companies that have been labelled in our survey to have a 100% independent supervisory board are Deutsche Boerse and Infineon. Here, all supervisory board members elected by the general meeting passed the ECGS requirements.

Companies with a major shareholder, former executives on the supervisory board or long term supervisory board mandates which do not meet ECGS guidelines are negatively perceived by foreign investors from the US and the UK. Within Germany, until now only marginal importance has been placed on independence issues. Companies such as E.ON, Douglas, BASF, and Porsche are "under watch" by international proxy agencies due to the lack of independent supervisory board members which can lead to critical recommendations. Especially critical are the supervisory boards of Fresenius Medical Care and Solarworld where no supervisory board member can be viewed as being independent.

An example for the impact of proxy agencies is the AGM 2008 of Hochtief AG where the proposal to re-elect the representatives of the majority shareholder only received 90.10% and 91.38%, respectively. The former chairman of the supervisory board, Dr. Hans-Peter Keitel, received only 90.06% of the votes cast.

Dr. Jürgen Weber and Ulrich Hartmann fared even worse in their election of the Lufthansa supervisory board. The former CEO, Dr. Weber, received only 81.10% of the votes and Ulrich Hartmann who has been on the board for more than 9 years, received a mere 85.36%.

Factors taken into account which may compromise independence include:

- A former executive position within the company or group
- An association with the business, such as a directorship, of more than 9 years
- Relationship through blood, marriage or equivalent to other directors or advisers to the company
- A significant personal holding in the company's equity
- Current or recent involvement at a senior level in another entity with a material financial or commercial interest in the company either through a shareholding link, or as customer, supplier, joint venture partner or competitor;
- A current or recent material connection with a professional adviser to the company

There are further criteria however it is obvious that the assessment of independence will have implications for the supervisory board elections. ECGS for instance recommends opposing the election of a supervisory board member if the necessary minimum number of independent board members has not been reached.

Independence of the Auditor

According to ECGS, a very important element of corporate governance is an objective and independent annual audit. ECGS recommends that auditors should limit their role as advisors of the company to assure objectivity and independence. ECGS recommends opposing the re-election of an auditor if he has received more non-audit fees than audit fees.

Against this background, ECGS analysed the development of audit and non-audit fees paid to auditors of the German MSCI Europe companies.

On the one hand the survey revealed that audit fees, on average for the German MSCI Europe companies have decreased more than 10% from 10.7 million euros in 2006 to 9.6 million euros in 2007. On the other hand, we need to note that the non-

Comparison of audit / non-audit fees* paid to MSCI companies' auditors in 2006/2007

