Corporate Governance in OECD Member Countries: Recent Developments and Trends (Revised)

I. Introduction

Improving corporate governance has emerged as a priority in all OECD Member countries during the past few years. The enhanced accountability, transparency, and integrity flowing from improved corporate governance practices create value for shareholders and other stakeholders, reduce the cost of capital, and increase a company's competitiveness in the global marketplace. Corporate governance is also important for the stability of international financial flows as it reduces information asymmetries in global markets.

1999 was a watershed year for corporate governance. In the international arena, the most significant event of the year was the issuance of the OECD Principles of Corporate Governance, which were approved by the OECD Ministers in May 1999 and quickly gained global acceptance as the international benchmarks on corporate governance. The OECD Ministers encouraged Member countries to implement and use the OECD Principles and to exchange experience among themselves. The Ministers also called on the OECD, in co-operation with the World Bank, the International Monetary Fund, and other international organisations, to "promote the implementation and use of the Principles in non-member economies." This call was echoed by the G-7 Finance Ministers and the representatives of the G-22 country grouping.

In 1999, France, Germany, and the United Kingdom also joined other OECD Member countries in embarking on company law reform, and Italy, Korea, Mexico, and Portugal promulgated their first corporate governance codes. Furthermore, rating services blossomed in Europe, with three firms introducing corporate governance rating services on European companies.

The year 2000 promises to be no less eventful. Earlier this year, Germany adopted its first corporate governance code, the first set of benchmarks for two-tier board systems, and Canada and the United Kingdom introduced legislation that would usher corporate governance into the Internet age. In Korea, the government enacted legislation that would enhance shareholder voting and participation rights and require the boards of large companies to have at least 50% independent outside directors.

OECD Member countries continue to witness certain sustained trends, such as fuller disclosure of company information, enhanced shareholder rights, and the increasing presence of independent directors on corporate boards. Over the past two years, there have also been a number of emerging trends. The four emerging trends highlighted in this report are: 1) the emergence of the OECD Principles as the international benchmarks on corporate governance; 2) the increasing utilisation of new technologies for corporate governance purposes; 3) the rise of trade union shareholder activism; and 4) the harmonisation of financial reporting standards. These trends are described in greater detail in Section III.

This report, which has been drafted under the responsibility of the Secretariat, does not claim to be comprehensive or exhaustive. Its key objective is to provide the Steering Group delegates with an overview of corporate governance developments and trends in OECD Member countries since the adoption of the OECD Principles. This report serves as background for a first round of exchange of information and discussion.

II. Recent Developments in Selected OECD Member Countries

This section highlights the key corporate governance developments in selected OECD Member countries since the beginning of 1999. Certain earlier developments are discussed to provide additional background information.

In **Australia**, there has been extensive debate recently over the direction of corporate governance. In 1998, Australia's parliament amended the Corporations Law to require companies to disclose individual director and executive remuneration figures and all proxy solicitation results (even though most voting in Australia is conducted by a show of hand[1]). In addition, the 1998 amendments extended the notice period for annual general meetings (AGMs) from 21 to 28 days.

The Government seems to believe that Australia's company law regime has become too prescriptive and, in October 1999, the Parliamentary Joint Statutory Committee voted to repeal the current law mandating disclosure of proxy vote results and to reinstate the 21-day notice period for AGMs. In addition, Australia's Companies and Securities Advisory Committee, which advises the Treasury Minister, has recommended amending the current law allowing 100 shareholders to call an extraordinary general meeting. Arguing that this rule is prone to abuse by disgruntled shareholders and that companies will incur unnecessary and excessive expenses as a result, the Committee instead supports a new threshold based on a percentage of shareholding.

Proxy advisers in Australia have also been active in corporate governance. In February 1999, Computershare Analytics became the first Australia-based proxy solicitation firm. This company offers such services as identifying and profiling institutional investors, soliciting proxies, performing corporate governance audits of companies, and supplying investor relations advice. In May 1999, Institutional Shareholder Services (ISS) Australia announced that it would begin issuing credit-rating-style grades on corporate governance to Australia's top 100 companies. ISS Australia intends to test its assessment procedures in-house for a year and then launch this service in mid-2000.

In **Belgium**, the major development during the past 18 months was the issuance of a new regulation by the Brussels Stock Exchange requiring listed companies, beginning 1999, to disclose whether they are in compliance with the recommendations of the 1998 Report of the Belgian Commission on Corporate Governance (Cardon Report). The Cardon Report calls for the separation of the chairman and CEO positions, a majority of non-executive directors and a "sufficient" number of independent directors on each board, a maximum of 12 directors on a board, and performance-linked compensation for senior executives (including detailed disclosure of such arrangements), among other things. The Belgian Commission on Corporate Governance has been monitoring the level of compliance with its code and will consider updating its recommendations later this year or in early 2001.

In **Canada**, the Ministry of Industry announced in March 2000 amendments to the Canada Business Corporations Act, the main federal statute regulating corporations in Canada. The proposed amendments will make it easier for shareholders to communicate with each other, enable shareholders whose shares are registered in the names of their brokers to introduce proposals at shareholders' meetings, permit electronic voting and electronic dissemination of information, and reduce the number of Canadian residents required to be on the board of a Canadian company from more than 50% to 25%.

At the same time, the Ontario Securities Commission (OSC) is seeking to improve the quality of financial disclosure. In March 2000, the OSC issued a proposal that would compel a company's audit committee to review, and the board of directors to approve, the annual financial statements. In addition, the OSC

[1] The current Corporations Law provides for the disclosure of proxy results after the shareholder meeting.

proposal would expand the informational requirements for interim financial statements and require the audit committee and the board of a company to review such statements prior to releasing them to the public.

In the summer of 1999, the Toronto Stock Exchange (TSE) and the Institute of Corporate Directors (ICD) published a report entitled *Five Years to the Dey* that examined Canadian companies' compliance with the 14 best practice guidelines issued by the TSE Corporate Governance Committee (Dey Committee) in 1994. The study, which was compiled from survey responses from 635 Canadian CEOs and other senior executives, concluded that Canadian companies take the Dey Committee recommendations seriously and that there has been widespread adoption of certain Dey Committee guidelines, such as board size and board composition. However, the report also found certain shortcomings, such as:

1) 31% of boards are chaired by the CEO with no independent lead director;
2) Only 21% of boards meet at least twice a year without management present; and
3) 27% of boards have inside directors on their audit committees.

To further improve corporate governance among TSE-listed companies, the TSE will prescribe a standard format for corporate governance reporting in the annual report. In addition, the ICD will design a scorecard to assess board effectiveness and develop a comprehensive training program for new directors.

Over the past few years, the government of the **Czech Republic** has enacted a number of legislation aimed at modernising the company law framework. The 1998 Act on the Czech Securities Commission and Amendment of Investment Companies and Investment Funds Act empowered the Securities Commission to enforce the minority shareholder protection provisions in the Commercial Code and to ensure that public companies comply with their disclosure obligations. The 1999 Comprehensive Amendment of Commercial Code and Securities Act, which came into force on 1 January 2000 and was influenced by the OECD Principles of Corporate Governance, introduced a registration system for securities offerings, provided more detailed procedures for takeovers and mergers, and enhanced the rights of minority shareholders. Earlier this year, the Czech Republic government created a commission to draft a corporate governance code, using the OECD Principles as a reference point.

In **Denmark**, the government recently constituted an advisory panel, comprising public officials, business executives, fund managers, pension fund and labour leaders, and others, to survey Danish corporate governance practices. The advisory panel will decide later this fall whether to draft a voluntary code of best practice. In addition, academics, corporate executives, and officials from the Ministry of Trade and Industry have come together to form the Danish Corporate Governance Network (DCGN). The DCGN, which was established in August 1999, aims to be a clearinghouse for research on Danish corporate governance.

