# 2012 AGM SEASON EVALUATION REPORT

## 1. Introduction

Eumedion annually makes a substantive and procedural evaluation of the annual general meetings season (AGM season). The main substantive findings for the regular shareholders' meetings held in 2012 are set out below. Besides this, a number of best practice examples relating to the application of the Eumedion spearheads and to other important shareholder areas are included the appendix. The best practices were selected by Eumedion's Investment Committee and can serve as inspiration for other listed companies when drafting their next annual report and annual accounts.
A draft of this evaluation report was discussed in the Eumedion Investment Committee meeting of 29 May 2012.

## 2. Key points

- The alert procedure was initiated eight times (Mediq, KPN, TNT Express, Ahold, Beter Bed, Wereldhave, ASMI and UNIT4) and halted five times, either because the company in question had modified the proposal (TNT Express, Wereldhave) or because prospects had been held out that certain commitments would be given (KPN, Ahold and Beter Bed).
- Out of the 1192 voting items this AGM season, a total of eight were withdrawn before the start of the AGM, four were amended and five rejected. One AGM was postponed in connection with a suspicion of acting in concert on the part of certain shareholders without notification having been given to the supervisory authority and the company. 17 days later, this AGM was reconvened; from a total of eight voting items seven were rejected by the AGM.
- Shareholders did not formally submit any shareholder resolution. TNT Express shareholders JANA and Aimco withdrew their proposals for the appointment of supervisory directors shortly before the publication of the AGM agenda, after it had been announced that TNT Express was putting itself up for sale.
- In its Spearheads Letter 2012 Eumedion had asked the listed companies to provide more clarification on proposals for the (re)appointment of external auditors. This spear head was applied by AEX-listed companies in particular.
- Eumedion also asked in the Spearheads Letter 2012 that the continuity paragraph should receive further consideration, requesting among other things that the report of the management board or supervisory board should include a discussion of the main points in the management letter and that the relevant financial ratios included in the bank covenants should be made public. Companies still suffer quite badly from cold feet with regard to the first point and they usually do

not go much further than a statement that the management letter has been discussed. Where the second point is concerned, it has now become common practice for the financial ratios in the bank covenants to be given in the annual report, supplemented by the realisations at book-year end.

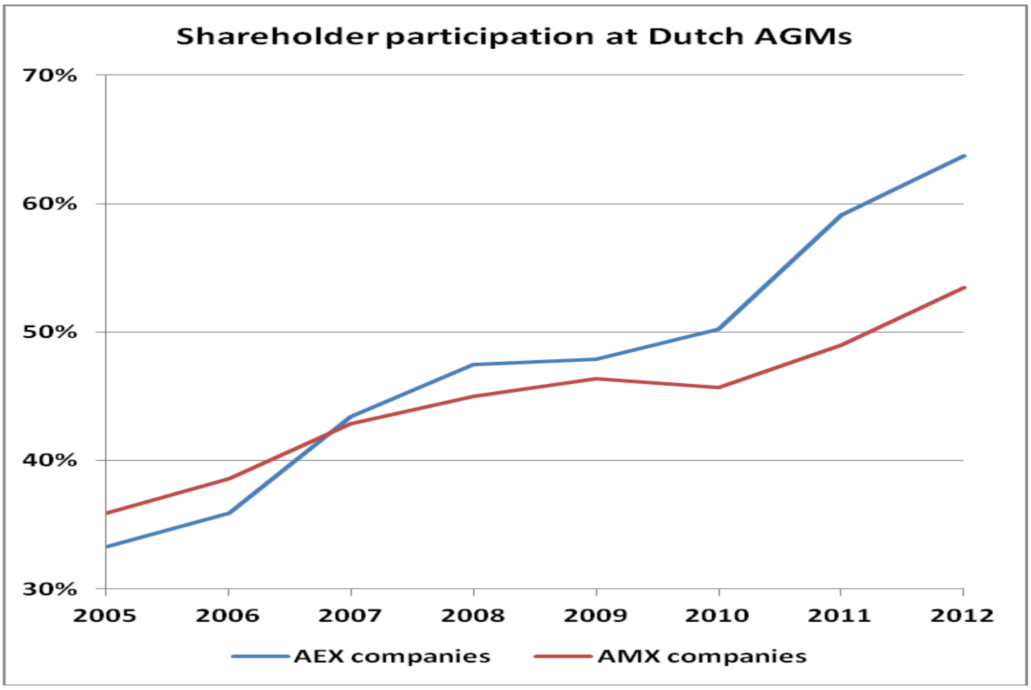
- Decrease in the number of anti-takeover measures, despite public anxiety about the “sell-off” of the Dutch corporate sector.
- Shareholders are becoming more and more critical in their assessments of the appointment and reappointment of supervisory directors. They increasingly urge disclosure of the attendance rates of individual supervisory directors at meetings of the supervisory board and curtailment of the number of supervisory directorships (with growing numbers of shareholders also taking into account the supervisory directorships at non-Dutch legal persons and at large non-listed Dutch companies).
- Remuneration policies at Dutch listed companies are less controversial than in other countries. The quality of remuneration reports continues to be variable and there is, above all, little substantive information on the reasons for the amount of the short-term bonus.
- The overall quality of the 2011 sustainability reporting increased considerably. Companies show more consistency in their sustainable key performance indicators and use more real figures (numbers, percentages) instead of saying that they will improve their performance without a target.

## 3. Explanatory notes

### *a) AGM voting and attendance*

*Number of votes cast at AGMs*

For the eight consecutive year the number of votes casted at the AGMs of the largest Dutch listed companies (‘AEX’) increased: from 59.1% in 2011 to approximately 63.7% in 2012. Compared with 7 years ago the number of votes cast almost doubled (33.3% in 2005). The number of votes casted at the AGMs of the midcap (‘AMX’) companies also increased (see graph below). The increased shareholder participation in the decision-making process at AGMs can presumably be attributed to: i) the increased awareness of shareholder responsibilities (stimulated by e.g. the UK Stewardship Code and the Eumedion best practices for engaged share-ownership), ii) the introduction of the mandatory voting record date system in July 2010, and consequently the abolition of share blocking as a precondition for voting at Dutch AGMs  and iii) the extension of the period between the convocation of the AGM/publication of agenda and the AGM date (42 days since July 2010).