company	audit fees 2006 €	audit fees 2007 €	audit fees 2006 compared to 2007	non-audit fees* 2006 €	non-audit fees* 2007 €	non-audit fees* 2006 compared to 2007	Index
Adidas	500.000,00	1.200.000,00	140,00%	600.000,00	600.000,00	0,00%	DAX
Allianz	57.800.000,00	49.000.000,00	-15,22%	21.100.000,00	18.100.000,00	-14,22%	DAX
Altana	2.193.000,00	926.000,00	-57,77%	963.000,00	127.000,00	-86,81%	MDAX
Arcandor	1.220.000,00	1.080.000,00	-11,48%	946.000,00	813.000,00	-14,06%	MDAX
BASF	23.900.000,00	19.100.000,00	-20,08%	1.200.000,00	900.000,00	-25,00%	DAX
Bayer	27.000.000,00	9.000.000,00	-66,67%	10.000.000,00	2.000.000,00	-80,00%	DAX
Beiersdorf	669.000,00	644.000,00	-3,74%	112.000,00	114.000,00	1,79%	MDAX
Bilfinger Berger	4.374.000,00	4.590.000,00	4,94%	5.966.000,00	3.611.000,00	-39,47%	MDAX
Celesio	419.000,00	419.000,00	0,00%	182.000,00	57.000,00	-68,68%	MDAX
Commerzbank	6.279.000,00	10.149.000,00	61,63%	3.061.000,00	3.585.000,00	17,12%	DAX
Continental	2.800.000,00	3.500.000,00	25,00%	300.000,00	900.000,00	200,00%	DAX
Daimler	62.000.000,00	63.000.000,00	1,61%	11.000.000,00	8.000.000,00	-27,27%	DAX
Deutsche Bank	44.000.000,00	43.000.000,00	-2,27%	17.000.000,00	16.000.000,00	-5,88%	DAX
Deutsche Börse	1.300.000,00	1.700.000,00	30,77%	1.700.000,00	2.800.000,00	64,71%	DAX
Deutsche Post	14.200.000,00	13.700.000,00	-3,52%	11.500.000,00	10.800.000,00	-6,09%	DAX
Deutsche Postbank	5.600.000,00	7.000.000,00	25,00%	8.600.000,00	9.400.000,00	9,30%	DAX
Deutsche Telekom	28.100.000,00	19.200.000,00	-31,67%	24.800.000,00	22.200.000,00	-10,48%	DAX
Douglas	700.000,00	700.000,00	0,00%	100.000,00	200.000,00	100,00%	MDAX
E.ON	53.000.000,00	33.000.000,00	-37,74%	8.000.000,00	24.000.000,00	200,00%	DAX
Fresenius Med. Care	5.744.242,98	8.574.000,00	49,26%	737.913,44	1.307.000,00	77,12%	DAX
Heidelberger Druck.	806.000,00	773.000,00	-4,09%	82.000,00	106.000,00	29,27%	MDAX
Henkel Vz.	8.000.000,00	8.100.000,00	1,25%	600.000,00	400.000,00	-33,33%	DAX
Hochtief	2.751.000,00	3.477.000,00	26,39%	1.097.000,00	1.519.000,00	38,47%	MDAX
Hypo Real Estate	4.276.000,00	5.390.000,00	26,05%	1.348.000,00	5.710.000,00	323,59%	DAX
Infineon	4.000.000,00	4.300.000,00	7,50%	3.000.000,00	2.200.000,00	-26,67%	DAX
IVG Immobilien	1.100.000,00	3.500.000,00	218,18%	1.500.000,00	800.000,00	-46,67%	MDAX
Linde	13.000.000,00	11.000.000,00	-15,38%	4.000.000,00	4.000.000,00	0,00%	DAX
Lufthansa	2.800.000,00	2.900.000,00	3,57%	900.000,00	1.200.000,00	33,33%	DAX
MAN	4.500.000,00	4.600.000,00	2,22%	4.900.000,00	4.700.000,00	-4,08%	DAX
Merck KGaA	3.900.000,00	8.300.000,00	112,82%	1.800.000,00	3.000.000,00	66,67%	DAX
Metro	6.000.000,00	6.000.000,00	0,00%	2.000.000,00	3.000.000,00	50,00%	DAX
MLP	1.335.000,00	1.308.000,00	-2,02%	362.000,00	590.000,00	62,98%	MDAX
Münchener Rück.	6.749.000,00	6.802.000,00	0,79%	3.760.000,00	4.441.000,00	18,11%	DAX
Porsche	680.000,00	690.000,00	1,47%	448.000,00	660.000,00	47,32%	CDAX
Premiere	451.000,00	330.000,00	-26,83%	239.000,00	647.000,00	170,71%	MDAX
ProSiebenSat.1 Vz.	883.000,00	1.070.000,00	21,18%	264.000,00	1.569.000,00	494,32%	MDAX
Puma	700.000,00	400.000,00	-42,86%	300.000,00	300.000,00	0,00%	MDAX
Qiagen	820.440,39	1.768.334,48	115,53%	1.146.150,34	599.040,44	-47,73%	TDAX
Rheinmetall	1.967.000,00	2.145.000,00	9,05%	172.000,00	490.000,00	184,88%	MDAX
RWE	16.700.000,00	17.600.000,00	5,39%	6.900.000,00	4.100.000,00	-40,58%	DAX
Salzgitter	1.510.000,00	2.595.000,00	71,85%	210.000,00	921.000,00	338,57%	MDAX
SAP	7.435.000,00	8.300.000,00	11,63%	1.073.000,00	500.000,00	-53,40%	DAX
Siemens	55.000.000,00	55.300.000,00	0,55%	32.500.000,00	31.700.000,00	-2,46%	DAX
Solarworld	454.000,00	535.000,00	17,84%	363.000,00	210.000,00	-42,15%	TDAX
Südzucker	600.000,00	900.000,00	50,00%	1.200.000,00	100.000,00	-91,67%	MDAX
ThyssenKrupp	21.000.000,00	20.000.000,00	-4,76%	5.000.000,00	3.000.000,00	-40,00%	DAX
TUI	2.500.000,00	2.700.000,00	8,00%	2.300.000,00	2.300.000,00	0,00%	DAX
Volkswagen	4.401.000,00	1.756.000,00	-60,10%	2.789.000,00	2.549.000,00	-8,61%	DAX
Wincor Nixdorf	384.000,00	441.000,00	14,84%	875.000,00	845.000,00	-3,43%	MDAX
average:	**10.540.830,27**	**9.642.088,46**	**-8,53%**	**4.265.225,79**	**4.238.164,09**	**-0,63%**	

* non-audit fees: audit-related services and other audit work, tax consultancy and others services