In **France**, the government and the business community have waged a high-profile debate during the past year over the issues of executive pay disclosure and splitting the unitary post of *président directeur générale* (PDG) into two posts (equivalent to the chairman and CEO positions). In 1999, as part of its review of the company law in France, the French government indicated that it favoured greater disclosure of executive remuneration and separating the PDG position into two posts. In response, in July 1999, a corporate governance committee assembled by Medef, the French employer association, issued the Viénot II guidelines on corporate governance. This report, which updates the original corporate governance recommendations issued in 1995 (Viénot I) and which was drafted by a 15-person CEO committee chaired by Société Générale honorary chairman Marc Viénot, advocates giving boards the discretion to split up or to retain the PDG post. Regarding the disclosure of individual executive remuneration, Viénot II emphasises the need to protect executives' privacy. Instead of individual disclosure, this report recommends that companies divulge the policies used to set executive remuneration. However, in January

2000, Medef abandoned the Viénot II stance on executive pay disclosure and issued a "strong recommendation" to its members to voluntarily publish individual executive compensation and stock option grants.

In January 2000, the Ministry of Justice introduced legislation, expected to pass parliament by June 2000, that would automatically separate the PDG position into two posts, unless shareholders assent to retain it. Following Medef's reversal on the issue of executive pay disclosure, the Ministry of Justice withheld a proposal that would require listed companies to reveal individual remuneration packages for their top two executives.

Aside from these two issues, Viénot II also expanded on the guidance contained in the original report. With respect to the composition of the board of directors, Viénot II recommends that one-third of board seats and one-third of the audit committee and nomination committee seats be reserved for independent outsiders and that outside directors should constitute a majority in the remuneration committee. In addition, Viénot II recommends limiting the term of each director to a maximum of four years, down from the current maximum of six years, and that directors' remuneration should include stock grants. Lastly, Viénot II urges executives of listed companies to limit the number of outside directorships to a maximum of five.

In 1999, the Association Française de la Gestion Financières (AFG-ASFFI), which represents French money managers and SICAV mutual funds, started the Corporate Governance Watch Programme to monitor compliance with its 1998 best practice principles (Hellebuyck Code)[2]. Initially covering only the 40 blue-chip companies in the CAC 40 index, this service was expanded in July 1999 to cover all companies in the SBF 120 index. Under this programme, the AFG-ASFFI will issue an alert and recommend a "no" vote when any resolution presented at a shareholders' meeting breaches the Hellebuyck Code.

A recent survey by U.S.-based recruitment consultants Korn/Ferry International indicates that CAC 40 companies have embraced many international corporate governance best practice guidelines. The study found, for example, that 30% of directors in CAC 40 companies are independent and 90% of boards maintain audit, remuneration, and nomination committees.

Recent developments in **Germany** are expected to drastically alter the corporate governance landscape in that country. Perhaps the most significant event occurred at the end of 1999 when the German government announced its intention to abolish the 50% capital gain tax on share sales. This measure, if passed by parliament, is expected to accelerate the dismantling of the extensive cross-shareholding structure among German corporations and financial institutions[3] and, as a result, disperse ownership to a wider group of investors, including foreign investors. In addition to increasing liquidity in the stock market and enhancing the market for corporate control, dispersed ownership will also force boards to be more transparent and more accountable to shareholders.

The German government has also been busy introducing other measures intended to further improve corporate governance. In 1999, the Ministry of Justice endorsed legislation to introduce electronic and postal voting. In addition, the German government has recommended the adoption of U.S.-style record dates, arguing that the current rule, which requires owners to deposit shares in order to vote, discourages

[2] In many respects, the Hellebuyck Code is a rival code to Viénot II. The Hellebuyck Code, for example, calls for the elimination of double voting, splitting the PDG post into two positions, and full disclosure of executive compensation while the Viénot II report either opposes or is silent on such issues.

[3] Because many cross-shareholding stakes were purchased decades ago, German companies have been effectively prevented from divesting their interests because of the large capital gain tax bill that they would face.

voting at shareholders' meetings. Currently, the Ministry of Finance is contemplating amending the tax law to make it more difficult for companies to erect takeover defences.

The Law on Control and Transparency in Business (KonTraG), which came into force in April 1998, has had a significant impact on corporate governance in Germany. This legislation compels companies to disclose how many board committees are in operation and allows German companies to adopt International Accounting Standards (IAS) or U.S. GAAP for their financial reporting[4]. As a result, the percentage of DAX 30 companies with audit, remuneration, or nomination committees jumped from 3% in 1998 to over 50% in 1999. In addition, in 1999, 63% of DAX 30 companies reported their financial results using IAS or U.S. GAAP, as compared to 17% in 1998. In July 1999, Deutsche Börse chief Werner Seifert announced that the Deutsche Börse may require listed companies to report financial statements under IAS or U.S. GAAP.

Earlier this year, Germany became the latest OECD Member country to adopt a corporate governance code. The German Panel on Corporate Governance, whose 10-person membership included academics, fund mangers, shareholder advocates, and executives, released the *Corporate Governance Rules for Quoted German Companies* in January 2000. The German Code calls for a "sufficient" number of independent directors, performance-linked compensation arrangements for executives, the creation of audit, nomination, and personnel committees (among others), and the dissemination of information (AGM notices and agenda, voting results, etc.) over the Internet, in German and English. Domestic and foreign investors have praised the code and have pledged to persuade German companies to adopt it.

The increasing emphasis on corporate governance in Germany has also led to rising demand for governance advisory services. In 1998, the first companies dedicated to advising investors and company supervisory boards on corporate governance started to appear.

The major development in **Greece** in 1999 was the introduction of a corporate governance code. In April 1999, Greece's Capital Market Commission (CMC) formed the Committee on Corporate Governance in Greece (CMC Committee) to draft a blueprint for corporate governance reform. In November 1999, the CMC Committee, which comprises representatives of industry, banks, funds, the Athens Stock Exchange, and foreign investors, released the *Principles on Corporate Governance in Greece: Recommendations for its Competitive Transformation*. The CMC Principles, which is a voluntary code of best practice modelled closely on the OECD Principles, recommend the following:

1) Full, timely, and detailed disclosure of material information;
2) A maximum board size of 13, with a majority of non-executive directors;
3) An audit committee consisting solely of non-executive directors and a remuneration committee with a majority of non-executive directors;
4) Performance-based compensation for executives; and
5) Splitting the chairman and CEO posts.

The CMC Committee will be monitoring compliance with its Principles and, thereafter, decide whether the Principles should be made mandatory for listed companies.

In **Ireland**, the Irish Stock Exchange (ISE) in 1999 became the first stock market in the Euro-zone, and the second in Europe after the London Stock Exchange, to introduce regulations requiring the disclosure of individual remuneration for executives. Previously, listed companies were only required to reveal aggregate figures. The ISE initially opposed such disclosure, arguing that the loss of privacy was too great when compared to the gain realised. However, under pressure from domestic and international investors

[4] Tax returns, however, must continue to be prepared under German GAAP.

and the threat by the Irish government to introduce legislation if the stock exchange did not act, the ISE board in the end agreed to require listed companies to disclose individual executive remuneration.

In **Italy**, the now private Borsa Italiana formed the Committee for the Corporate Governance of Listed Companies (*Comitato per la Corporate Governance delle Società Quotate*) in January 1999 to undertake the drafting of a set of corporate governance best practice. In October 1999, the panel, chaired by Borsa Italiana chief Stefano Preda, issued Italy's first corporate governance code. Among the Committee's recommendations are:

1) Each board should have an "appropriate" number of independent directors so that their views will "carry significant weight";
2) Companies should announce their list of director nominees at least 10 days before the shareholders' meeting;
3) Boards should establish nomination and remuneration committees with a majority of non-executives and an internal control committee with an "appropriate" number of outsiders; and
4) A certain portion of executive compensation should be linked to performance.

Similar to France's Viénot II report, the Preda report does not call for the separation of the CEO and chairman posts. Over the next two years, the Preda Committee will monitor the level of compliance by listed companies and, if necessary, revise the Code.