***b) No shareholders' proposals***

While shareholders submitted ten shareholder resolutions in the 2011 AGM season, the counter has remained at 0 this season. Although it is true that in January 2012 TNT Express shareholders JANA and Aimco had proposed a number of candidates for appointment as supervisory directors, these proposals were withdrawn a short time before publication of the AGM agenda, after it had been announced that TNT Express and UPS had entered into discussions on a takeover of TNT Express.

This season, eight proposals have been withdrawn before the start of the AGM (HITT: proposed amendments to the articles of association [including raising the thresholds for the AGM to dismiss members of the management board and supervisory directors] and the authorization to issue shares; TNT Express: proposal to appoint two new supervisory directors; Wereldhave: proposal to change performance criteria for variable remuneration of management board; ING Group: reappointment of a supervisory director; NedSense: appointment of two supervisory directors). Five proposals were amended before the start of the AGM (TNT Express: remuneration policy; Imtech: authorization to acquire own shares; Wereldhave: proposal for performance criteria for variable remuneration of management board 2012 and 2013) or at the AGM (Grontmij and ICT Automatisering: amendments to the executive board's remuneration policy). In the case of one proposal, a promise was made in order to prevent problems with the voting on that proposal (KPN: proposed amendment to the articles of association – proposal to stiffen the conditions for the right to submit shareholder proposals will be revoked at a future AGM). In the case of two other proposals (reappointment of a supervisory director at ING Groep and one at Aegon), more information on the attendance percentages at the meetings of the supervisory board and on the nature of the supervisory directorships was provided in advance of the AGM, to enable shareholders to take these details into account when deciding on their voting behaviour. One AGM (Fairstar Heavy Transport) was suspended shortly after it had been opened, because Fairstar believed that certain shareholders (including Dockwise) had coordinated their voting behaviour without notifying the AFM (the Netherlands Authority for the Financial Markets) accordingly. 17 days later this AGM was reconvened after Dockwise had made a new shareholding notification; from the eight voting items at this AGM seven were voted down. Amongst them were the adoption of the 2011 annual accounts, the amendments to the executive board's remuneration policy and the authorisation of the management board to issue new shares.

***c) Eumedion Spearheads Letter 2012: reasons more often provided for proposed (re)appointments; companies that had appointed an external auditor in perpetuity are abolishing this***

In its Spearheads Letter for 2012 Eumedion had asked companies to provide more extensive reasons for their proposals for (re)appointments than in previous years. Companies that had appointed their external auditors for an indefinite period were asked to reverse this decision and to submit a proposal for (re)appointment once more.

The reappointment of the external auditor was on the agendas of the AGMs of 42 of the 75 largest companies. In precisely half of these cases, serious efforts were made to explain the reasons and this was particularly noticeable at the AEX-listed companies, but also some smaller listed companies provided more information (e.g. best practice Macintosh; see appendix). In 15 cases nothing more was stated in the explanatory notes to this tabled proposal than the name of the audit firm that was being recommended for reappointment.

A number of the companies that had appointed their external auditors for an indefinite period in the past either placed reappointment on this year's agenda (ASML, Macintosh), or announced that they would be doing this in the near future (DSM). Five companies either organized a tender procedure for the audit firm (Delta Lloyd, ICT Automatisering, Fornix BioSciences) or announced their intention of doing so (AkzoNobel, BESI).

A change of audit firm was proposed at three companies (DPA, ICT Automatisering and Ctac).

Only 3 proposals for (re)appointment of the external auditor led to more than 5% votes against in the AGM (BESI (6.4%), Accell Group (8.3%) and Qurius (47.4%)). The large number of 'no votes' at the last company's AGM can probably be linked to the fact that the for reappointment nominated external auditor (BDO Audit & Assurance) is not only the current external auditor, but also the Qurius' largest customer in the sector of professional services. According to many shareholders this can lead to interdependencies which could prejudice the desired independency of the external auditor. Neither in the explanatory notes to this voting item nor in the Supervisory Board's report it was made clear that the Supervisory Board had taken this aspect into account in proposing BDO as the external auditor and whether the Supervisory Board had taken measures to secure the independent position of BDO.

***d) Eumedion Spearheads Letter 2012: publication of bank covenants has become common practice; still cold feet with regard to the discussion of the main points contained in the management letter***

Eumedion asked in its Spearheads Letter 2012 that further consideration be given to the risk paragraph and risk management. In this context, Eumedion called upon the companies to discuss subjects including the most important items set out by the external auditor in the management letter and how these issues were addressed. In addition, companies were asked for the second successive year to provide information on the relevant ratios agreed on in the bank covenants and the realisations for these in the financial year. It is clear that there are still a lot of cold feet where the first point is concerned. Most companies go no further than a simple statement that the management letter has been discussed by the (audit committee of the) supervisory board. Companies sometimes confine themselves to stating that the management letter contains no remarks worth mentioning (VastNed Retail) or that these remarks are not material, not important, or minor (Arcadis, Delta Lloyd, Kendrion, Holland Colours). Companies that made a serious effort to discuss the main items in the management letter are Reed Elsevier, Wavin, Sligro Food Group, Macintosh (recognised as 'best practice'; see appendix), KAS Bank, BESI, TMG, Exact Holding, RoodMicrotec, Crown van Gelder and Ctac, which shows that smaller enterprises are ahead of the larger ones in this respect. There is a positive trend in publishing the relevant ratios agreed in the bank covenants and the realisations in the year under review. Almost all AEX, AMX and AScX companies included these ratios in their 2011 annual accounts or reports (last year this still varied from one-third of the AEX companies to two-thirds of the AMX and AScX companies). Eumedion recognised Aalberts Industries as the best practice in reporting on bank covenants (see appendix). Of the top 50 companies, only Reed Elsevier, Imtech, ASMI and Wereldhave do not publish the relevant ratios agreed in the bank covenants and its realisations; some of them considered this information as "competitive".