Ratio of audit / non-audit fees* paid to MSCI companies' auditors in 2006/2007

	2006				2007			
	audit fees €	**non-audit fees* €**	**ratio**	**auditor**	**audit fees €**	**non-audit fees* €**	**ratio**	**auditor**
Adidas	500.000,00	600.000,00	20,00%	KPMG	1.200.000,00	600.000,00	-50,00%	KPMG
Allianz	57.800.000,00	21.100.000,00	-63,49%	KPMG	49.000.000,00	18.100.000,00	-63,06%	KPMG
Altana	2.193.000,00	963.000,00	-56,09%	PwC	926.000,00	127.000,00	-86,29%	PwC
Arcandor	1.220.000,00	946.000,00	-22,46%	BDO	1.080.000,00	813.000,00	-24,72%	BDO
BASF	23.900.000,00	1.200.000,00	-94,98%	KPMG	19.100.000,00	900.000,00	-95,29%	KPMG
Bayer	27.000.000,00	10.000.000,00	-62,96%	PwC	9.000.000,00	2.000.000,00	-77,78%	PwC
Beiersdorf	669.000,00	112.000,00	-83,26%	Ernst & Young	644.000,00	114.000,00	-82,30%	Ernst & Young
Bilfinger Berger	4.374.000,00	5.966.000,00	36,40%	PwC and Ernst & Young	4.590.000,00	3.611.000,00	-21,33%	PwC and Ernst & Young
Celesio	419.000,00	182.000,00	-56,56%	PwC	419.000,00	57.000,00	-86,40%	PwC
Commerzbank	6.279.000,00	3.061.000,00	-51,25%	PwC	10.149.000,00	3.585.000,00	-64,68%	PwC
Continental	2.800.000,00	300.000,00	-89,29%	KPMG	3.500.000,00	900.000,00	-74,29%	KPMG
Daimler	62.000.000,00	11.000.000,00	-82,26%	KPMG	63.000.000,00	8.000.000,00	-87,30%	KPMG
Deutsche Bank	44.000.000,00	17.000.000,00	-61,36%	KPMG	43.000.000,00	16.000.000,00	-62,79%	KPMG
Deutsche Börse	1.300.000,00	1.700.000,00	30,77%	KPMG	1.700.000,00	2.800.000,00	64,71%	KPMG
Deutsche Post	14.200.000,00	11.500.000,00	-19,01%	PwC	13.700.000,00	10.800.000,00	-21,17%	PwC
Deutsche Postbank	5.600.000,00	8.600.000,00	53,57%	PwC	7.000.000,00	9.400.000,00	34,29%	PwC
Deutsche Telekom	28.100.000,00	24.800.000,00	-11,74%	PwC and Ernst & Young	19.200.000,00	22.200.000,00	15,63%	PWC and Ernst & Young
Douglas	700.000,00	100.000,00	-85,71%	Susat & Partner oHG	700.000,00	200.000,00	-71,43%	Susat & Partner oHG
E.ON	53.000.000,00	8.000.000,00	-84,91%	PwC	33.000.000,00	24.000.000,00	-27,27%	PwC
Fresenius Med. Care	5.744.242,98	737.913,44	-87,15%	KPMG	8.574.000,00	1.307.000,00	-84,76%	KPMG
Heidelberger Druck.	806.000,00	82.000,00	-89,83%	PwC	773.000,00	106.000,00	-86,29%	PwC
Henkel Vz.	8.000.000,00	600.000,00	-92,50%	KPMG	8.100.000,00	400.000,00	-95,06%	KPMG
Hochtief	2.751.000,00	1.097.000,00	-60,12%	Deloitte & Touche	3.477.000,00	1.519.000,00	-56,31%	Deloitte & Touche
Hypo Real Estate	4.276.000,00	1.348.000,00	-68,48%	KPMG	5.390.000,00	5.710.000,00	5,94%	KPMG
Infineon	4.000.000,00	3.000.000,00	-25,00%	KPMG	4.300.000,00	2.200.000,00	-48,84%	KPMG
IVG Immobilien	1.100.000,00	1.500.000,00	36,36%	PwC	3.500.000,00	800.000,00	-77,14%	PwC
Linde	13.000.000,00	4.000.000,00	-69,23%	KPMG	11.000.000,00	4.000.000,00	-63,64%	KPMG
Lufthansa	2.800.000,00	900.000,00	-67,86%	PwC	2.900.000,00	1.200.000,00	-58,62%	PwC
MAN	4.500.000,00	4.900.000,00	8,89%	KPMG	4.600.000,00	4.700.000,00	2,17%	KPMG
Merck KGaA	3.900.000,00	1.800.000,00	-53,85%	KPMG	8.300.000,00	3.000.000,00	-63,86%	KPMG
Metro	6.000.000,00	2.000.000,00	-66,67%	KPMG	6.000.000,00	3.000.000,00	-50,00%	KPMG
MLP	1.335.000,00	362.000,00	-72,88%	Ernst & Young	1.308.000,00	590.000,00	-54,89%	Ernst & Young
Münchener Rück.	6.749.000,00	3.760.000,00	-44,29%	KPMG	6.802.000,00	4.441.000,00	-34,71%	KPMG
Porsche	680.000,00	448.000,00	-34,12%	KPMG	690.000,00	660.000,00	-4,35%	Ernst & Young
Premiere	451.000,00	239.000,00	-47,01%	PwC	330.000,00	647.000,00	96,06%	KPMG
ProSieben Sat.1 Vz.	883.000,00	264.000,00	-70,10%	KPMG	1.070.000,00	1.569.000,00	46,64%	KPMG
Puma	700.000,00	300.000,00	-57,14%	PwC	400.000,00	300.000,00	-25,00%	PwC
Qiagen	820.440,39	1.146.150,34	39,70%	Ernst & Young	1.768.334,48	599.040,44	-66,12%	Ernst & Young
Rheinmetall	1.967.000,00	172.000,00	-91,26%	PwC	2.145.000,00	490.000,00	-77,16%	PwC
RWE	16.700.000,00	6.900.000,00	-58,68%	PwC	17.600.000,00	4.100.000,00	-76,70%	PwC
Salzgitter	1.510.000,00	210.000,00	-86,09%	PwC	2.595.000,00	921.000,00	-64,51%	PwC
SAP	7.435.000,00	1.073.000,00	-85,57%	KPMG	8.300.000,00	500.000,00	-93,98%	KPMG
Siemens	55.000.000,00	32.500.000,00	-40,91%	KPMG	55.300.000,00	31.700.000,00	-42,68%	KPMG
Solarworld	454.000,00	363.000,00	-20,04%	BDO	535.000,00	210.000,00	-60,75%	BDO
Südzucker	600.000,00	1.200.000,00	100,00%	PwC	900.000,00	100.000,00	-88,89%	PwC
ThyssenKrupp	21.000.000,00	5.000.000,00	-76,19%	KPMG	20.000.000,00	3.000.000,00	-85,00%	KPMG
TUI	2.500.000,00	2.300.000,00	-8,00%	PwC	2.700.000,00	2.300.000,00	-14,81%	PwC
Volkswagen	4.401.000,00	2.789.000,00	-36,63%	PwC	1.756.000,00	2.549.000,00	45,16%	PwC
Wincor Nixdorf	384.000,00	875.000,00	127,86%	KPMG	441.000,00	845.000,00	91,61%	KPMG
average:	**10.540.830,27**	**4.265.225,79**	**-59,54%**		**9.642.088,46**	**4.238.164,09**	**-56,05%**	

