

# ANNUAL REPORT 2004

STICHTING  
CORPORATE  
GOVERNANCE  
ONDERZOEK VOOR  
PENSIOENFONDSEN

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## **1 Foreword**

At the same time as most Dutch listed companies (hereafter to be referred to as “Listed Companies”) are explaining their annual reports for the financial year 2004 and rendering account for their management in their annual general meetings of shareholders (hereafter to be referred to as “AGM”), we are presenting the SCGOP annual report for 2004.

In 2004, initial experience was gained with the Dutch Corporate Governance Code (hereafter to be referred to as the “Code”), as it was set out by the Tabaksblat Committee in December 2003. Many SCGOP members assumed their fiduciary responsibilities and formulated Corporate Governance policy, including policy with regard to the exercise of voting rights on shares. With some exceptions, Listed Companies made appropriate reference to the Code and its implications during the AGMs in 2004. The hour of truth is 2005, however, and SCGOP and its members will be carefully assessing the application of the Code by the Listed Companies.

The past year was also a year of self-examination for SCGOP. The previous annual report considered the intended further professionalization and expansion of SCGOP. A working party has drafted a long-range plan (hereafter to be referred to as the LRP) and a consultation paper, and all SCGOP members and a number of prospective new members were able to respond to these plans within the framework of a consultation round in early 2005. The plans are expected to come into effect in the coming year.

We said farewell to our secretary, Jean Frijns, in the Board Meeting of 3 March 2005. He had held this position since SCGOP was founded in 1998 and SCGOP has gratefully benefited from his tremendous expertise and commitment. His appointment as chairman of the Monitoring Committee Corporate Governance Code has given this committee an excellent point of departure for supervising compliance with the Code and providing advice on amending it where necessary.

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If ambitions for 2004 were high, they are even more challenging for 2005, as is made clear by the details worked out in the Activity Plan 2005 (which can be found at [www.scgop.nl](http://www.scgop.nl)). It should be possible to realize these ambitions, however, with the support and assistance of our members and other institutional investors who endorse SCGOP's new mission and policy.

Heerlen, 19 April 2005.

R.M.S.M. Munsters MFE  
(chairman)

## **2 General Information**

With effect from the financial year 2003, the general information on the Stichting Corporate Governance Onderzoek voor Pensioenfondsen [Foundation for Corporate Governance Research for Pension Funds; hereafter to be referred to as “SCGOP” or the “Foundation”] is no longer included in the annual report. This information (hereafter to be referred to as the “General Information”) is available on the SCGOP website<sup>1</sup>. The General Information as at year-end 2004 (hereafter to be referred to as the “General Information 2004”) is an integral part of this Annual Report for 2004.

## **3 Spearheads 2004**

The definitive Dutch Corporate Governance Code (hereafter to be referred to as the “Code”)<sup>2</sup> appeared on 9 December 2003. The goal of the Tabaksblat Committee was that Dutch listed companies (hereafter to be referred to as “Listed Companies”) would state in concrete terms in their annual reports for 2003 how their governance was organized, the extent to which they thought to implement the Code and where they foresaw problems. SCGOP shared the assumption of the Tabaksblat Committee that management boards and supervisory boards would submit these reports for the financial year 2003 for discussion at the annual general meeting of shareholders (hereafter to be referred to as the “AGM”) in 2004, even if there was no obligation to do so as yet; such an obligation does exist for the financial year 2004, because the Code has been embedded in law in the interim.<sup>3</sup>

When the Foundation published its recommendations on executive remuneration<sup>4</sup> in March 2003, a large number of Listed Companies had already set out their policies with

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<sup>1</sup> The General Information 2004 is on the SCGOP website ([www.scgop.nl](http://www.scgop.nl)).

<sup>2</sup> The Dutch Corporate Governance Code (frequently referred to as the “Tabaksblat Code”, or simply the “Code” for short) as presented by the Corporate Governance Committee chaired by Mr M. Tabaksblat (hereafter to be referred to as the “Tabaksblat Committee”). Mr P.P. de Koning, the former chairman of SCGOP, was a member of the Tabaksblat Committee. More information will be found in Section 8 of the Annual Report 2003.

<sup>3</sup> A previous amendment to the law led to the introduction of article 391 paragraph 4 of book 2 of the Netherlands Civil Code. The Code, as published in Staatscourant [Netherlands Government Gazette] 250 of 23 December 2004, is designated by Decree of 23 December 2004 as the code of conduct referred to in article 391 paragraph 4 of book 2 of the Netherlands Civil Code (Staatsblad [Bulletin of Acts and Decrees], year 2004, 747).