***e) Quality of sustainability reporting increased considerably***

The overall quality of the 2011 sustainability reporting increased considerably. Companies show more consistency in their sustainable key performance indicators and use more real figures (numbers, percentages) instead of saying that they will improve their performance without a target. The 73[1] companies of the AEX, AMX and AScX all report on sustainability: either as a separate chapter in their annual report, as an integrated or combined report or they publish a separate sustainability report. They also use their websites as a source for information on sustainability with extra information on community work. The trend is more separate reports with additional or integrated information. Aegon has apart from its annual report 2011 and annual review 2011 a sustainability supplement. Philips publishes its annual report also in Mandarin (Mainland Chinese) to engage with its Chinese employees on sustainability. Heijmans has also three reports: annual, sustainability and innovation.
Integrated reporting is not growing quickly among listed companies. There is a lot of confusion of what is a real integrated report. For the moment we consider the reports of DSM, AkzoNobel, Philips and PostNL as real integrated reports (see best practices in the appendix). Aegon published three reports

[1] We have not included ArcelorMittal and Aperam, as these are Luxembourg based companies.

for 2011 and one could consider their Annual Review 2011 an integrated report according to the proposals of the International Integrated Reporting Council (IIRC). The three reports of Aegon show that with the existing legislation in the United States it is difficult to make a “real” integrated report that also takes the legal requirements of 20-F into account. Of the 23 AEX companies 20 publish their sustainability performance and policy according to the Global Reporting Guidelines. Fugro, TomTom and Randstad Holding do not, although Randstad Holding is stakeholder of the GRI and participates in the IIRC. AMX companies as CSM and Nutreco have a long standing tradition of sustainability reporting but most AMX firms are lagging behind with sustainability reporting with noticeable exceptions as Arcadis, BAM and Heijmans in the construction sector and Delta Lloyd and SNS Reaal in the financial sector. Imtech is improving its sustainability reporting as is AMG and Ordina. Of the AScX companies Beter Bed and Qurius have showed most progress in 2011. Both have published for the first time a sustainability report (Qurius as part of the annual report, Beter Bed a separate report) and both succeed in giving a good picture of the efforts that are being made to become a more sustainable company in performance, strategy and policy. Beter Bed for example is open about its efforts to appoint more women in senior positions.

Because CSR or sustainability reporting is still a developing craft, some companies give revisions on data of previous years. We encourage that practice as its shows that data gathering and internal control is improving.

Assurance by a third party is still mainly a AEX company’s prerogative and then only for the companies that have been reporting on sustainability for around ten years or more. Most assurance is done by the big four accountancy firms. Royal Dutch Shell uses Lloyd’s Register Quality Assurance.

The Supervisory Board and the non-executives are still the missing link in almost all sustainability reporting. Reporting on their involvement or interest through their section in the annual report, as already required by the Dutch corporate governance code, would be an improvement on sustainability governance.

***f) Appointments and reappointments of supervisory directors are assessed more critically***

Shareholders are taking an increasingly critical look at the proposals for the (re)appointment of supervisory directors, important criteria in this process being: i) the number of supervisory directorships held by the person in question; ii) the number of times that the person in question did not attend a meeting of the supervisory board; and iii) the report on the self-assessment of the supervisory board. When considering the number of supervisory directorships, shareholders are increasingly often not only paying attention to the number of supervisory directorships that the person in question holds at *Dutch listed companies* (scope of the Dutch Corporate Governance Code), but the number of supervisory directorships at other large Dutch legal persons is also taken into account (scope of the upcoming Act on Management and Supervision), in addition to those at non-Dutch listed companies. A growing number of shareholders observe a guideline of five supervisory directorships at large companies, whether these are listed on a stock exchange or not and whether these have their statutory seat in the Netherlands or elsewhere. This maximum is not applied mechanically, however, since shareholders also look at the availability and the dedication of the relevant supervisory director in practice. An important criterion in this regard is the participation of the person in question in the meetings of the supervisory board and supervisory board committees. The remark often made in the reports of supervisory boards that no supervisory director was “frequently” absent (which is sufficient according to the Dutch Corporate Governance Code)[2] is no longer adequate for a growing number of shareholders. Shareholders want transparency on the attendance rate of each supervisory director at supervisory board meetings in the year under review. Shareholders at companies including TNT Express, PostNL, AkzoNobel, ING Groep and Aegon asked before or during the AGM for more and detailed information about the supervisory directors to be (re)appointed (the nature of the other supervisory directorships and a summary of attendance at the meetings of the supervisory board). In advance of the AGM, ING Groep and Aegon provided additional information on their websites about those supervisory directors whose reappointment had been placed on the agenda and who hold what is a very large number of supervisory directorships in the eyes of the shareholders. These companies provided detailed information on the presence of the people in question at supervisory board and committee meetings. Despite this, the nomination for reappointment of the ING supervisory director in question was withdrawn shortly before ING’s AGM, as – according to ING – a number of major shareholders announced to vote against this resolution. The supervisory director in question felt “uncomfortable” with an imminent high number of ‘no-votes’. The Aegon supervisory director in question was, however, reappointed by the Aegon AGM with a majority of 89.33% of the votes cast (86.2% if major – and friendly – shareholder Vereniging Aegon is excluded). Two nominees for the supervisory board of NedSense withdrew their candidacy 11 days before the AGM, as a result of the “difference of opinion” with NedSense’s largest shareholder about the future composition of the supervisory board.