* non-audit fees: audit-related services and other audit work, tax consultancy and others services

audit fees have increased from 4 million euros to 4.2 million euros in the same period.

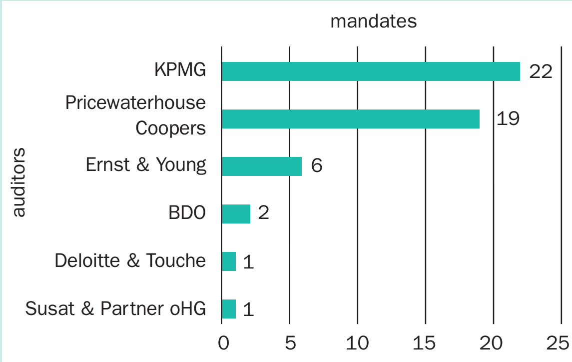
22 of the 49 German MSCI Europe listed companies are covered by KPMG, 19 are covered by PWC (including double audits). Furthermore, it is interesting to see that KPMG has received 440 million euro in audit and non-audit fees; PWC still was able to bill more than 200 million euros.

In 2006, non-audit fees accounted for approximately 40% of audit fees. In 2007, a similar relationship of 44% is found on average for the German companies in the MSCI Europe index.

Who is ECGS?

The European Corporate Governance Service (ECGS) was established in 2001 to provide fully independent corporate governance research and proxy voting advice to institutional investors with pan-European and global asset portfolios. ECGS is a partnership of local market providers based throughout Europe all of whom are recognised commentators on governance in their domestic markets. Each partner is an experienced advocate of shareholder rights in their own market and this experience is brought to bear on the voting recommendations each produces for ECGS. ECGS offers coverage of all large listed companies in each European market to a client list comprising international funds and asset managers.

Auditors' hitlist 2007



It is important to keep in mind that the previously mentioned figures are based on the average. Looking at individual cases may warrant questioning the independence of auditors based on the ratio of audit to non-audit fees. In 2006, the auditors of Adidas, Bilfinger+Berger, and Deutsche Boerse received more fees for non-audit than for audit services. In 2007, the same happened at Postbank, Deutsche Telekom, Premiere, Pro7Sat1, Volkswagen, Wincor Nixdorf, and again at Deutsche Börse.

ECGS therefore recommended opposing the re-election of the auditor in the above mentioned cases.

These topics only skim the top of issues foreign investors face when investing in Germany. With the increasing foreign ownership in German stocks, we expect to see some major changes in the next few years. If in the future, the non-binding "advisory vote" on directors' pay will take effect, we are sure to hear foreign investors' criticism loud and clear through their votes.

On August 22, 2008, German newspaper Handelsblatt headlined: "Foreigners increase pressure on companies – international investors use general meetings for criticism"

30 | Handelsblatt GELDANLAGE

Ausländer erhöhen Druck auf Konzerne

Internationale Investoren nutzen Hauptversammlungen zur Kritik

CHRISTIAN SCHNELL | FRANKFURT

Drei Dinge stören ausländische Investoren an deutschen Aktiengesellschaften besonders: Zum einen kritisieren sie Kapitalmaßnahmen, bei denen nicht genau angegeben wird, wofür das eingesammelte Geld verwendet werden soll. Daneben sind die mangelnde Unabhängigkeit des Aufsichtsrates und die zu enge Verflechtung zum jeweiligen Wirtschaftsprüfer Themen, die der immer stärker werdenden Gruppe der

mit, dass bereits aus der Einladung zur HV hätte hervorgehen müssen, wofür das frische Kapital verwendet wird. Damit war die Commerzbank unter den 49 deutschen Unternehmen im europäischen Auswahlindex MSCI Europe die Ausnahme.

Abhängigkeit der Aufsichtsräte

Heidelberger Druck schaffte es, einen solchen Antrag mit 76,75 Prozent gerade so durchzubringen. „Immer, wenn den Institutionellen aus dem Ausland die Ziele der Maßnah-

DSW-Rechtsanwältin Christiane Hölz.