In addition to the Preda Code, Assogestioni, a trade association of money managers with €375 billion in assets, also published its own corporate governance guidelines in 1999. Assogestioni, through its Fund Managers Committee, has been active in improving corporate governance standards of Italian companies. Assogestioni's guidelines advocate the inclusion of independent directors, performance-based stock options, board committees, credible outside audits, and longer notice periods for AGMs.

The corporate governance movement in **Japan** has been driven primarily by the private sector. Domestic institutional shareholder activism in Japan, in particular, has been on the rise during the past two years. One of the most active shareholder activists in the country is the Kosei Nenkin Kikin Rengokai (Association of Japanese Corporate Pension Funds) (KNKR). In June 1998, the KNKR released the *Action Guidelines for Exercising Voting Rights*, which asserts that pension funds have a fiduciary duty to monitor corporate governance and to utilise their votes to encourage long-term, shareholder-value strategies. The KNKR guidelines also call for an end to scheduling AGMs on a single peak day, longer notice periods for annual meetings, and smaller boards consisting of a majority of independent outsiders. In 1999, the KNKR sought to draft more detailed corporate governance principles and strengthen domestic support for shareholder oversight of companies. Earlier this year, the KNKR issued a preliminary step-by-step manual for fund managers that insists on the establishment of proxy voting guidelines and active voting.

The Corporate Governance Forum of Japan (CGFJ), which comprises a coalition of businessmen and academics, has also been active in the Japanese corporate governance scene. In 1998, the CGFJ released a corporate governance code that is similar to the KNKR code. The CGFJ principles urge companies to establish audit and remuneration committees consisting solely of independent outside directors and nomination and corporate governance committees with a majority of independent outsiders. The KNKR and CGFJ codes have yet to receive much attention within Japan, although the CGFJ code has been endorsed by foreign institutions such as CalPERS.

Among Japanese corporations, one notable development during the past few years has been the reduction of board sizes from 20-40 to approximately 10. Sony, the electronics company, started this trend by slashing its board in 1997 from 40 to 10 members. In 1999, Sony also held its first open conference with shareholders after its AGM. Following Sony's lead, more than 300 companies also trimmed their boards.

In addition, a small number of companies, such as NTT, Sanwa Bank, Sanyo Electric, Sony, and Softbank, have appointed independent outsiders to their boards. To facilitate better decision-making, a handful of Japanese companies have begun sending out AGM agendas four weeks in advance, rather than the typical 15 days, thereby providing investors (particularly foreign investors) with more time to make voting decisions. Lastly, in response to the activism of foreign investors, companies have emerged to advise Japanese corporations on communicating with foreign investors on corporate governance concerns, including how to increase proxy voting by foreign shareholders.

Recently, the Tokyo Stock Exchange has stepped up its efforts to promote corporate governance. Last year, an advisory committee created by the Tokyo Stock Exchange released a report entitled *The Way Forward*, which recommended strengthening the corporate governance provisions in the stock exchange's listing rules. The Tokyo Stock Exchange hosted a conference on corporate governance in August 1999 and is presently contemplating including additional corporate governance items in its listing rules. Currently, the Tokyo Stock Exchange requires all listed companies to include a statement describing their corporate governance practices when they submit their preliminary annual results.

In recent years, the Business Accounting Deliberation Council, the accounting standard-setting body in Japan, has been actively revising the accounting standards applicable to all Japanese companies. This year, nine new accounting standards modelled on International Accounting Standards (IAS) were implemented, including those relating to interim financial statements, financial instruments, and retirement benefits. In addition, revisions to the Company Law to enhance corporate governance are under discussion.

Corporate governance reforms in **Korea** since the 1997 crisis have been spurred by both the public and private sectors. The intransigence of many large conglomerates (*chaebol*) to improve their corporate governance practices has forced the Korean government to step in to impose changes. In March 1999, the Ministry of Finance and Economy established the Committee on Corporate Governance (CCG) to draft a best practice code. The CCG, which comprised government-appointed private experts from business, finance, law, accounting, and academia, released Korea's first corporate governance code in September 1999. This effort directly referred to the OECD Principles of Corporate Governance. Among the CCG Code's recommendations are:

1) Large companies with assets in excess of 1 trillion won should have boards with at least 50% independent outside directors;
2) Cumulative voting;
3) Easing restrictions to facilitate shareholder proposals;
4) Formation of audit committees with at least two-thirds independent outside directors and nomination and remuneration committees with at least one-half independent outside directors;
5) Spreading out the dates of AGMs among listed companies[5] in order to enhance shareholder participation; and
6) Performance-linked compensation for executives.

To protect audit committee members from being dismissed arbitrarily by controlling shareholders, the CCG Code recommends allowing shareholders to select committee members during the AGM, when directors are appointed.

In response to the CCG Code, the Ministry of Finance and Economy implemented regulations mandating companies with a market capitalisation of over 2 trillion won to staff their boards with at least 50% independent outsiders, starting from 2001. In addition, from this year onward, these companies are

[5] This year, 224 of the 406 firms listed on the Korea Stock Exchange held their annual meetings on 17th March while 82 other firms held their AGMs on either 10th or 24th March.

required to establish audit committees with two-thirds independent outside directors and nominations committees with a majority of independent outsiders. The implementing regulations have also given legal effect to other recommendations contained in the CCG Code, including greater disclosure of major decisions taken by the board of directors, protection of stakeholders, and enhanced shareholder voting and participation rights.

In the area of disclosure, the Financial Supervisory Commission has introduced regulations requiring listed companies, from May 2000, to disclose their corporate governance structures in their quarterly reports, including information on outside directors and the functioning of their audit committees. Moreover, listed companies must also state whether they are in compliance with the CCG Code. Companies failing to fully disclose such information may be fined up to 500 million won and may also be liable for losses incurred as a result of the omission.

These efforts were preceded by significant changes in Korea's corporate governance framework in 1998. The measures introduced that year included: 1) requiring the top 30 *chaebol* to prepare consolidated financial statements and establish audit committees in all of their listed companies and affiliates; 2) compelling all listed companies to reserve 25% of their board seats to independent outsiders; 3) introducing cumulative voting; and 4) subjecting auditors and corporate accounting officers to stiffer penalties for malfeasance.

Led by the People's Solidarity for Participatory Democracy (PSPD), shareholder rights groups in Korea have emerged as leading advocates for corporate governance reform in the country. In 1999, the PSPD and two large foreign institutional investors filed the first-ever dissident investor resolution at Samsung Electronics to require the board to screen transactions in excess of 10 billion won. Earlier this year, the PSPD successfully lobbied Dacom to appoint four outside directors to its eight-person board, including two to be named by the PSPD, and to create an audit committee consisting entirely of independent directors and chaired by a director nominated by minority investors. In addition, as a result of pressure from the PSPD, SK Telecom has agreed to give minority shareholders a role in naming independent outside directors and to introduce cumulative voting in two years (rather than in three years as originally planned).

Foreign institutional investors have also been active in promoting better corporate governance practices in Korea. In July 1999, U.K.-based Hermes Investment Management reached an accord with Daewoo Securities (DS) whereby DS's management, in exchange for Hermes' support of a rights offering, agreed to adopt a pro-shareholder corporate governance charter and appoint two independent foreign directors (one to be nominated by Hermes) to its eight-person board.

Similar to many OECD Member countries, **Mexico** has also adopted a corporate governance code. In June 1999, the Mexican Stock Exchange, the Mexican Bankers Association, the Mexican Institute of Finance Executives, and the Mexican Institute of Public Accountants jointly released Latin America's first code of corporate governance. The *Corporate Governance Code for Mexico* calls for a board of five to fifteen members, with independent outsiders constituting at least 20% of the membership. According to the Code, boards should also establish remuneration and audit committees, among others. The audit committee, in particular, should be chaired by an independent outside director. The Code also urges companies to disclose in their annual reports the compensation policies used and the compensation packages of board members and senior executives[6]. The annual report should also discuss the activities of each board committee during the year and disclose the names of the directors on each committee. Although compliance with the Code is voluntary, the National Banking and Securities Commission has issued a regulation requiring listed-companies to indicate the degree to which they adhere to the Code. Under the

[6] The Code does not indicate whether disclosure of individual compensation packages is required or whether the disclosure of aggregate figures is sufficient.

regulation, companies that are not following the Code must explain their reasons for not complying and describe an alternative mechanism used in its place.