<sup>4</sup> The “Aanbevelingen Bestuurdersbeloning” [Recommendations on Executive Remuneration] will be found on the SCGOP website ([http://www.scgop.nl/downloads/SCGOP%20Aanbevelingen%20bestuurdersbeloning%20\(def\).pdf](http://www.scgop.nl/downloads/SCGOP%20Aanbevelingen%20bestuurdersbeloning%20(def).pdf)).

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regard to executive remuneration. Corporate management<sup>5</sup> stated at a number of the AGMs attended by SCGOP members that they would not start taking the Foundation's recommendations into account until 2004.

The spearheads formulated by SCGOP for 2004 were therefore the following:

- the implementation of the Code by the Listed Companies;
- the recommendations with regard to executive remuneration.

In the year under review, SCGOP did not send its spearheads by letter to the Listed Companies in advance of the AGMs with a request that they respond to the spearheads formulated, although this had been done in previous years. Consideration was emphatically requested for these spearheads, however, in the dialogues between members and Listed Companies and during the AGMs.

The following are a number of findings in response to the AGMs at which the 2004 spearheads were brought up for discussion:

- many Listed Companies had taken the necessary steps to comply (start complying) with the Code and had rendered account in this respect in their annual reports<sup>6</sup>;
- a number of Listed Companies had set up remuneration committees with the task of (re)formulating policy with regard to executive remuneration.

### **4 Activities 2004**

SCGOP prepared a long-range plan in 2004<sup>7</sup> in addition to developing many other activities, most of which were related to the Code established at the end of 2003.

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<sup>5</sup> The (chairman of the) executive board and/or supervisory board.

<sup>6</sup> A first monitoring study of 80 Listed Companies carried out by the Netherlands Institute for Corporate Governance (NICG) in October 2004 shows that the Listed Companies have started work energetically on applying the Code. It can also be concluded on the basis of the annual reports for 2003, however, that many principles and best practice provisions have not yet been named and/or are only being complied with in part and/or explained. The study can be ordered on the website of NICG ([www.nicg.nl](http://www.nicg.nl)).

<sup>7</sup> Dealt with extensively in Section 6 below.

#### **4.1 Corporate Governance Manual 2004**

Partly in response to the Code, an updated version of the Corporate Governance Manual compiled by SCGOP in 2001 appeared at the start of 2004.<sup>8</sup> The manual sets out the basic principles of corporate governance and explains the involvement of pension funds in the corporate governance discussion.

In addition, consideration is given to the relationship between corporate governance and financial performance, pension fund governance and socially sustainable investment. The Code imposes obligations on pension funds and other institutional investors with regard to their role as shareholders in Listed Companies.

#### **4.2 Symposium**

Two SCGOP symposia were organized in 2004. The comprehensive theme of the symposium on 13 January 2004 was the Code and the presentation of the above-mentioned Corporate Governance Manual 2004 to the Dutch Minister of Finance. The Minister emphasized the importance of the Code for institutional investors, and the chairman of SCGOP (hereafter to be referred to as the “Chairman”) discussed the Manual. Other speakers at the symposium were Mr Wakkie (Ahold), Mr de Keuleneer (Amonis) and Ms Bier (Allen & Overy).

The symposium on “Corporate Governance in an international perspective” took place on 10 November 2004. The programme was a challenging one with distinguished speakers such as Mr Ross Goobey (chairman International Corporate Governance Network ICGN), Mr van der Veer (Koninklijke Olie/Shell Groep) and Professor Mertens (Erasmus University Rotterdam).<sup>9</sup>

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<sup>8</sup> Dutch and English versions of the Corporate Governance Manual 2004 are available on the SCGOP website ([www.scgop.nl/cmm/paginas/pagina\\_eпа.asp?cpp\\_volgnummer=2](http://www.scgop.nl/cmm/paginas/pagina_eпа.asp?cpp_volgnummer=2)).

<sup>9</sup> See Section 5 below.