The request for more and detailed information about supervisory directors may also be connected with the generally still sparse reporting on the self-assessment by the supervisory board. More and more companies are actually providing information about the procedure followed (by means including questionnaires, external evaluators, the so-called ‘confessional procedure’ with the supervisory board chairman, etc.), but only a minority of companies[3] disclose the most significant findings and conclusions and what follow-up action was taken in response to the assessment. Another reason for the increasingly critical attitude taken by shareholders is concern about the quality of the succession planning of some supervisory boards. The flames of this concern are fed by proposals for the reappointment of supervisory directors for a period of four years after the maximum 12-year period of office permitted by the Dutch Corporate Governance Code. This was the case at Vopak, ASMI (which even amended its articles of association for this purpose) and Hydratec this year and they were preceded in previous years by Batenburg Techniek, Royal Ten Cate and Eurocommercial Properties. KPN suggested lowering the minimum number of management board members prescribed in the

[2] Most Dutch companies adhere strictly to code provision III.1.5: “The report of the supervisory board shall state which supervisory board members have been frequently absent from meetings of the supervisory board.” Frequently no further information is given than that no supervisory director whatsoever was frequently absent, or a statement of the average ‘attendance percentage’ per meeting.

[3] Only ING Groep, TomTom, Aegon, Randstad Holding, Delta Lloyd, Heijmans, SNS Reaal, BinckBank, Ordina, VastNed Retail, KAS Bank, TKH Group, Van Lanschot, NedSense and RoodMicrotec report the most important conclusions from the assessment.

articles of association from three to two on account of the unexpected resignation of the CFO and another member of the management board.

### g) Relatively many votes against the authorisation of the management board to issue new shares and to restrict or exclude pre-emptive rights

The most controversial voting items are still: i) the authorisation of the management board to issue new shares; and ii) the restriction or exclusion of the pre-emptive rights of existing shareholders when new shares are being issued. Dutch market practice relating to the authorisation of the management board to issue new shares to which pre-emptive rights do not apply (20% of the subscribed capital) is too high in the opinion of some shareholders. The figure that applies to the large caps is 5% in the UK and 10% for the small caps. The first signs of limiting the authorisation to issue new shares to 10%, however, emerged at Dutch companies this year (e.g. BESI, Kendrion, Crown van Gelder, Beter Bed, Aalberts, Stern, Batenburg, DPA, Simac, Witte Molen, ASML and Heineken). Nevertheless, the AGM of Witte Molen rejected with an overwhelming majority the proposals to authorise the management board to issue new shares and to exclude the pre-emption rights on these shares.
Shareholders are also still greatly concerned about proposals to authorise the management board to issue anti-takeover preference shares (to a maximum of 100% of the issued capital in some instances). The number of companies that ask the AGM for such authorisation is decreasing, however. The companies that did so this year were TomTom, Unit4, TKH Group, Arcadis and Accell; one less than last year (Fugro).

### h) Decrease in the number of anti-takeover measures

The number of anti-takeover measures is gradually decreasing. NSI for example, proposed to its AGM that the priority shares be withdrawn and Grontmij proposed discontinuing the issue of depositary receipts for shares and the accompanying dissolution of its Trust Office. For the last time Grontmij's Trust Office exercised its decisive power at the 2012 Grontmij AGM: as a result of the 'in favour votes' of the Trust Office, the AGM granted discharge to the former members of the management board Thijsen and Zuijdam and to the former supervisory directors Meysman, Eisma and Lundquist. Grontmij's Trust Office did not motivate its voting behaviour, although some holders of depositary receipts asked for it. TNT Express lowered the AGM thresholds for the dismissal of members of the management board and supervisory directors (these have been made 'Tabaksblat proof'). For the first time in its history, Fugro did not ask its AGM to authorise the management board to issue anti-takeover preference shares (although its Anti-Takeover Foundation was granted a call option on these shares in 2012). The Mediq AGM rejected the management board's proposal to voluntarily maintain the full structure regime. The AGM opted for the mitigated structure regime, so that the AGM will be able to influence the composition of the management board in future. The three Dutch companies whose shares became listed on the NYSE Euronext Amsterdam exchange during this AGM season (Ziggo, Core Laboratories and D.E Master Blenders 1753) do not have any statutory anti-takeover provisions.

### i) Remuneration policy less controversial in the Netherlands than in other countries; reporting on implementation of remuneration policy remains weak

While in other countries feelings on the subject of remuneration policy sometimes ran high between shareholders and executives at financial institutions in particular, the discussions on this issue were generally less heated in the Netherlands. A total of 17 companies had put a change in the executive board's remuneration policy on the agenda this year. The proposals were amended at two companies (TNT Express and Wereldhave) prior to the AGM and at two companies (Grontmij and ICT Automatisering) during the AGM, after some shareholders of these companies had made it known that they were concerned about some elements of the proposals. Only the proposals to change the remuneration policy at BinckBank and Delta Lloyd encountered a large number of votes against: 37.05% at the BinckBank AGM and 30.99% (excluding the votes of friendly major shareholders Aviva and Fonds NutsOhra) at the Delta Lloyd AGM. This was mainly related to the proposed integration of the short-term and long-term bonus systems and the accompanying reduction of the performance period to one year. A system of this kind was decided on in order to comply with the Decree on Restrained Remuneration Policies *('Besluit beheerst beloningsbeleid'*), in which the remuneration provisions in 'CRD III Directive' are implemented. The other Dutch financial institutions had amended their remuneration policies in more or less the same manner in recent years and they had also encountered relatively many votes against from their shareholders.

Shareholders at a number of companies (Ahold, Beter Bed Holding, UNIT4) made remarks concerning whether certain discretionary decisions made by the supervisory board with regard to remuneration policy should not have been submitted to the AGM in advance. In this context there is a lack of clarity at listed companies and among shareholders on the following questions: i) whether stock option and share schemes must be submitted separately to the AGM for approval, or whether these schemes can be carried along with the adoption of (an amendment to) the remuneration policy and ii) when is it possible to speak in terms of 'substantial changes' to the remuneration policy and/or stock option and share schemes that must be submitted to the AGM again in their new forms.