In the private sector, Mexico's largest retailer, Elektra, became the first company in the country to adopt its own code of best practice. The company will reduce the number of directors from thirteen to nine, including four outsiders, and will create four board committees. In addition, outside directors have been given the power to approve related party transactions.

In the **Netherlands**, the government launched a major initiative in 1999 to enhance corporate governance in the country. To increase voting at AGMs, the government 1) declared that mail ballots are allowed under the law, provided that the owners are fully identified, and 2) announced its commitment to introduce record dates (seven days before a shareholders' meeting) so that proxy-processing companies will be able to confirm that the proxies submitted were from their true owners. In addition, in May 1999, the Ministry of Finance submitted legislative proposals to 1) require the disclosure of individual director and executive remuneration, 2) require the disclosure of corporate governance structures and policies (including major share ownership, voting rights, and takeover defences), and 3) grant shareholders the right to place certain items on the AGM agenda. The legislative proposal also mentioned the OECD Principles of Corporate Governance as an important international benchmark.

In the private sector, in November 1999, shareholder rights group Vereniging van Effectenbezitters (VEB) published a governance assessment of Dutch companies and declared that the entire group was "underachieving." Despite the promulgation of the Peters Code of best practices, VEB concluded that shareholder rights have made "hardly any progress." Accordingly, VEB is seeking legislation to further shareholder rights in the Netherlands.

In **New Zealand**, ANZ Investment Bank published a study earlier this year that found the combination of passive investors, non-performance-based executive compensation, ineffective boards, and an outdated law contributed to erasing US$3.3 billion in market capitalisation at 500 companies in 1998. In a briefing to the New Zealand Treasury, ANZ Investment Bank recommended the creation of a national panel to reform corporate governance. In particular, ANZ Investment Bank advocated requiring companies to disclose how executive remuneration is linked to the creation of shareholder value and how each board evaluates its chief executive. Lastly, ANZ Investment Bank recommended the introduction of regulations to compel civil service pension fund managers to "report on the governance standards of the companies they invest in and their own steps to improve these."

In **Poland**, the securities commission issued new regulations in November 1999 intended to close the gaps in the 1997 corporation law, which had led to significant abuses by investors, and to raise Polish stock exchange regulations to Western European levels.

In 1999, **Portugal** also adopted a corporate governance best practice code. The 17-point Code, which was issued by the market regulator Comissão do Mercado de Valores Mobiliários, advocates having at least one director who is independent of the dominant shareholder(s) and encourages the utilisation of new technologies, such as the Internet, to disseminate financial results, preparatory documents for shareholders' meetings, and other information. The Code also contains a novel recommendation to require the board to explain, annually, the reasons for the company's share price movements during the preceding year, taking into account such developments as the issuance of shares or other equity-linked securities, the announcements of interim and year-end results, and the payment of dividends. Lastly, companies are urged to disclose in the annual report the degree of compliance with the Code.

Like many OECD Member countries, the **United Kingdom** is undertaking a major review of its company law regime. As part of this process, the independent Company Law Review Steering Group (CLRSG),

which is undertaking the review, has issued consultation documents that set out its vision for the future. In October 1999, the CLRSG published *General Meetings and Shareholder Communication*[7], which contains proposals that would allow "deferred voting" (with polls open for a period of time after the AGM), require companies to provide a 20-business day notice period for an AGM, and permit virtual electronic AGMs in place of physical meetings. In March 2000, the CLRSG followed up with the issuance of the *Modern Company Law for a Competitive Economy: Developing the Framework*. This document made an unprecedented pronouncement that notwithstanding the fact that directors should be solely accountable to shareholders, they should also be obligated to foster "inclusive" relationships with such stakeholders as employees, customers, suppliers, and the community.

Seeking to take advantage of recent technological advancements, the British Parliament recently passed legislation that would permit the transmission of shareholder proxy and voting instructions by electronic means and allow the distribution of company information, such as the annual report, by E-mail or through the Internet.

In 1999, the British government introduced a new "truth in voting" rule that would require U.K. pension funds to divulge their policies on how they exercise their voting rights and whether they engage in socially responsible investing. Starting from 3 July 2000, U.K. pension funds will be required to disclose:

1) The extent (if at all) to which social, environmental, or ethical considerations are taken into account in the selection, retention, and realisation of investments; and
2) The policy (if any) directing the exercise of the rights (including voting rights) attaching to investments.

This initiative follows similar but voluntary recommendations made in Australia and Canada. In addition, the British government may impose legislation if U.K. companies do not make greater progress linking executive pay to performance. In July 1999, Trade and Industry Secretary Stephen Byers declared that the government was not opposed to exceptional compensation for outstanding performance. Rather, the government was concerned that many companies were not complying with the spirit of the Greenbury best practice recommendations on directors' remuneration. The government published a consultative document that proposed a variety of means for improving disclosure of directors' remuneration and the board's accountability to shareholders.

In September 1999, a committee chaired by Rank Group finance director Nigel Turnbull (Turnbull Committee[8]) released a report recommending that companies undertake an annual assessment of the business risks that they face. Such risks include "those related to market, credit, liquidity, technological, legal, health, safety, and environmental, reputation and business probity issues." In response, the U.K. Listing Authority has introduced a new rule requiring listed companies, starting this year, to confirm in their annual reports that they have complied with the Turnbull Committee recommendations or, alternatively, explain their reasons for not complying.

Mirroring developments in the United States, the U.K. Trade Union Congress (TUC) started a drive in 1999 to mobilise labour's influence as pension fund shareholders. The TUC also adopted model corporate governance guidelines for union trustees of pension funds. The guidelines urge trustees to lobby for independent board directors, performance-based executive compensation, and broad-based employee share ownership schemes. Separately, the National Association of Pension Funds, whose members manage the

[7] Two other documents, one concerning company formation and capital maintenance and the other concerning company law rules applicable to overseas companies, were also published in October 1999. These documents were preceded by the *Strategic Framework* consultation document, which was issued in February 1999.

[8] The Turnbull Committee was formed by the Institute of Chartered Accountants in England and Wales (ICAEW).

savings of several million employees, intends to develop a "Corporate Responsibility Profile" for the top 350 companies in the United Kingdom. Each profile will evaluate a company's compliance against certain London Stock Exchange Combined Code principles and provisions.

In the **United States**, the issue of audit has been in the forefront of deliberations. Prompted by the U.S. Securities and Exchange Commission's (SEC) campaign to improve financial reporting, the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD) formed the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (NYSE-NASD Blue Ribbon Commission) in September 1998. This committee, chaired by Ira Millstein, senior partner at Weil, Gotshal & Manges, and John Whitehead, former co-chairman of Goldman, Sachs & Co., released its recommendations in February 1999. The NYSE-NASD Blue Ribbon Commission recommends that:

1) Each company establish an audit committee with a minimum of three directors, all of whom must be independent and financially literate and one of whom must have an accounting background[9];
2) Each audit committee adopt a formal charter that is approved by the entire board, reviewed annually, and disclosed to shareholders at least once every three years and whenever there is an amendment;
3) The SEC promulgate rules requiring each reporting company to disclose in its proxy statement whether its audit committee has adopted a charter and, if so, whether the audit committee complied with the charter during the preceding year;
4) The SEC require the audit committee of each reporting company to disclose whether its members had reviewed the audited annual financial statements among themselves and with the management and the auditors; and
5) The SEC require the auditors to review a company's interim financial statements prior to filing with the SEC.

In response, the SEC, NYSE, and NASD amended their respective rules and listing requirements to give effect to the above recommendations. In addition, the SEC is requiring every audit committee to inform its board of directors whether it recommends that the financial statements be included in the company's annual report.