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At the close of this latter symposium, Mr Peters (former chairman of the Netherlands Corporate Governance Committee) presented the first copy of the book “De discussie over Corporate Governance in Nederland, 1985-2005” to Mr Frijns, in his capacity as chairman of the Corporate Governance Code Monitoring Committee.<sup>10</sup>

### **4.3 Consultation rounds**

The many written and verbal consultation rounds in which the comments of the Foundation are requested by legislators and other organizations make it clear that SCGOP has earned its place in the field of corporate governance. The following are a number of the consultation papers<sup>11</sup> on which SCGOP has commented and/or contributed to:

- "Recommendation on the role of (independent) non-executive or supervisory directors", EU Consultation;
- "Board responsibilities and improving financial and corporate governance information", EU Consultation;
- “De toekomstige behandeling van beschermingsconstructies bij Nederlandse beursgenoteerde ondernemingen” [future treatment of anti-takeover measures at Dutch Listed Companies], Netherlands Ministry of Finance;
- “Ontwerp gedragsrichtlijn accountant in AVA” (draft code of conduct for accountant in AGM);
- “Ontwerp Belgische Corporate Governance Code” [draft Belgian Corporate Governance Code], Belgian Corporate Governance Committee;
- "Fostering an appropriate regime for shareholders' rights", EC consultation;
- “Proposal for a Directive on Statutory Audit”, EU consultation;
- draft revised Corporate Governance principles of the OECD;

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<sup>10</sup> Section 8 contains more information about this new committee.

<sup>11</sup> SCGOP newsletter 3, June 2004 ([http://www.scgop.nl/upload/4/040625\\_nieuwsbrief\\_juni\\_2004\\_def.pdf](http://www.scgop.nl/upload/4/040625_nieuwsbrief_juni_2004_def.pdf)) and SCGOP newsletter 4, October 2004 (<http://www.scgop.nl/upload/4/oktober%202004.doc>) contain a more extensive summary and the consultation papers. A number of these consultation papers are available on the SCGOP website ([www.scgop.nl](http://www.scgop.nl), at *archief* under de category *publicaties*).



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- “Het rapport van de Commissie Modernisering Beleggingsinstellingen (Commissie Winter)” [report of the committee on the modernization of investment institutions, (the Winter Committee)];
- and the bill for revision of the statutory two-tier rules.<sup>12</sup>

### **4.4 SCGOP Newsletter**

In addition to the activities described above, SCGOP provides its members with information by means of the SCGOP newsletter, which appears two or three times a year and examines current themes of importance to the Foundation and its members.<sup>13</sup>

## **5 Research Corporate Governance and market value**

The research into the existence and impact of corporate governance characteristics in relation to the financial performance of Listed Companies was completed in 2004. This study was conducted by Prof. Dr. G.M.H. Mertens (Erasmus University Rotterdam) et al.<sup>14</sup> The research process was intensively monitored by a brainstorming group from SCGOP.

## **6 Further professionalization and expansion**

In 2004 the Board gave much thought to the future of SCGOP. The Board's strategic plans for the future will result in the intended further professionalization and expansion<sup>15</sup> of SCGOP.

### **6.1 Professionalization**

Mr J.T. van Niekerk (formerly general manager of Pensioenfonds Unilever “Progress”) started work as Director of SCGOP (hereafter to be referred to as the “Director”) in 2004, for 2.5 days per week. He is in charge of the secretariat of SCGOP. Further

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<sup>12</sup> This bill finally came into effect on 1 October 2004.

<sup>13</sup> The third issue of the SCGOP newsletter appeared in June 2004 and the fourth issue in October 2004. All the SCGOP newsletters are available on the SCGOP website ([www.scgop.nl](http://www.scgop.nl)).

<sup>14</sup> Section 5.3 of the General Information 2004 contains ample information on this study and its most important conclusions.

<sup>15</sup> Expansion is held to mean the extension of membership to other institutional investors, such as insurers, asset managers and investment funds.

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professionalization will be achieved by strengthening the SCGOP secretariat and the recruitment of one or more qualified policy officials.<sup>16</sup> In addition to the desirability of expanding SCGOP, the expansion will enable the Foundation to make more resources available for further professionalization.

While ad hoc committees used to be set up for certain matters, SCGOP now has five permanent committees. The committees are the Legal committee, Audit committee, Research and Subjects for the Symposium committee and the Public Relations (PR) committee. The Organization Symposium working party assists the Research and Subjects for the Symposium committee in organizing the symposium. These committees monitor developments occurring in their relevant fields of competence and draw up memoranda for SCGOP and/or its members where necessary. The Director, in his capacity as such, is a member of each of these committees.