Ein gravierendes Problem für ausländische Investoren ist auch die Abhängigkeit vieler Aufsichtsräte. ECGS-Experte Alan MacDougall empfiehlt als Richtgröße, dass mindestens die Hälfte der von der HV gewählten Aufsichtsräte nicht in irgendeiner Weise vom Unternehmen abhängig sein soll. Als Abhängigkeit wertet er beispielsweise die Position als ehemaliger Vorstand, ein mehr als neun Jahre andauerndes

Euroshareholders starts FORTISACTION.COM

Euroshareholders, the pan European non-profit organisation of shareholder associations, announces that it has launched a website to bundle forces of European shareholders of Fortis. Shareholders are invited to join the action and register as supporter. At this moment in time no financial contribution will be asked to investors.

The developments at Fortis over the last few months have been extremely disappointing. The mismanagement in times of worsening market conditions has led to the dismantling of Fortis on October 3rd and October 5th 2008.

Based on the information currently available Euroshareholders points to the fact that Fortis management has:

- consistently misinformed shareholders
- mismanaged the company during this crisis period
- lost – despite 15 billion in share issues – more than 30 billion euro in market capitalisation
- dismantled the company

Since the company's management has not acted in the best interests of Fortis shareholders it is important to bundle forces. Euroshareholders has decided to join forces with the national organisations that are involved: VFB and Investa in Belgium, VEB in the Netherlands and Investas in Luxembourg.

Currently, Euroshareholders is exploring the following actions:

- actions to ensure a shareholder vote on the transactions of October 3rd and October 5th, since under Dutch Law Fortis it is required to ask for shareholder approval of those transactions (see Euroshareholder press release of October 6th)
- actions to investigate mismanagement of the company
- actions to investigate whether Fortis management has correctly informed its shareholders and the financial community on its problems, the impact of the subprime- and credit crisis, and its financial position
- actions to claim damages from parties involved.

Shareholders can support Euroshareholders' actions by registering now on the www.fortisaction.com website.

Fund Survey 2008

Is there a positive connection between corporate governance and the share price performance of a company? Does the financial crisis have an impact on the funds' corporate governance? DSW wants to find out and therefore for the fourth time conducts a survey on corporate governance of funds in Germany. Together with Feri Rating & Research, DSW developed a detailed catalogue of questions including topics such as the internal structure of the funds, control mechanisms, exercise of shareholder rights and the importance of corporate governance. Asset managers interested in participating in the survey can contact Jella Benner-Heinacher, jella.bennerheinacher@dsw-info.de for further information.

The DSW Voting Guidelines

DSW is the only German shareholder association to disclose its fundamental voting behaviour in respect to regular items on the agenda of German general meetings to specifically make clear for investors how DSW exercises votes for its members, other investors or representatives. You can order the DSW Voting Guidelines via e-mail: jella.bennerheinacher@dsw-info.de or just fax: 0049-211-6697-70. Price: 95 € plus VAT.

Directors' Pay Survey 2008

Public and political interest in directors' pay has tremendously increased in recent years; awareness and criticism has never been greater. It is rumoured that Porsche CEO Wendelin Wiedeking received around 100m EUR in 2007, which is approximately 0.9% of Porsche's net profit, as a result of Porsche's investments into VW. This has led to a public outcry for greater regulation of management remuneration.

DSW, as Germany's largest investor association, has been dealing with the topic of directors' pay since 2001. Our Survey on Directors' Pay has significantly added to the public's awareness and consequent debate regarding regulation and salary limits. DSW was the first German organisation to take a close look at executives' remuneration and analysed it.

Structure and appropriateness of management remuneration of DAX and MDAX companies is analysed based on a number of different variables. Apart from the fixed salary, we analyse the variable components as well as share-based remuneration components. Additionally, we surveyed the remuneration French, Swiss and US large cap companies paid their executives in 2007. We conducted our survey in partnership with the Business and Controlling Department at the TU München.

One of the key findings of our study is that the outcry for regulation and tighter control by the politicians as a response to so-called "excessive" or "obscene" salaries is (safe for few exceptions) in fact unwarranted and would actually be counterproductive to the German economy.

DSW is of the opinion that decisions regarding directors' pay should be taken by companies' shareholders, as they are the ones paying for it and managers can be seen as their "asset managers". One step in the right direction has already been made: In 2008 a new recommendation has been implemented in the German Corporate Governance Code recommending that the entire supervisory board should be involved in deciding on management board members' remuneration.

Although we noted improvements, the DSW Survey still revealed a lack of transparency when it comes to disclosure of directors' pay. Almost every company has different formats and standards for reporting executive remuneration. Standardisation is required in order to increase comparability and general transparency.

A further issue we face lies in the area of severance and interim payments. Publication of these payments to board members is a legal requirement, however, companies are only required to disclose "significant" payments if they deviate significantly from those for employees. It would be a great improvement to see standardisation and an increase in transparency in this component of executive remuneration.

Another deficiency we note is the legal possibility to opt-out from individual disclosure of management board members remuneration. This clause enables companies to opt-out from the individual disclosure of management board members' remuneration if three quarter of the shares present at the general meeting support such a proposal. In 2008 we noted that a number of companies with a major shareholder used this possibility also in preparation of their IPO, a proceeding which we do not consider as being a sign of good corporate governance.