The efforts of the SEC, NYSE, and NASD to improve the functioning of audit committees have been augmented by initiatives undertaken by other institutions. In February 1999, KMPG released a 73-page booklet on audit committees. *Shaping the Audit Committee Agenda*, which relies on the recommendations of the NYSE-NASD Blue Ribbon Commission, provides advice on risk issues, compensation, and committee charters. In the fall of 1999, the National Association of Corporate Directors (NACD) Blue Ribbon Commission on Audit Committee released a guide for supervising the external audit. The NACD guide, which builds upon the recommendations of the NYSE-NASD Blue Ribbon Commission, offers best-practice guidelines regarding the duties of an audit committee, the skills required of audit committee members, information to be received from management, the disclosure to be made to shareholders, and interactions with executives. Earlier in the year, the Independence Standards Board (ISB), an autonomous private sector body created by the SEC in 1997, announced a new rule compelling auditors to inform the board of any U.S. company they audit of the existence of any consulting relationship that may compromise their independence. In addition, auditors are required to renew such declaration to the firm's board annually and to meet with the firm's audit committee to outline ways of assuring continued independence. Auditors, however, are not required to make such disclosure to the firm's shareholders.

U.S. institutional investor CalPERS quickly endorsed the NYSE-NASD Blue Ribbon Commission recommendations and pledged to push U.S. companies in which it is a shareholder to begin adopting the

[9] Companies with a market capitalisation of US$200 million or less are required only to have an audit committee of at least two members, a majority of which must be independent.

Commission's recommendations. In addition, CalPERS continues to be active in other areas of corporate governance. In February 1999, CalPERS launched a website called the *CalPERS Shareowner Forum*, which will alert investors to ongoing proxy battles, shareholder litigation, and institutional shareholder activism. The website will also post voting decisions by CalPERS in real-time so that other institutions will be able to inspect CalPERS's positions on corporate matters. In November 1999, CalPERS indirectly endorsed the OECD Principles of Corporate Governance by adopting the International Corporate Governance Network (ICGN) corporate governance "working kit" (see Section III below for more information) as its own.

Other U.S. institutional investors have also continued to call for better corporate governance. Many institutional investors, in particular, have stepped up their efforts to eradicate the "dead hand" poison pill, which allows a pre-existing group of directors to control the outcome of a hostile takeover battle even after they have been removed from office[10]. In 1998, the Delaware Supreme Court declared the "dead hand" poison pill to be illegal, citing that it "impermissibly circumscribes a newly elected board's power to manage and direct the company's business". However, TIAA-CREF, another major pension fund, estimates that 25% of listed companies outside of Delaware have such provisions. TIAA-CREF has filed dissident shareholder proposals asking boards to remove such provisions.

Over the past 18 months, other organisations in the United States have issued, or are developing, corporate governance codes. In March 1999, an 18-person panel consisting of U.S. directors and shareholders released *Barriers to Good Corporate Governance*, which seeks to help directors diagnose and treat governance problems. In July 1999, the Investment Company Institute, a mutual fund trade association, promulgated a 15-point governance code for mutual funds. In October 1999, U.S.-based Conference Board announced a five-year project to develop practical benchmarks that companies and shareholders worldwide can use to measure board effectiveness, disclosure practices, shareholder rights, and proxy voting procedures.

Reflecting the increasing integration of the **European Union** (EU) countries and the growing tendency to treat the EU as a single market, a number of pan-European initiatives have also emerged recently. In April 2000, the Internal Market Directorate of the European Commission (EC) announced that it will commission an independent study of corporate governance codes in member states. This study will identify common as well as divergent corporate governance approaches and features among member states that could impact cross-border investment. The EC intends to use the findings of the study as the basis for its next initiative – a Euro-code, directives, or other approaches. Meanwhile, the draft directive on pan-European takeover rules is still being discussed.

On the private sector side, Brussels-based consultancy Déminor, supported by six influential European institutional investors[11], announced the introduction of the *Corporate Governance Rating Service* in March 1999. This service would provide corporate governance grading (on an A to E scale) on 160 top European corporations, including the Financial Times 30 companies in the United Kingdom, DAX 30 companies in Germany, CAC 40 companies in France, AEX 25 companies in the Netherlands, SX 16 companies in Sweden, and BEL 20 companies in Belgium. Companies will be graded based on 230 corporate governance indicators, divided into four categories – shareholder rights, absence of takeover defences, disclosure, and structure of boards. In December 1999, Déminor released its findings. Eighteen companies, including 14 from the United Kingdom, received the highest grade.

[10] Dead-hand provisions allow only those directors who were in office at the time the poison pill was adopted to redeem the rights issued in connection with the poison pill.

[11] The six European institutional investors are ABP of the Netherlands (largest pension fund in Europe), Credit Agricole Indosuez Luxembourg, DWS of Germany, Hermes of the U.K., PGGM of the Netherlands, and SPP of Sweden. These investors manage an aggregate €400 billion.

In December 1999, France's Proxinvest also released its corporate governance ratings of 200 Euro-zone listed companies. Irish companies took the top four places, with France's Air Liquide placing fifth. In contrast, Italian firms took three out of the last five places. The ratings were based on 35 corporate governance criteria, including minority shareholder protection, board structure, and transparency.

In the fall of 1999, DSW, Germany's leading shareholder association, issued a set of recommendations intended to promote the harmonisation of shareholder rights in the European Union. The six minimum shareholder rights published by DSW are:

1) A 30-day notice period for AGMs of all companies listed in the EU;
2) No minimum quorum;
3) Timely distribution of information, such as the annual report;
4) One share, one vote principle;
5) Permit proxy voting; and
6) Right to compensation and other legal remedies for misleading statements in the annual report.

In February 2000, Eurosharehoiders, a Brussels-based confederation of European shareholder associations (including Aktiespararna (Sweden), Deutsche Schutzvereinigung für Wertpapierbesitz (DSW)(Germany), and Vereniging van Effectenbezitters (Netherlands)), issued a 10-point guidelines on corporate governance. The Eurosharehoiders guidelines, which are based on the OECD Principles, represent the first attempt by investors to draft common standards for Europe's diverse governance cultures. The guidelines call for companies to maximise shareholder value and to permit shareholders to elect the members of at least one board. In addition, the Eurosharehoiders' guidelines advocate the one share, one vote principle, oppose the use of takeover defences, and call for shareholder approval for mergers and takeovers, stock option plans, and share buy-back programmes.

In April 2000, the **Slovak Republic**, which is a candidate for OECD membership, expressed its intention to comply with the OECD Principles and to implement the applicable provisions of the OECD Principles into domestic law in the near future.

III. Selected Corporate Governance Trends

Recent corporate governance developments in OECD Member countries reveal the emergence of a number of discernible trends. The emerging trends highlighted in this report are: 1) the emergence of the OECD Principles as the international benchmarks on corporate governance; 2) the increasing utilisation of technology to promote and enhance corporate governance; 3) the rise of shareholder activism by trade unions; and 4) the harmonisation of financial reporting standards.

Emergence of the OECD Principles as the International Benchmarks on Corporate Governance

One of the most significant developments over the past 18 months has been the emergence of the OECD Principles of Corporate Governance as the first internationally accepted benchmark on corporate governance. The OECD Principles were adopted by the 29 OECD Ministers in May 1999 and subsequently endorsed by the G-7 and G-22. In March 2000, the Financial Stability Forum adopted the OECD Principles as one of its 12 core international standards for sound financial systems. A month earlier, finance ministers attending the Third Western Hemisphere Finance Ministers Meeting, which was held in Cancun, Mexico, agreed to form a working group to assess corporate governance practices in their economies against the standards set forth in the OECD Principles. Since its inception in May 1999, the

OECD Principles have gained widespread acceptance as a universally applicable set of corporate governance standards, serving as a model for various national and regional codes and adopted by private institutions to be the benchmarks for measuring corporate governance performance.