### **6.2 Expansion**

Institutional investors other than pension funds, e.g. asset managers, insurers and investment funds, also develop Corporate Governance policy and go public with this. These institutional investors state with increasing frequency that they are interested in the activities of SCGOP, which has led the Foundation to consider expansion of its tasks and membership. Since expansion of SCGOP cannot be considered separately from the plans for the future, a long-range plan working party (hereafter referred to as the “Working Party”) was formed in the middle of 2004.<sup>17</sup> The Working Party is preparing the review of a new professional organization.

### **6.3 Long-range plan**

The Working Party drafted a long-range plan (hereafter to be referred to as the “LRP”) at the end of 2004 and submitted this to the board. The outlines of the LRP were presented during the 2004 members’ meeting. On the basis of this LRP, the Working Party prepared a consultation paper<sup>18</sup> for consultations to be held with all SCGOP members and observers, as well as a number of prospective new members<sup>19</sup>. This consultation

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<sup>16</sup> Depending on the job description, prospective candidates would, in principle, be graduates with experience in the field of Corporate Governance and/or investment.

<sup>17</sup> The members of this working party are Mr Munsters, Mr Marius, Mr Uijen, Mr van Niekerk and Mr Fehrenbach.

<sup>18</sup> The consultation paper can be found on the SCGOP website ([www.scgop.nl](http://www.scgop.nl)).

<sup>19</sup> Mainly other institutional investors which are not pension funds.

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round commenced in early 2005 and is expected to have been completed by the middle of 2005.

The LRP foresees the following characteristics for a future SCGOP ([NEW]):

[NEW]<sup>20</sup> will have to create a distinct profile for itself as the most important Dutch platform in the field of Corporate Governance for institutional investors. The mission and policy of [NEW] will focus on facilitating institutional investors where possible, so as to be able to make a contribution to the role that institutional investors should play on the basis of the Code. Although the Code is of recent date, the maintenance and further development of good Corporate Governance standards will continue to demand the explicit attention of [NEW], as will the encouragement of the acceptance of and compliance with these standards. Part of this policy is finding a broader basis for [NEW]. As a consequence, all institutional investors active in the Netherlands who support the mission and the policy of [NEW], are welcome to become members of [NEW], thereby creating a broader basis for the mission and policy of [NEW] and encouraging their acceptance.

Furthermore, the mission and policy of [NEW] are focused on stimulating compliance with Corporate Governance standards by Listed Companies. This also requires consultation between [NEW] and the Listed Companies with regard to their Corporate Governance policy (alone or with other members) and it also requires consultation with other institutional investors. In addition, [NEW] wishes to contribute to making the entire process of voting at AGMs as informative and efficient as possible, and to shaping a process that can take place without impediments. Corporate Governance research is beneficial in this respect, but the emphasis will increasingly be placed on the maintenance and further development of good Corporate Governance standards and the acceptance of and compliance with good Corporate Governance standards.

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<sup>20</sup> [NEW] is used to refer to the future SCGOP as it will be structured and organized subsequent to the expansion and professionalization aspired to, partly because a change of name for SCGOP would appear desirable.

## **7 Monitoring Committee Corporate Governance Code**

On 6 December 2004 the Dutch Minister of Finance accepted the recommendation of the Tabaksblat Committee (also on behalf the Minister of Justice and the State Secretary for Economic Affairs), that a new committee should be formed with regard to Corporate Governance, viz. the Monitoring Committee Corporate Governance Code (hereafter to be referred to as the “Monitoring Committee”). It is the task of the Monitoring Committee to promote the use and topicality of the Code and it will have to monitor the extent to which the Code is implemented and to identify any indistinctness in it. The Monitoring Committee does not have the power to amend the Code. If the committee reaches the conclusion, with the passage of time, that the Code is no longer keeping pace with national and international developments in the field of corporate governance, an ad hoc committee, separate from the Monitoring Committee, can be formed at the appropriate time to carry out an evaluation of the Code as a whole and to make proposals (if necessary) for amendment of the Code, taking previous conclusions from the monitoring reports into account, as well as social and international developments. An amended Code can then be designated again by the Cabinet, on the basis of a decision to amend an Order in Council.

Mr Frijns, the secretary of SCGOP, was appointed chairman of the Monitoring Committee in a personal capacity at the end of 2004.

## **8 Website**

The internet address of the SCGOP website is [www.scgop.nl](http://www.scgop.nl). The content of the website includes general information about SCGOP, policy information, planned policy, the annual report and relevant documents.

## **9 Board Meetings**

The Board met eight (8) times in 2004.