It should also be noted that the quality of remuneration reports continues to vary. The "Anglo Saxon" companies Royal Dutch Shell and Unilever in particular do not only provide good information on the remuneration structure (most 'Dutch' companies do the same), but on the results of the remuneration policy as well. Many 'Dutch' companies, for instance, provide no clarification on the amount of the short-term bonus paid (by means of the scores on each performance criterion for example) and sometimes refuse to provide information on the severance packages agreed on with executives when these differ from the relevant provision in the Dutch Corporate Governance Code. Holding an annual (non-binding) vote on the remuneration report, as is done in the United Kingdom, could possibly encourage companies to prepare more transparent remuneration reports.

The remuneration of the supervisory board was on the agenda at 18 companies. The proposal for changes to remuneration encountered relatively high resistance at one company (TNT Express; 30.15% votes against). These shareholders mainly objected to the proposal to pay supervisory directors for each meeting attended when the situation at the company is such that extra supervisory board meetings have to be held (i.e. more than the number originally stipulated). A significant number of shareholders believed this was not appropriate to the role of a supervisory board.

### *j) Four companies introduced the one-tier board structure*

The number of Dutch companies introducing the one-tier board structure has not assumed large proportions as yet. This may be connected to the fact that the Act on Management and Supervision, which makes it easier for companies to introduce the one-tier board structure, has not yet come into effect. Heineken Holding, TMC, Kardan and D.E Master Blenders 1753 have joined the ranks of Unilever NV, Ageas NV, Cryo-Save Group and New Sources Energy: all companies that have already introduced the one-tier board structure. Heineken Holding, Kardan and TMC had different reasons for abandoning the two-tier model: Heineken Holding on account of the fact that members of the (former) board of directors were designated ‘executives’. Executives will only be permitted to hold two supervisory functions when the Act on Management and Supervision comes into effect. Subsequent to the introduction of the one-tier board structure, four of the five members of the management board will be designated ‘non-executives’, to which a legal ceiling of five supervisory functions will soon apply. Kardan’s most important reason was the double listing, i.e. in Tel Aviv and Amsterdam. Some components of Israeli securities legislation currently force supervisory directors at Kardan to become involved with management duties to such an extent that this is more in keeping with the role of non-executive directors. An important reason for TMC was the opportunity of allowing the founder, who was also the chair of the management board, to retain a powerful position (as Chairman). The introduction of the one-tier board structure at this company means, however, that only a minority of the board consists of independent persons and that the company intends to grant profit-dependent remuneration to the Chairman and the Vice Chairman of the board. D.E Master Blenders 1753 was introduced as a Dutch listed company on 12 June 2012 as a result of a divestment of US company Sara Lee. The coffee and tea company was, after its former parent, introduced with a one-tier board structure.

### *k) Perceived influence of proxy advisors*

Executives and policymakers are increasingly concerned that institutional investors follow the voting recommendations from proxy advisory firms blindly, without verifying their accuracy. The European Commission is considering legislative measures and the European Securities and Markets Authority (ESMA) recently issued a discussion paper in which a range of policy options are discussed. In the Netherlands, the Corporate Governance Code Monitoring Committee announced to carry out a new survey in 2012 into the role of proxy advisors and how they influence voting at Dutch AGMs. The 2011 Monitoring Committee survey among investors revealed that the influence of proxy advisory services was “not as great as the overall picture suggests”. The tables presented below give an impression of the influence of the two largest proxy advisory firms, ISS and Glass Lewis, on the voting outcomes of the 2012 Dutch AGMs. The first table presents an overview of the resolutions that met more than 20% resistance from shareholders (in terms of votes cast), together with the ‘standard’ ISS and Glass Lewis proxy advice (voting advice based upon the internal policy guidelines of the proxy advisor in contrast to customised voting advice: advice based upon the client's voting policy; many institutional investors subscribe to these customised voting advices).

*Table 1: most controversial voting items at 2012 AGMs*

| **AGM** | **Subject** | **Standard ISS advice** | **Standard Glass Lewis advice** | **Result** |
|---|---|---|---|---|
| Witte Molen | Authority to issue new shares | No advice | No advice | Resolution voted down (99.998% voted against) |
| Witte Molen | Disapplication of pre-emption rights | No advice | No advice | Resolution voted down (99.998% voted against) |
| Witte Molen | Authority to repurchase shares | No advice | No advice | Resolution voted down (99.998% voted against) |
| Mediq | Voluntary continuation of the existing, full two-tier board system ('structure regime') | Against | Against | Resolution voted down (68.8% against) |
| Groothandelsgebouw | Authority to issue new shares and disapplication of pre-emption rights | No advice | No advice | Resolution voted down (51% against) |
| Qurius | Appointment of BDO as auditor of the company | For | No advice | Adopted, but 47.44% of votes cast against |
| UNIT4 | Authority to issue new shares | Against | Against | Adopted, but 43.8% of votes cast against |
| BinckBank | Amendment remuneration policy | Against | Against | Adopted, but 37.05% of votes cast against |
| Stern Groep | Authority to repurchase shares | For | No advice | Adopted, but 37% of votes cast against |
| Wolters Kluwer | Disapplication of pre-emption rights | For | For | Adopted, but 36.15% of votes cast against |
| TMG | Disapplication of pre-emption rights | Against | Against | Adopted, but 35.8% (40.9% excluding Trust Office) of votes cast against |
| TMG | Authority to issue new shares | Against | For | Adopted, but 35.7% (40.8% excluding Trust Office) of votes cast against |
| Grontmij | Discharge of Mr. Thijsen | For | For | Adopted, but 33.6% (72.4% excluding Trust Office) of votes cast against |
| Grontmij | Discharge of Mr. Zuijdam | For | For | Adopted, but 33.6% (72.4% excluding Trust Office) of votes cast against |
| Grontmij | Discharge of Mr. Meysman | For | For | Adopted, but 33.4% (71.7% excluding Trust Office) of votes against |
| Grontmij | Discharge of Mr. Eisma | For | For | Adopted, but 33.4% (71.7% excluding Trust Office) of votes against |
| Arcadis | Authority to issue anti- | Against | Against | Adopted, but |