In 1999, Greece and Portugal developed corporate governance codes modelled on the OECD Principles. In addition, the Netherlands has cited the OECD Principles as a reference in its on-going work on reforming the regulatory framework for corporate governance and the Czech Republic is establishing a commission to draft a corporate governance code, using the OECD Principles as a reference point. Furthermore, the corporate governance codes of the Bank for International Settlements, Commonwealth Association of Corporate Governance, and the Easdaq stock market draw upon, and make references to, the OECD Principles. Lastly, the Euroshareholders' 10-point guidelines on corporate governance, which represent the first attempt to draft common standards for Europe's varied corporate governance cultures, are based on the OECD Principles.

As indicated above, the OECD Principles have also been adopted by a variety of private sector corporate governance institutions. At its annual meeting in Frankfurt in July 1999, the International Corporate Governance Network[12] (ICGN) endorsed the OECD Principles and issued a complementary 10-point "working kit". The working kit is intended to provide specific guidance, from an investor's perspective, on how the OECD Principles should be applied in practice. It emphasises the importance of shareholder returns, timely and adequate disclosure, the one share, one vote principle, the right of shareholders to vote on major corporate changes, independent directors (at least three), and detailed disclosure of remuneration policies, including divulging the compensation package for individual directors and senior executives. Institutional investors such as Hermes Investment Management of the United Kingdom and CalPERS, Institutional Shareholder Services, and TIAA-CREF of the United States have indirectly adopted the OECD Principles by endorsing the ICGN *Statement on Global Corporate Governance Principles*.

A number of organisations are also using the OECD Principles as benchmarks for measuring corporate governance performance. The International Forum on Accountancy Development (IFAD), a body created by the International Federation of Accountants to improve accounting and audit practices worldwide, is using the OECD Principles as a tool to analyse governance and disclosure regimes. The European Corporate Governance Service's voting reports for the FTSE Eurotop 300 companies also include corporate governance profiles based on the OECD Principles, as amplified by the ICGN working kit.

Increasing Utilisation of Technology for Corporate Governance

Recent advances in technology, and the advent of the Internet in particular, have opened new possibilities for promoting and improving corporate governance. Over the past 18 months, there has been a clear trend in OECD Member countries to harness new technologies for corporate governance-related activities. The Internet, for example, is being used to disseminate company information (such as annual reports and other company communication), generate increased shareholder awareness of corporate governance issues, co-ordinate shareholder actions, and facilitate the exercise of shareholder rights.

The impetus for this trend has come from both the public and private sectors. In Britain, the Electronic Communication Bill, which was passed recently by Parliament, would permit companies to receive shareholder proxy and voting instructions by electronic means, recognise electronic signatures, and allow the dissemination of information (such as annual reports) by E-mail or through the Internet. In Germany, the government has endorsed electronic voting. On the other side of the Atlantic, the proposed

[12] The ICGN is comprised predominantly institutional investors which manage an aggregate US$6 trillion in investment funds.

amendments to the Canada Business Corporations Act would also sanction electronic voting and electronic dissemination of information.

In addition, the German government's investment promotion agency has indicated a desire to set up a website that will serve as a clearinghouse for information on corporate governance. This website would be similar to the website that the Paris Bourse has been operating since 1997.

The importance of new technology for corporate governance has also been noted in recently promulgated corporate governance codes. A number of the corporate governance codes discussed in this report, such as France's Hellebuyck Code, Germany's corporate governance code, and Korea's code of best practice for corporate governance, explicitly endorse the use of electronic means for communication, dissemination of information, and voting.

Likewise, the private sector has been eager to take advantage of new technologies for corporate governance-related purposes, with institutional investors and companies catering to institutional investors being the most enthusiastic proponents. In 1999, U.S.-based CalPERS and Domini Social Investments began posting their proxy vote decisions on the Internet two weeks prior to the relevant AGMs. The CalPERS's website also contains news on CalPERS's and other institutions' shareholder litigation activities and a library of 14,000 abstracts of corporate governance literature. In addition, an increasing number of U.S. companies have started holding virtual AGMs.

Commercial corporate governance services on the Internet have proliferated recently. In July 1999, Institutional Shareholder Services (ISS) Australia began posting its research reports on its website. The company furnishes subscribers with a password, enabling them to access detailed analyses of meeting agendas and governance profiles of 120 listed companies in Australia. In 1999, Proxy Monitor became the first U.S. company to introduce proxy analyses on the web. Proxy Monitor's European counterparts, Proxinvest in France and the National Association of Pension Funds (NAPF) and the Association of British Insurers in the United Kingdom, started providing proxy analyses over the web several years earlier.

Not to be left behind, services for individual shareholders are also surfacing. This year, the Association of Investment Trust Companies (AITC), which represents approximately 300 unit trusts in the United Kingdom, commenced Internet and telephone share voting services to shareholders. Another U.K. company, E-vote, has also introduced electronic voting at approximately 100 U.K. companies. In the United States, Proxy Monitor has launched an interactive website that allows each user to vote all of its shares worldwide through a single website. In addition, U.S. companies such as ADP and EquiServe are offering individuals the option of voting proxies over the Internet.

Lastly, the number of corporate governance websites continues to multiply. The OECD and the World Bank plan to create stand-alone websites for their three regional roundtables in Asia, Latin America, and Russia. Each website is expected to serve as a hub for corporate governance information in its region. In addition, the World Bank has created a separate website for the Global Corporate Governance Forum. To facilitate the exchange of ideas on corporate governance, the European Corporate Governance Network and the World Bank have both launched electronic bulletin boards. Other prominent websites on corporate governance include The Corporate Governance Encyclopedia, The Corporate Library LLC, CalPERS, and the Danish Corporate Governance Network.

Trade Union Shareholder Activism

While not highlighted in the above section on corporate governance developments in selected OECD Member countries, another emerging trend has been the increasing activism of trade unions in the corporate governance movement. In November 1998, the International Confederation of Free Trade Union (ICFTU) formed an International Task Force on Pensions and Capital Markets to identify shareholder activist strategies and draft core principles that define the role of pension fund capital in the global marketplace. In 1999, the European Association of Employed Shareholders developed a six-point principles of corporate governance intended to spur employee investors to "take a supervisory role and exercise their responsibilities as shareholders." In the United Kingdom, the Trade Union Congress (TUC) recently initiated a drive to mobilise labour's influence as pension fund shareholders. The TUC also adopted model corporate governance guidelines for union trustees of pension funds, urging trustees to lobby for independent board directors, performance-based executive compensation, and widespread employee share ownership schemes.

In the United States, trade unions have become increasingly active in monitoring the votes of fund managers. The AFL-CIO, for example, has urged fund managers to vote according to union client recommendations[13]. In October 1999, the AFL-CIO released a report grading mutual funds on shareholder activism. Fund managers gave high marks to funds that vote proxies, file dissident resolutions, nominate directors at underperforming companies, or screen out companies that are anti-union. Twenty-two U.S. fund managers received grades ranging from excellent to fail.

Coordination among national trade unions on corporate governance activities is also on the rise. In November 1999, an ICFTU strategy session held in Stockholm yielded an agreement among the participants to cooperate on promoting labour shareholder activism on corporate governance. Earlier this year, Australia's Council of Trade Unions, Britain's Trade Union Congress, and the U.S.'s AFL-CIO came together to coordinate a proxy campaign at mining concern Rio Tinto.

Harmonisation of Financial Reporting Standards

Rising cross-border portfolio investments and the integration of capital markets, combined with the corresponding demand by investors for standardised financial reporting, have led to the increasing adoption of International Accounting Standards (IAS) and U.S. GAAP by companies and national standard-setting bodies in OECD Member countries. The continuing convergence of IAS and U.S. GAAP may also signal that a single set of internationally recognised accounting standards could soon emerge[14].

For a number of years, a small group of companies seeking financing in the international capital markets have turned to IAS or U.S. GAAP for their financial reporting. In recent years, this trend appears to be

[13] U.S. trade unions have assumed largely mainstream positions on corporate governance issues. For example, the AFL-CIO opposes poison pills and double voting and favours independent boards and curbing excessive executive pay.