DSW agrees that a significant improvement would be extending the lockup period for stock options as this would lead to a more long term approach of such kind of remuneration. However, we believe it is not necessary to establish a new law, an amendment to the Corporate-Governance-Kodex will suffice.

The Results

The average executive manager of a company listed in the DAX-index received 2.926m EUR in cash and share-based remuneration in 2007. Excluding CEOs, average compensation drops to 2.615m EUR.

On average, management board members' remuneration increased by 7.75% from 2006 to 2007. This is a relatively big increase, however, taking into account company performance, an increase of 7.75% remains reasonable as company profits increased by 18% during the same time period and management board members' remuneration accounted for 0.64% of personnel cost in 2007 and 0.65% in 2006. Additionally, our survey showed that the average management board members' remuneration accounted for 1.37% of net profit in 2007 and 1.17% in 2006. Concluding, we think it is fair to say that executive pay has not been out of line.

The average remuneration of a DAX 30 management board member in 2007 was structured as follows: 26% was made up of fixed salary, 56% came from variable bonuses, linked to short term company performance, and 18% were bonuses linked to share performance. From DSW's point of view high amount of short-term bonuses over emphasize the short term performance of the company with regard to directors' pay and do not place enough importance on long term performance. DSW believes that 2/3 of compensation should derive from long term variable incentives. This could be closer linked with stock options or using multi-year averages to calculate bonuses. It is important to mention that some companies have already taken a more long term stance towards remuneration.

It is also important to look at the pension provisions of managers. On average, pension benefit costs for a management board member of a DAX 30 company amounted to 0.4m EUR in 2007. However, this figure differs greatly: From cancellation of pension provisions at SAP amounting to 0.34m EUR at SAP to allocation to reserves at Merck amounting to 1.975m EUR.

In the DSW Survey we also looked at "golden hellos" as well as severance payments. In 2007, 10 DAX companies made such payments, in 2006, there were only 4. Here, Deutsche Börse is noteworthy: severance payments of 7.5m EUR and 9.1m EUR were made to Matthias Ganz and Mathias Hlubek respectively. Thomas Eichelmann, CFO at Deutsche Börse, received a 2.7m EUR "golden hello" to compensate for missing out on his previous employer's bonus. Peter Löscher, CEO of Siemens, received a "golden hello" of 8.5m EUR. Dr. Klaus Kleinfeld, his predecessor, received 5.8m EUR in compensation for adhering to his confidentiality agreement and in advisory mandates after he left the company.

DAX

Rank	CEO	Company	Total Remuneration
1	Dr. Josef Ackermann	Deutsche Bank	13.981
2	Dr. Dieter Zetsche	Daimler	10.014
3	Prof. Dr. Wolfgang Reitzle	Linde	8.059
4	Michael Römer	Merck	7.308
5	Dr. Klaus Kleinfeld	Siemens	6.082
6	Prof Dr. Henning Kagermann	SAP	5.913
7	Dr. Wulf H. Bernotat	E.ON	5.332
8	Dr. Jürgen Hambrecht	BASF	5.212
9	Michael Diekmann	Allianz	5.200
10	Martin Winterkorn	Volkswagen	4.926
11	Dr. Ben Lipps	FMC	4.520
12	Dr. Michael Frenzel	TUI	4.478
13	Klaus Zumwinkel	Deutsche Post	4.311
14	Dr. Nikolaus von Bomhard	Münchener Rück	4.191
15	Herbert Hainer	Adidas	4.183
16	Dr. Ekkehard D. Schulz	Thyssen Krupp	4.022
17	Harry Roels	RWE	3.937
18	Dr. Norbert Reithofer	BMW	3.754
19	Manfred Wennemer	Continental	3.661
20	Werner Wenning	Bayer	3.593
21	Dr. Hans Joachim Körber	Metro	3.487
22	Prof. Dr. Ulrich Lehner	Henkel	3.376
23	Hakan Samulesson	MAN	3.286
24	Reto Francioni	Deutsche Börse	3.284
25	Klaus-Peter Müller	Commerzbank	2.878
26	Wolfgang Mayrhuber	Lufthansa	2.714
27	René Obermann	Deutsche Telekom	2.658
28	Dr. Wolfgang Ziebart	Infineon	2.043
29	Georg Funke	Hypo Real Estate	1.883
30	Dr. Wolgang Klein	Postbank	1.531

A spot on the MDAX

This year's Pay Survey for the first time took a look at companies listed in the MDAX to analyse how German mid-cap managers' remuneration is structured and how transparent the companies are towards their shareholders. The average executive received 1.486m EUR in 2007 in cash and share-based remuneration. In comparison to the previous year, remuneration increased by 8.34%. Jochen Zeitz, CEO of Puma, is the number one paid executive in the MDax with 7.2m EUR followed by HeidelbergerCement CEO Bernd Scheifele with 6.1m EUR in total remuneration.

The survey showed that transparency in the MDAX is significantly lower than in its prime counterpart, the DAX: 10 out of 50 companies did not report individually on their managers' remuneration. Moreover, one must frequently calculate remuneration based on numbers found in various sections of the annual report.