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| | takeover preference shares | | | 32.92% of votes cast against |
| TNT Express | Remuneration Supervisory Board | Against | For | Adopted, but 30.15% of votes cast against |
| Kardan | Share grant to (former) members of Management Board 2009-2011 | For | For | Adopted, but 29.93% of votes against |
| Kardan | Adoption of remuneration report | For | For | Adopted, but 29.78% of votes cast against |
| TMG | Authority to repurchase shares | For | For | Adopted, but 29.7% (34.0% excluding Trust Office) of votes casted against |
| Wolters Kluwer | Authority to issue new shares | For | For | Adopted, but 29.01% of votes cast against |
| Kardan | Approval remuneration policy for the Board (9c) | For | For | Adopted, but 28.89% of votes cast against |
| Kardan | Remuneration of CEO | For | Against | Adopted, but 28.89% of votes cast against |
| Kardan | Discharge Management Board 2011 | For | For | Adopted, but 28.75% of votes cast against |
| Kardan | Discharge Supervisory Board 2011 | For | For | Adopted, but 28.75% of votes cast against |
| Kardan | Discharge Management Board Jan. – May 2012 | For | For | Adopted, but 28.75% of votes cast against |
| Kardan | Discharge Supervisory Board Jan. – May 2012 | For | For | Adopted, but 28.65% of votes cast against |
| Kardan | Authority to issue new shares | For | For | Adopted, but 28.29% of votes cast against |
| Grontmij | Discharge of Mr. Lundquist | For | For | Adopted, but 27.8% (66.1% excluding Trust Office) of votes cast against |
| Batenburg Techniek | Authority to issue new shares | For | For | Adopted, but 27.0% of votes cast against |
| Kardan | Remuneration Management Board 2012 | For | For | Adopted, but 26.80% of votes cast against |
| Kardan | Appointment of Mr. Oren as executive | For | For | Adopted, but 24.28% of votes cast against |
| Kardan | Authority to repurchase shares | Against | Against | Adopted, but 23.76% of votes cast against |
| Kardan | Remuneration non-executives | For | For | Adopted, but 23.58% of votes cast against |
| Kardan | Appointment of Mr. Schur as non-executive | For | For | Adopted, but 23.03% of votes cast against |
| Kardan | Appointment of Mr. Groen as non-executive | For | For | Adopted, but 23.02% of votes cast against |

| | | | | |
|---|---|---|---|---|
| Kardan | Appointment of Mr. May as non-executive | For | For | Adopted, but 23.02% of votes cast against |
| Kardan | Appointment of Mr. Sheldon as non-executive | For | For | Adopted, but 23.02% of votes cast against |
| TMG | Adoption of the proposed profit appropriation | For | For | Adopted, but 22.4% (25.6% excluding Trust Office) of votes cast against |
| PostNL | Discharge Supervisory Board | For | For | Adopted, but 21.77% of votes cast against |
| AkzoNobel | Disapplication of pre-emption rights | For | For | Adopted, but 21.38% of votes cast against |
| SBM Offshore | Disapplication of pre-emption rights | For | For | Adopted, but 21.30% of votes cast against |
| PostNL | Re-appointment chairman Supervisory Board | For | For | Adopted, but 21.15% of votes cast against |
| Wolters Kluwer | Discharge Supervisory Board | For | For | Adopted, but 20.55% of votes cast against |
| Wolters Kluwer | Discharge Supervisory Board | For | For | Adopted, but 20.54% of votes cast against |

From table 1 it cannot be directly concluded that ISS and Glass Lewis have a large influence on the Dutch AGM voting outcomes: only 6 of the 46 most controversial voting items had a negative voting advice by both proxy advisors and 31 of them a positive advice by both advisors although these items met a relative large resistance from shareholders. Another observation from table 1 and also table 2 is that the two largest proxy firms do not always have the same advice regarding (potential controversial) voting items, indicating that they sometimes have different views on the consequences of a proposal for an investor.

*Table 2: number of voting items with different advices from ISS and Glass Lewis*

| AGM | Subject | Standard ISS advice | Standard Glass Lewis advice | Result |
|---|---|---|---|---|
| Delta Lloyd | Change in remuneration policy for Executive Board | Against | For | Adopted with only 11.32% of votes cast against |
| Heijmans | Authority to issue new shares | Against | For | Adopted with only 5.6% (13.05% excluding Trust Office) of votes cast against |
| Mediq | Introduction of mitigated structure regime | Against | For | Adopted with only 2.4% of votes cast against |

Nevertheless, two companies took the (draft) advice of proxy service providers into account when determining to make an additional statement or to withdraw a voting item. Partly as a result of a negative draft voting advice, KPN made the statement on its website that its proposal to stiffen the conditions for the right to submit shareholder proposals will be revoked at a future AGM. However, not only proxy advsiors, but shareholders themselves also expressed reservations to KPN's proposal (e.g. Eumedion issued an alert and the lead investor and opt in members expressed their displeasure in a dialogue with the company). ING Groep stated that supervisory director Aman Mehta withdrew his nomination for reappointment as member of the supervisory board, "after negative advice on this point from shareholder advisory groups over the number of board positions Aman Mehta holds". However, from the ING AGM it became clear that also a number of ING's major shareholders had doubts about the number of supervisory directorships of Aman Mehta.