[14] Since the mid-1990s, the International Organization of Securities Commissions (IOSCO) and the International Accounting Standards Committee (IASC), the London-based body that develops IAS, have engaged in the development of a core set of internationally acceptable standards, drawn from existing IASC standards as well as national standards. In addition, the U.S. Securities and Exchange Commission (SEC), which has the power to set U.S. accounting standards (in practice, this power is delegated to the Financial Accounting Standards Board (FASB)), issued a "concept release" seeking input on how convergence between IAS and U.S. GAAP can be achieved. Separately, the FASB has also endeavoured to narrow the differences between IAS and U.S. GAAP.

accelerating. A recent KPMG survey of companies in 16 European OECD Member countries[15] revealed that 50% of surveyed companies which are still using domestic accounting standards are contemplating converting to IAS or U.S. GAAP within the next three to five years.

Recognising the increasing need for companies to tap the international capital markets, a few OECD Member countries have recently introduced changes to allow domestic companies[16] to use IAS or U.S. GAAP to satisfy domestic reporting requirements[17]. In 1998, the KonTraG legislation allowed German companies to report their accounts under IAS or U.S. GAAP rather than German GAAP[18]. One year later, the number of DAX 30 companies reporting under IAS or U.S. GAAP jumped to 63%, from 17% in 1998. In Austria, starting April 2001, all domestic and foreign companies listed on the A-Market and the Austrian Growth Market will be required to use IAS or U.S. GAAP and all other companies may use IAS or U.S. GAAP for their consolidated financial statements. In France, the Commission des Opérations de Bourse (COB), the market regulator, announced in January 1999 that all listed companies may publish supplemental financial statements in accordance with IAS. In addition, a 1998 law that allows domestic companies to follow IAS or U.S. GAAP for consolidated financial statements will come into effect once the Comité de la Réglementation Comptable adopts IAS[19]. In Korea, the Accounting Standards Board was recently established with the objective of improving Korean accounting standards to a level consistent with international best practices. Furthermore, the Japanese government decided in 1998 to harmonise its accounting standards as closely as possible to IAS.

Furthermore, recent corporate governance codes have also embraced international accounting standards. In France, the Viénot II report recommends allowing companies to move from national accounting standards to IAS or U.S. GAAP. In Japan, the CGFJ corporate governance code urges companies to move "swiftly" to IAS. Lastly, the Big Five accounting firms established the International Forum on Accountancy Development (IFAD) in June 1999 to raise accounting standards worldwide to the level of IAS.

As a complement to the ongoing harmonisation of accounting standards, a similar effort to develop and implement international standards for audit is also occurring.

IV. CONCLUSION

The corporate governance developments highlighted in this report suggest that a convergence of corporate governance approaches is occurring among OECD Members. In most OECD Member countries, accountability of directors and executives has been enhanced, shareholder rights strengthened, and disclosure of company information improved, among other things. Governments, institutions, and companies in the OECD "family" are also moving rapidly to integrate new technologies, particularly the

[15] The companies surveyed were from Austria, Belgium Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

[16] Most OECD Member countries already allow foreign companies listed on their stock exchanges to use IAS or U.S. GAAP.

[17] A number of OECD Member countries already allow domestic companies, subject to certain conditions (i.e., reconciliation to national accounting standards, simultaneous foreign listing, significant foreign operations, etc.), to adopt IAS or U.S. GAAP for their domestic financial reporting. These include Belgium, Denmark, Finland, Hungary, Italy, the Netherlands, Poland, and Switzerland.

[18] As indicated previously, tax returns must continue to be filed using German GAAP.

[19] Attempting to attract Latin American companies seeking to tap the euro capital market, the Paris Bourse and Commission des Opérations de Bourse (COB) revised their listing rules in 1999 to permit the presentation of financial statements under IAS or U.S. GAAP.

Internet, into the corporate governance framework. Although the OECD Principles have been in existence for only a short time, they have contributed to this convergence, as governments and private institutions utilise them as models for their corporate governance codes and as benchmarks to measure corporate governance performance. The convergence taking place today, however, has not led, and is not expected to lead, to a homogenisation of the diverse legal, economic, and social traditions existing in OECD Member countries.

The recent alliances in the financial markets of OECD countries, such as the Deutsche Börse-London Stock Exchange, Paris Bourse-Brussels Stock Exchange-Amsterdam Stock Exchange, and Nasdaq-Osaka Stock Exchange (known as Nasdaq Japan), may also have powerful implications for corporate governance. As indicated above, stock exchanges have played a prominent role in improving corporate governance. Therefore, these linkages, which are expected to lead to fewer sets of rules, may accelerate the pace of convergence in corporate governance practices.

In recent years, many OECD Members have embarked on a review of their company law regimes. Globalisation, fundamental changes in economic structures and business practices, and advances in technologies are among the factors prompting governments to each examine 1) whether its company law can accommodate such changes and 2) how company law, which acts as the core corporate governance framework, can facilitate economic growth and enhance the competitiveness of its commercial enterprises.

The diverse developments in corporate governance in recent years have resulted in a greater need for dialogue and exchange of experience. The OECD has experienced an increased demand to facilitate and service these dialogues. In addition, new corporate governance issues have emerged. Discussions have only begun on the corporate governance of the so-called “new economy” companies, which exhibit their own governance challenges and opportunities, for example, in terms of incentive policies, board structures, and financing tools.

The increasing utilisation of technology for corporate governance purposes has also given rise to certain policy questions, such as whether the dissemination of company information by electronic means should supplant or complement traditional distribution channels and when such disclosure is deemed to have satisfied regulatory requirements.

In order to track the impact of these and forthcoming corporate governance reforms on corporate financing and equity market development more comprehensively, a more sustained analytical and research effort would be needed.

ANNEX I

Presentation - Recent Corporate Governance Developments and Trends in OECD Member Countries

The following is a transcript of the presentation made by Simon Wong, Counsel, Corporate Affairs Division, OECD, at a meeting of the OECD Steering Group on Corporate Governance on 15 June 2000.

Introduction

Good morning, ladies and gentlemen. I will spend the next 15 minutes going over the background paper written for this session. This paper is intended to provide an overview of key corporate governance developments and trends over the past 18 months within the OECD region. Unfortunately, due to time and resources constraints, we were unable to examine all of the developments occurring in OECD countries. We apologise for any omissions. For the sake of brevity, I will discuss the developments by theme instead of by country as in the background paper.

Main Body

Improving corporate governance continues to be a priority in the OECD region and the level of corporate governance activity remains high.

One of the most visible developments over the past 18 months has been the promulgation of corporate governance codes by private sector organisations and public sector bodies such as stock exchanges and securities commissions. Among OECD Member countries, 1999 saw Greece, Italy, Korea, Mexico and Portugal adopt their first corporate governance codes. Earlier this year, Germany promulgated its first corporate governance code, the first set of guidelines for two-tier boards, and Euroshareholders, a confederation of European shareholders associations, issued corporate governance guidelines for European companies. Currently, the Czech Republic and Denmark are contemplating drafting corporate governance codes for their enterprises and the European Commission is conducting a study of corporate governance codes in Member states and, depending on the outcome of this study, may draft a Euro code.

While each code is distinct and tailored to fit local conditions, there are a number of similarities among them. For example, all codes urge companies to appoint independent outside directors to their boards. Many codes, however, do not specify the number or percentage of independent directors who should sit on a company's board. Instead, they simply state that a board should contain a "sufficient" or an "appropriate" number of independent directors. The Corporate Governance Code for Mexico, however, states that outsiders should constitute at least 20% of the board and Korea's corporate governance code recommends that 50% of the boards of large companies should comprise independent directors.

Another similarity among corporate governance codes is the call for the creation and use of board committees, particularly audit, nomination, and remuneration committees. According to these codes, these committees should be made up primarily or entirely of independent directors. To provide additional assurance that audit committees will in fact act independently, Korea's corporate governance code adopts a novel approach by recommending that shareholders be provided with the power to appoint audit committee members during shareholders meetings.