MDAX

Rank	CEO	Company	Total Remuneration
1	Jochen Zeitz	Puma	7.200
2	Dr. Bernd Scheifele	HeidelbergCement	6.100
3	Dr. Thomas Ludwig	Klöckner	3.586
4	Dr. Bruno Sälzer	Hogo Boss	3.283
5	Udo Stark	MTU Aero Engines Holding	3.165
6	Dr. Lütkestratkötter	HOCHTIEF	3.104
7	Dr. Leichnitz	IVG Immobilien	2.880
8	Louis Gallois	EADS	2.809
9	Klaus Eberhardt	Rheinmetall	2.777
10	Dr. Wolf Schumacher	Aareal	2.679
11	Dr. Ulf M. Schneider	Fresenius	2.631
12	Dr. Thomas Middelhoff	Arcandor	2.625
13	Jürg Oleas	GEA	2.614
14	Hartmut Retzlaff	STADA Arzneimittel	2.607
15	Dr. Fritz Oesterie	Celesio	2.555
16	Dr. Peter-Alexander Wacker	Wacker Chemie	2.434
17	Robert J. Koehler	SGL Carbon	2.390
18	Dr. Rüdiger Kapitza	Gildemeister	2.305
19	Guillaume de Posch	ProSiebenSat.1 Media	2.157
20	Dr.-Ing. Klaus Probst	Leoni	2.088
21	Hans H. Overdiek	Pfleiderer	2.050
22	Wolfgang Pföhler	RHÖN-KLINIKUM	2.046
23	Eckard Heidloff	WINCOR NIXDORF	1.916
24	Stefan R. Fuchs	Fuchs Petrolub	1.876
25	Dr.-Ing. Wolfgang Leese	Salzgitter	1.855
26	Thomas-B. Quaas	Beiersdorf	1.840
27	Herbert Bodner	Bilfinger	1.832
28	Harald J. Joos	Demag Cranes	1.812
29	Volker Kronseder	Krones	1.725
30	Dr. Axel C. Heitmann	LANXESS	1.692
31	Dr. Ralf Bethke	K+S	1.656
32	Dietmar Meister	AMB Generali	1.580
33	Gerhard Wiedemann	KUKA	1.534
34	Bernhard Schreier	Heidelberger Druckmaschinen	1.527
35	Dr. Matthias Wolfgruber	Altana	1.510
36	Dr. Henning Kreke	Douglas Holding	1.343
37	Burkhard U. Drescher	GAGFAH	1.315
38	Dr. Gerold Linzbach	Symrise	1.227
39	Dr. Gerhard Eschenröder	Vossloh	1.226
40	Dr. Wilhelm Bender	Fraport	1.215
41	Volker Heuer	Tognum	1.181
42	Dr. Uwe Schroeder-Wildberg	MLP	1.161
43	Wilhelm Zeller	Hannover Rückversicherung	1.155
44	Dr. Werner Marnette	Norddeutsche Affinierie	1.145
45	Gordon Riske	Deutz	1.081
46	Dr. Georg Kofler	Premiere	1.010
47	Wolfgang Werner	Praktiker	763
48	Dr. Theo Spettmann	Südzucker	741
49	Klaus-Dieter Peters	Hamburger Hafen und Logistik	738
50	Claus Matthias Böge	Deutsche Euroshop	544

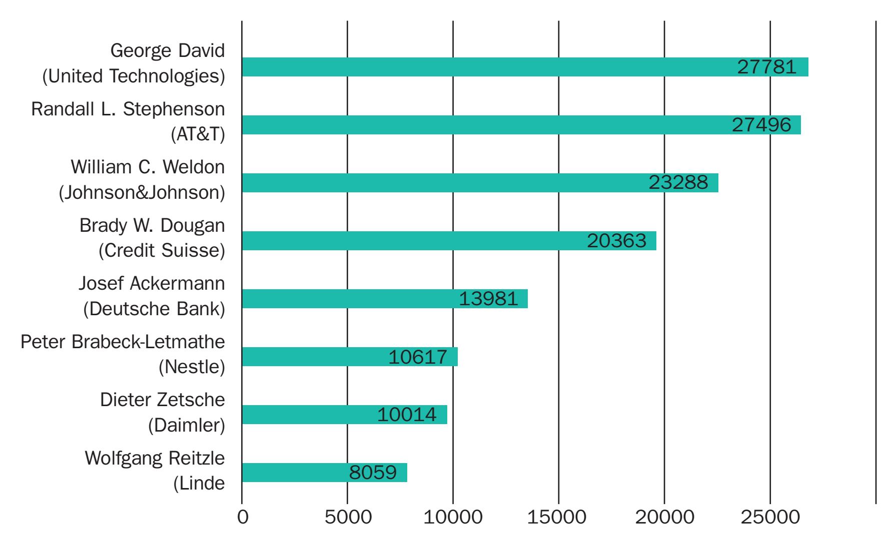
The Directors' Pay Abroad

The question whether directors' pay is appropriate, is primarily based on company performance. However, it is also important, to take a look at directors' pay in other countries with well established capital markets. This year, DSW therefore also surveyed management remuneration in France, Switzerland, and the US by examining the cash remuneration of CEOs in each countries main stock index: the Dow Jones in the US, the SMI in Switzerland, and the CAC40 in France. French companies generally do not reveal the values of the options they grant, thus we focused on the fixed salary as well as on the variable bonus. If CEOs were active only during a fraction of the year, we calculated the yearly equivalent.