## Appendix: Best Practices

1. ***Reporting on the discussion on the main items of the auditor's letter to the management and supervisory board***

**Macintosh Retail Group:**

**Main points in auditor's management letter (from: management report)**

"The Managing Board established that there is no legal obligation, whether under legislation or in the Dutch Corporate Governance Code, to disclose the (main points arising from) the management letter. Moreover, the auditor's recommendations are generally not material (or they would have been included in the financial statements), and, by definition, they relate to the company's internal process. However, the Managing Board believes that informing shareholders of the auditor's main findings relating to risks and risk management as part of the risk review process can be useful.
Macintosh Retail Group has engaged Ernst & Young Accountants LLP, as its external auditor, to audit the financial statements. As part of this audit, the external auditor, in addition to issuing an independent auditor's report, sets out its findings in a management letter and audit report each year. These reports are issued to and discussed with the Managing Board and Supervisory Board, respectively. Among other things, the external auditor tests the adequate operation of internal control procedures and compliance with laws and regulations in the context of, and to the extent relevant to, the audit of the financial statements. In the opinion of the external auditor, the internal control systems, to the extent reviewed as part of the audit of the financial statements, met the requirements set for managing risks in the year under review. It did, however, identify a number of areas for improvement, including the process of bringing the internal control procedures of acquirees into line with the internal control structure that meets Macintosh Retail Group's standards, as well as (further) formalising the IT policy and related IT controls. The external auditor also recommended that documentation on inventory takings and shop visiting be further finetuned. The Managing Board concurs with the external auditor's recommendations, having made plans to implement these recommendations in 2012 so as to enhance the effective operation of Macintosh Retail Group's risk management and control systems."

**From report of the supervisory board:**

"The Audit Committee and Supervisory Board established that there is no legal obligation, whether under legislation or in the Dutch Corporate Governance Code, to disclose the (main points of) the management letter of the external auditor. However, the Supervisory Board believes that informing shareholders of the auditor's main findings relating to risks and risk management as part of the risk review process can be useful.
The Supervisory Board discussed Ernst & Young Accountants LLP's management letter with the latter and the Managing Board. Among other things, the external auditor tested the adequate operation of internal control procedures and compliance with laws and regulations in the context of, and to the

extent relevant to, the audit of the financial statements. In the opinion of the external auditor, the internal control systems, to the extent reviewed as part of the audit of the financial statements, met the requirements set for managing risks in the year under review. It did, however, identify a number of areas for improvement referred to in the Report of the Managing Board. The Managing Board concurs with the external auditor's recommendations, having made plans to follow up on these recommendations in 2012. The Supervisory Board will monitor this."

## 2. *Transparency on financial ratios to which companies should comply according to their bank covenants and the 'results'*

**Aalberts Industries:**

Aalberts Industries has agreed the following covenants wit hits banks:

| Covenants | Leverage ratio | Interest cover ratio |
|---|---|---|
| As at 31 December 2010 | < 3.5 | > 3.0 |
| As at 30 June of each year thereafter | < 3.5 | > 3.0 |
| As at 31 December of each year thereafter | < 3.0 | > 3.0 |

Definitions:

Leverage ratio: Net debt / EBITDA on 12 months rolling basis

Interest cover ratio: EBITDA / net interest expense on 12 months rolling basis

The interest rate surcharges are made dependant of the achieved leverage ratio.

At year-end the requirements in the covenants are met as stated below.

| Realised covenant ratios | 2011 | 2010 |
|---|---|---|
| Leverage ratio | 2.0 | 2.3 |
| Interest cover ratio | 12.9 | 10.4 |

## 3. *Making the explanatory notes to the appointment or reappointment of the external auditor more meaningful to shareholders*

**Macintosh Retail Group:**

**Performance and reappointment of external auditor**

"As agreed at the General Meeting of Shareholders in 2004, at least once every four years, the main conclusions regarding the performance of the external auditor are communicated to the General

Meeting of Shareholders. The last time this occurred was in 2008, which means it will be discussed again at the General Meeting of Shareholders of April 25, 2012.
Early in 2011, the Managing Board and Audit Committee assessed the performance of the external auditor with a view to reporting their findings to the General Meeting of Shareholders in 2012. The Managing Board and Audit Committee reported to the Supervisory Board on this. The general consensus is that the collaboration with the external auditor has improved every year over the past few years, with a number of specific action points, particularly in the fields of planning and organisation, having been implemented. This resulted in the process of finalising the financial statements being fast-tracked, with lower audit fees as a result. A major area for attention was the auditor's international focus required with a view to Macintosh Retail Group's expansion abroad.
To the extent the Managing Board, Supervisory Board and Audit Committee were able to assess the following issues, they also concluded that:
• the audit was performed adequately;
• communications between the external auditor, Managing Board and Supervisory Board were effected properly;
• the independence of the external auditor was not an issue;
• the auditor performed its duties on the basis of an independent and professional critical attitude;
• the expertise and composition of the audit team was up to standard; and
• the audit fees were in accordance with agreements made.

In 2004, the shareholders issued the engagement for the audit of the financial statements of Macintosh Retail Group to Ernst & Young Accountants LLP for an unlimited period of time. The engagement can only be cancelled prematurely if the performance of Ernst & Young Accountants LLP or any other circumstances so dictate. A proposal will be submitted to the General Meeting of Shareholders of April 25, 2012 to reappoint Ernst & Young Accountants LLP as the external auditor for another term of four years, i.e. for the financial years 2012 - 2015.
Following a maximum period of seven years, the external audit firm's partners bearing overall responsibility and the partners responsible for the audit will have to be replaced by other partners. The Audit Committee will make recommendations to the Supervisory Board in this respect, partly on the basis of an annual assessment of services rendered.
In line with the rotation schedule referred to above, the Ernst & Young Accountants LLP's partner bearing overall responsibility will be replaced following the audit of the financial statements 2011."