The subjects considered included the development of the corporate governance of Listed Companies, the long-term policy of SCGOP, stances to be taken with regard to Dutch and European legislation and regulations in relation to corporate governance, the organization and working methods of SCGOP, the annual accounts and annual report of SCGOP, the autumn symposium, and the SCGOP Activity Plan 2005.

## **10 Members' Meetings**

The members met two (2) times in 2004. The 2003 Members' Meeting was held on 13 January 2004, due to the difficulties of arranging a date.<sup>21</sup>

The annual Members' Meeting for the year 2004 was held on 10 November 2004, when the items on the agenda included adoption of the minutes of the Members' Meeting of 13 January 2004 and a short discussion of the Annual Report 2003 and Annual Accounts 2003. The Chairman briefly reviewed developments in 2004 and presented the main points from the LRP. The Director revealed the contours of the SCGOP Activity Plan 2005 during the Members' Meeting, in addition to the budget and the permanent committees formed within SCGOP. The members were promised that the Activity Plan 2005 and a consultation paper to be prepared in response to the LRP would be forwarded to them before the end of 2004/start of 2005.<sup>22</sup> Finally, the members were asked whether they were interested in further discussions on the theme of US Securities Class Actions and it was decided to dedicate an SCGOP meeting to this theme early in 2005 in view of the considerable interest.

## **11 Observers**

Representatives of the Vereniging van Bedrijfstakpensioenfondsen [VB; the Dutch Association of Industry-wide Pension Funds], the Verbond van Verzekeraars [Netherlands Association of Insurers], the Dutch Fund Association and the Unie van Beroepspensioenfondsen [the Union of Occupational Pension Funds], frequently attended the Board Meetings.

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<sup>21</sup> This Members' Meeting is described at length in the SCGOP Annual Report for 2003.

<sup>22</sup> These documents were discussed at length above.

The Unie van Beroepspensioenfondsen ended its observership in 2004. The Dutch Fund Association and the Verbond van Verzekeraars have expressed a wish to continue their observerships in 2005. These observerships will then be evaluated, also within the context of the consultations on the intended professionalization and expansion of SCGOP.

## **12 Evaluation objectives 2004**

The Activity Plan 2004<sup>23</sup> included two objectives which SCGOP wished to address in 2004. In addition, a great deal of thought was given in 2004 to the future of SCGOP, particularly with regard to further professionalization and expansion.<sup>24</sup>

The objectives were as follows:

- to draw attention to and to assist with the elaboration of the fiduciary responsibility of pension funds and other institutional investors; and
- to enter into a dialogue with Listed Companies.

The first objective can be broken down into the following focal points.<sup>25</sup>

- the formulation of policy for exercising voting rights on shares;
- accountability for the implementation of the voting policy;
- accountability for voting record and voting behaviour.

In 2004 most SCGOP members developed policy with regard to the exercise of voting rights on shares, adopted this policy and had to render account for it. Where possible, relevant knowledge was exchanged within the SCGOP context. Many AGMs of Listed Companies were attended by one or more SCGOP members. In several instances where SCGOP members were unable to attend an AGM themselves, they provided another SCGOP member with a proxy. In addition to going to AGMs in the Netherlands

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<sup>23</sup> The Activity Plan 2004 is available on the SCGOP website, (<http://www.scgop.nl/upload/4/SCGOP%20Aktiviteitenplan%202004.pdf>).

<sup>24</sup> Section 6 deals with this at length.

<sup>25</sup> These focal points are also found in the Code and the "ICGN Statement on Institutional Shareholder Responsibility" (<http://www.icgn.org/documents/InstShareholderResponsibilities.pdf>).

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and voting there, many members used (electronic) proxy voting in the Netherlands and elsewhere. Many shareholders accounted for their voting record and voting behaviour via their websites.

Attending the AGMs further enabled the SCGOP members to enter into a dialogue with the Listed Companies, requesting specific consideration for the spearheads,<sup>26</sup> viz.: (i) the implementation of the Code by Listed Companies and (ii) the recommendations for executive remuneration. The results of the dialogues were generally encouraging for the future.<sup>27</sup> Many Listed Companies have started working energetically with the Code, have taken the initial steps towards accountability in their annual reports and/or have formed remuneration committees with the task of (re)formulating policy with regard to executive remuneration.

Heerlen, 19 April 2005.

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R.M.S.M. Munsters MFE  
(chairman)

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A.J. Akkerman MBA  
(secretary)

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<sup>26</sup> Extensive information on this subject is given in Section 3

<sup>27</sup> Please refer to the websites of the various SCGOP members who report on and render account for these activities there.