From an international perspective, German managers have no reason to complain: the average cash remuneration amounted to 3.825m EUR in 2007 whereas the average French manager received 2.3m EUR. The average Swiss manager received 2.99m EUR and 3.03m EUR on average went to the US managers.

However, when stock options are taken into account, the pictures drastically change: in Switzerland, an additional 50% of remuneration in the form of stock options needed to be added and with that the average Swiss executives' remuneration rose to 6m EUR. At the very top is Brady Dougan, former CEO of Credit Suisse. During his 8 months with Credit Suisse in 2007, he received 22.3m CHF; which amounts to

Total remuneration of selected CEOs for 2007 in '000 EUR



a 33.5m CHF, or 20.3m EUR, yearly equivalent. Only 20% Dougan's remuneration came from his fixed salary and performance based bonus (10% each). The remaining 80% resulted from the value of stock options allocated to him. And it has to be noted that, due to write downs on asset backed securities as a result of the subprime crisis, the value of these stock options was strongly reduced subsequently.

In the US, there is an even greater focus on share-based remuneration. Many companies do not pay a performance based bonus on top of their fixed salary but focus on share-based compensation. United Technologies CEO George David, for instance, received a total remuneration of 38.07m USD, equivalent to 27.8m EUR (based on last year's average exchange rate). Second came AT&T CEO Randall L. Stephenson with 37.68m USD in remuneration for 2007. The average US-CEO took home 15.68m USD in 2007 (including pension benefits), with that making a lot more than their German counterparts.

The US also lies ahead of Germany in terms of transparency which is not at least due to a greater involvement of shareholders in directors' pay issues. The general meeting has an advisory vote on the pay structure. This vote is not binding but it is a way for shareholders to voice their opinion if they are unhappy with the structure of their directors' pay

We believe that such an advisory vote would be a good addition to the German system. Other European countries, such as the UK and the Netherlands, have already implemented such a system, and Switzerland plans to follow.

New President for DSW

On 10th of October 2008, Dr. Eckart John von Freyend was elected as new president of DSW. He succeeded Roland Oetker, who leaves DSW to devote his time to new entrepreneurial challenges. Due to his extraordinary merits and engagement for the German equity culture and for DSW, the presidency has appointed Roland Oetker who led DSW for 10 years as honorary president of DSW.

Between 1990 and 1995, Dr. John von Freyend held the position of a head of the department in the Federal Ministry of Finance (manager of federal financial interests and the privatisation agency). Afterwards he led IVG Immobilien AG as CEO until 2006. Dr. John von Freyend is a member of DSW's presidency since 2005.

DSW's Sixth International Investors' Conference 2008

Conference Schedule

Date: 2 of December, 2008

Place: Kurhaus Wiesbaden
Kurhausplatz 1
65183 Wiesbaden

9.00 *Registration*

9.15 **Welcome address**
Dr. Eckart John von Freyend, DSW President

9.30 **'US-class actions as an important shareholder instrument?'**
Keynote speakers:
– Deborah Sturman, Sturman LLC, USA
– Joe Rice, Motley Rice LLC, USA

10.15 **'The European class action – dream and reality'**
– Prof. Dr. Burkhard Hess, University of Heidelberg, Germany

10.40 **'The Dutch system – a good example for Europe?'**
– Dr. Paul Coenen, VEB, Netherlands

11.00 **Coffee break**

11.30 **Directors pay – do we need a shareholder vote?'**
– Carola van Lamoen, Robeco, Netherlands
– Stephen Brown, TIAA-CREF, USA
– Camiel Selker, Towers Perrin, Netherlands
– Petra Nix, Kirchhoff Consult, Germany
Moderation:
– Arthur Crozier, Lake Isle/Innisfree, USA

12.30 **Lunch buffet**

2.00 *Opening speech by*
– Max Dietrich Kley, former Chairman/CEO BASF
'What is the right Corporate Governance regime? – the company view'

2.30 *Followed by panel:*
'What is the right Corporate Governance regime? – the investors view'
– Jean Nicolas Caprasse, ISS/RMG, Belgium
– Christian Strenger, DWS, Germany
– Tom Powdrill, PIRC, UK
– Anne Simpson, ICGN, UK
– David Diamond, Allianz Global Investors, France
Moderation:
– Hans-Ulrich Wilsing, Linklaters, Germany

3.30 **Coffee break**

4.00 **'Compliance at Siemens – a change management process'**
– Dr. Andreas Pohlmann, Chief Compliance Officer, Siemens AG

4.30 **'New investors – new demands?'**
Keynote Speaker:
– Werner Brandt, CFO SAP AG
Followed by panel:
– Guy Wyser-Pratte, Wyser-Pratte & Co Inc, USA
– Vladimir Yakushev, S-Group Management, Russia
– Dr. Kim Cartwright, Mn Services, Netherlands
– Deborah Gilshan, Railpen Investments, UK
– Dr. Hans Hirt, Hermes, UK
Moderation:
– Dr. Herbert Müller, Ernst & Young AG, Germany

5.30 **'Cross border voting – hurdles in a unified Europe'**
– Oliver Linde, Georgeson, UK

6.00 **Closing remarks**
Jella Benner-Heinacher, DSW
followed by
Reception and Dinner