### *4. More meaningful reporting on the self-assessment of the Supervisory Board*

**Van Lanschot:**

"In 2011, the evaluation of the performance of the Supervisory Board, the individual Committees and the individual members of the Supervisory Board took place with the help of an independent

consultant (PwC). A PwC partner and employee interviewed all members of the Supervisory Board and the Board of Managing Directors and the company secretary. They discussed their findings during an evaluation meeting of the Supervisory Board in September and subsequently drew up a final report which was discussed in the December meeting.
It was determined, among other things, that the composition of the Supervisory Board is in accordance with the profile outline (both in terms of expertise and diversity) and the requirements of Chapter III.3 of the Corporate Governance Code. One of the findings was that the members of the Supervisory Board with a banking background have a strong presence in certain discussions and that the professional competence and expertise of directors without this background should be used effectively, for instance in order to help bring about a change in the bank's culture. The members of the Supervisory Board gave each other feedback on their strengths and points to consider, and reflected on this. It was determined that there is appropriate interaction between the Supervisory Board and the Board of Managing Directors and that it is useful to promote more frequent one-on-one contacts between the members of the Board of Managing Directors and the Supervisory Board. The Supervisory Board will also discuss how the culture change in the organisation can be brought about."

### *5. Clear remuneration report*

**Royal Dutch Shell**

Please see attachment 1.

### *6. Meaningful information on granting short term bonuses to members of the Management Board*

**Vopak:**

**"Short-term variable remuneration**
Depending on Vopak's performance in relation to pre-set targets, Executive Board members can earn a short-term variable remuneration for which the targets in 2011 were comparable or somewhat more ambitious than in previous years. The performance is measured by the company's results on financial as well as non-financial targets with an equal weight at the 'at target' level. The financial target is related to EBITDA growth during the plan year. The non-financial element pertains to targets in three areas:
1. Sustainability, covering personal and process safety (incidents, product loss, fire, pollution);
2. Customer satisfaction, measured by the Net Promoter Score (NPS) result on the customer satisfaction survey conducted by an external party;
3. The performance of the Executive Board as assessed by the Supervisory Board, with realized project results and the quality of new initiatives taken as key focus areas.
For commercial and competitive reasons, the specific targets are not published.

Early 2012, the results on the 2011 targets were evaluated followed by the decision to grant the following short-term variable remuneration for the financial year 2011.

The Supervisory Board conducted a detailed assessment on the performance of the Executive Board in 2011 based on the four aforementioned criteria. Following the significant improvement in EBITDA – excluding exceptional items – from EUR 598 million in 2010 to EUR 636 million in 2011, the financial results exceeded expectations. On sustainability, however, results were below expectations. Although there has been good progress in achieving the personal safety targets, Vopak faced an unfortunate fatal accident of one of its employees in China. There was also an increase in the number of process incidents this year, amongst others related to an increased maturity in the reporting and a relatively low safety performance of newly acquired terminals. In 2012, additional actions will be taken to improve safety with the focus on both asset integrity and personal safety behaviour. The final result of the customer satisfaction survey is not yet available. The preliminary result meets the level of last year but falls short of the improvement that was aimed for. The amounts mentioned in the short-term variable remuneration table are based on this preliminary result. On the final measure, the qualitative assessment of the performance of the Executive Board, the Supervisory Board was very pleased with the performance of the Executive Board. Overall, the Supervisory Board renders a positive evaluation on the performance of the Executive Board as a whole."

| Short-term variable remuneration | E.M. Hoekstra | J.P. de Kreij | F. Eulderink |
|---|---|---|---|
| 2011 – amount | 240,840 | 216,765 | 197,479 |
| 2011 - % of base salary | 53.52% | 48.17% | 48.17% |

### *7. Clear risk and risk management paragraphs*

**Vopak:**

See attachment 2.

### *8. Meaningful Supervisory Board report*

**Delta Lloyd Groep:**

See attachment 3.

### *9. Best practices sustainability transparency*

**DSM:** What still went wrong in 2011

Pages 132 and 133 show not only the accidents but also the near misses. It shows an impressive level of awareness and control.

**Ahold:** Data revision in sustainability report 2011
Page 55: “In our 2011 CR Report, several revisions of the 2008–2010 $CO_2$ emissions baseline have been performed. There are four major revisions:
1. ICA has been excluded from Ahold’s CR reporting in 2011
2. The $CO_2$ conversion factors have been updated according to the latest available information
3. The leakage of refrigerant substances for Ahold USA has been revised due to maintenance provided by a third party, which was not included in the 2010 data gathering process
4. Energy usage in Ahold USA’s outsourced distribution centers has been excluded in 2011”

The implications of these revisions are shown in a separate table on the same page

**AkzoNobel:** Graphics in integrated report show financial and sustainability KPIs and their relations per business unit. Although AkzoNobel reports per activity its performance, it does not lose the integrated approach.

**Philips:** Integrated report chapters 3 and 4 show very well license to operate in relation to development of products and financial performance.

***10. Best practices reporting on stakeholder engagement***
**DSM:** Special chapter on stakeholder engagement shows a global involvement.
**Van Lanschot:** Organised for the first time in 2011 a stakeholder dialogue and took the outcome of that dialogue as a starting point for improving its social report (‘maatschappelijk jaarverslag’) and that shows itself in the better quality of the report.

***11. Best practices in assurance on sustainability reporting***
**Nutreco:** KPMG also made in 2011 some comments on the sustainability performance improvement of their clients. That is much appreciated because it shows a continuous process of challenging the companies to do better both in reporting and performance:
This is the text from the assurance section of Nutreco:

“Without affecting the conclusions presented above, we would like to draw the readers’ attention to the following: In 2011, Nutreco has made further progress to define their focus areas in relation to sustainability, by developing the Sustainability Vision 2020, which gives direction to the improvement of Nutreco’s sustainability performance towards 2020. In order to demonstrate progress against the ambitions set for the forthcoming years, we recommend Nutreco to further develop measurement mechanisms to enable reporting on the progress, outcomes and (societal) impact of Nutreco’s sustainability efforts.”

Although the assurance of the sustainability information is not of the same level yet of assurance of the financial information, we see that the companies with an integrated report in 2011 have both assurance reports signed by their statutory auditor. We think that is a good development.