As a third example, there appears to be an increasing number of corporate governance codes that explicitly call for performance-linked compensation for executives, including through the use of stock grants and stock options.

One corporate governance issue that has attracted considerable attention recently is the disclosure of executive remuneration. In 1999, after a year-long battle, including the threat by the Irish government to impose legislation if the stock exchange did not act, the Irish Stock Exchange became the second stock market in Europe, after the London Stock Exchange, to require disclosure of individual executive remuneration figures. In France, a similar debate occurred between the French government and the business community. Earlier this year, the French government decided to withhold legislation requiring disclosure of individual executive salaries only after Medef, the French employer association, issued a strong recommendation to companies to voluntarily publish such information. In Japan, a lower court recently ruled that the defendant bank (Nanto Bank) must disclose specific bonus amounts when asking shareholders to approve bonuses to be paid to retiring directors. Furthermore, Kabunushi Ombudsman, an Osaka-based group of individual investors, recently filed a dissident resolution asking Sumitomo Bank to change its bylaws to require the release of individual director salaries, incentive pay, and retirement bonuses. In the Netherlands, the government has submitted legislative proposals to require the disclosure of individual director and executive remuneration. The German government is also reported to be contemplating similar legislation.

As the paper highlights and as the debates over executive remuneration disclosure demonstrate, governments are increasingly taking an active role to improve corporate governance. With respect to corporate governance codes, compliance is largely voluntary, although some stock exchanges and securities commissions require companies to disclose the degree of compliance with the applicable code as a way to shame them to comply. In some countries, however, governments have taken a more forceful approach by introducing legislation to mandate compliance with certain provisions of the corporate governance code. In Korea, for example, the government has introduced legislation requiring large companies, starting from 2001, to have at least 50% independent outside directors on their boards. In addition, listed companies that fail to fully disclose their corporate governance structures may be fined up to 500 million won and may also be liable for losses incurred as a result of such omissions. In the United Kingdom, the government has declared that it stands ready to impose legislation if U.K. companies fail to better link executive compensation to company performance.

Shareholder activism continues to be a positive force for improving corporate governance, with domestic and foreign institutional investors leading the way in many countries. In Ireland, domestic and international institutional investors applied pressure over the course of 1999 to persuade the Irish Stock Exchange to require listed companies to disclose individual compensation amounts. In Korea, domestic shareholders group PSPD (People's Solidarity for Participatory Democracy) has been successful in lobbying companies to appoint outside directors, create board committees, and introduce cumulative voting. In Mexico, the UK's Hermes Investment Management played a behind-the-scenes role to persuade Mexico's largest retailer to adopt its own code of best practice. In the United States, many institutional investors have filed dissident shareholder proposals asking boards to remove the "dead-hand" poison pill, which allows a pre-existing group of directors to control the outcome of a hostile takeover battle even after they have been removed from office. An increasingly visible component of shareholder activism is the rising activism of trade unions in the corporate governance movement. This will be discussed separately in the next section.

The increased emphasis on corporate governance has also resulted in rising demand for advisory services. In Japan, the principal drafter of the Japan Corporate Governance Forum's principles formed a company in 1999 to help guide foreign institutional investors on Japanese governance practices. In addition, Sumitomo Trust & Banking recently formed the Focus Club to advise Japanese companies on communicating with foreign investors on corporate governance concerns. In Germany, a few consultancies have appeared over the past two years to advise investors and company supervisory boards on corporate governance issues.

In addition to these developments, the background paper also highlights four "emerging" trends occurring in OECD Member countries. The first such trend is the emergence of the OECD Principles of Corporate Governance as the first internationally accepted benchmarks on corporate governance. Since their adoption by the OECD Ministers in May 1999, the OECD Principles have gained widespread endorsements as a universally applicable set of corporate governance standards. The International Corporate Governance Network, whose members manage an aggregate $6 trillion in funds, has endorsed the OECD Principles and major institutional investors, such as CALPERS, have also given their stamps of approval. In addition, in March 2000, the Financial Stability Forum adopted the OECD Principles as one of its 12 core international standards for sound financial systems. Furthermore, the OECD Principles have served as a model for national and regional corporate governance codes and have been referred to in the codes of the Bank for International Settlements, Commonwealth Association of Corporate Governance, and the Easdaq Stock Market. Lastly, a few organisations are utilising the OECD Principles as benchmarks for measuring corporate governance performance.

The second emerging trend is the increasing utilisation of new technologies, particularly the Internet, to promote and improve corporate governance. The Internet, for example, is being used to disseminate annual reports and other company information, raise awareness of corporate governance issues, co-ordinate shareholder actions, and facilitate the exercise of shareholder rights.

Both the public and private sectors have been active in harnessing recent technological advances for corporate governance purposes. In the United Kingdom, the parliament recently passed the Electronic Communications Bill, which would recognise electronic signatures and allow the dissemination of company information by E-mail or over the World Wide Web. In Canada, the proposed amendments to the Canada Business Corporations Act would permit electronic voting and electronic dissemination of information.

In the private sector, commercial corporate governance services on the Internet for institutional and individual investors have proliferated. In a number of OECD countries, proxy analyses are available over the Internet and investors can also vote their proxies online. In addition, CalPERS and other institutional investors have begun posting their proxy vote decisions on the Internet one or two weeks prior to the relevant AGMs and the number of corporate governance websites continues to multiply.

The third emerging trend is the increasing shareholder activism of trade unions in the corporate governance movement. In November 1998, the International Confederation of Free Trade Unions (ICFTU) formed an international task force to identify shareholder activist strategies and draft core principles that define the role of pension fund capital in the global marketplace. In 1999, the European Association of Employed Shareholders (EAES) developed a six-point principles of corporate governance intended to spur employee investors to "take a supervisory role and exercise their responsibilities as shareholders." In the United Kingdom, the Trade Union Congress (TUC) recently initiated a drive to mobilise labour's influence as pension fund shareholders. In the United States, trade unions have become increasingly active in monitoring the votes of fund managers.

In addition, trade unions have also co-ordinated their corporate governance activities. In November 1999, an International Confederation of Free Trade Unions strategy session in Stockholm yielded an agreement among the participants to co-operate on promoting labour shareholder activism on corporate governance. Recently, Australia's Council of Trade Unions, Britain's Trade Union Congress, and the U.S.'s AFL-CIO came together to coordinate a proxy campaign at mining concern Rio Tinto.

The last emerging trend concerns the harmonisation of financial reporting standards. Rising cross-border portfolio investments and the integration of capital markets, combined with the corresponding demand by investors for standardised financial reporting, have led to the increasing adoption of International

Accounting Standards (IAS) and U.S. GAAP by companies in OECD Member countries. Furthermore, certain OECD countries now allow domestic companies to use IAS or U.S. GAAP to satisfy domestic reporting requirements. The continuing convergence of IAS and U.S. GAAP, coupled with an increasing number of countries harmonising their domestic standards to IAS, may signal that a single set of internationally recognised accounting standards could soon emerge.

Conclusion

In conclusion, the developments in recent years suggest that a convergence of approaches is occurring among OECD Member countries. Across OECD economies, accountability of directors and executives has been strengthened, shareholder rights enhanced, and disclosure improved. In addition, governments have also been quick to take advantage of new technologies to improve corporate governance. The OECD Principles have facilitated this convergence by serving as a model for corporate governance codes and benchmarks to measure corporate governance performance.

The numerous developments in corporate governance over the past few years have also led to a heightened need for dialogue and exchange of experience and the OECD has experienced increased demand to facilitate such discussions. In the future, we anticipate continued demand for policy dialogue as new corporate governance issues emerge, particularly with respect to new economy companies, which exhibit unique corporate governance issues with respect to incentive policies, board structures, financing tools, and so forth. The increasing use of technology also gives rise to certain policy concerns, such as whether dissemination of information by electronic means should complement or replace traditional distribution channels and when such disclosure should be deemed to have satisfied regulatory requirements.

Thank you.

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