



## Govern thyself

Institutional investors have spent a decade and more trying to secure greater accountability from companies. Thanks to the ICGN, a global effort is now underway to establish principles for the investors' own governance.

Institutional investors have a critical role to play in ensuring that companies achieve top performance and serve society. It's only right therefore that institutions develop and disclose policies on how they engage with companies, the governance standards they apply, their voting strategies, and their guidelines for intervention.

It's also right that they disclose potential conflicts of interest and act to minimise them.

The ultimate aim is an investment culture characterised by long-term ownership and not short-term speculation.

To this end, the ICGN empanelled a committee to establish principles of ownership. The best practice guidelines, says the committee, are "designed to help shareholders monitor corporations – to prevent Enrons and spur better performance."

It is, they said, the first time that an investor representative body with global scope has "developed standards that would make their own performance as equity owners accountable to beneficiaries."

A follow-up document will address the issue of shareholders' rights.

The principles outline key Principles of Stewardship under four headings:

- ▶ General responsibilities
- ▶ Voting

Accountability of the institutional investor

- ▶ Conflicts of interest

"Institutional investors have a general fiduciary responsibility" says the draft "to ensure that investments are managed exclusively in the long-term financial interests of their beneficiaries." Within that context, institutions should contribute, where practicable, to improving and upholding good corporate governance in companies and markets with the objective of stimulating long-term value creation.

The draft sets out 12 appropriate actions that investors can take to give effect to their ownership responsibilities – see the box on page 2.

Shareholder engagement should not be seen solely as opposing poor corporate governance; good management initiatives should be supported as well. At the same time, investors must be sure that they don't micro-manage. Owners must not become meddlers.

Institutional investors are failing to meet their obligation as fiduciaries if they disregard serious governance shortcomings that may affect the long-term value of their investment. The draft principles list 15 areas where investors might have concerns, including:

- ▶ the level and quality of transparency
- ▶ the company's performance
- ▶ the suitability of outside directors
- ▶ remuneration practices and policies
- ▶ minority investor protection
- ▶ accounting and audit issues
- ▶ the management of environmental, ethical and social risks

## Voting

"Voting forms a prominent part of institutional investors' approach to corporate governance," says the draft. Votes cast "contribute to a stronger management focus on the actual (long-term) interests of shareholders."

Institutions should thus develop well-considered voting policies, and cast votes after careful analysis.

## Accountability

Institutions should be accountable to beneficiaries for the way they discharge their ownership responsibilities. To this end, they should disclose to beneficiaries:

- ▶ their corporate governance policy, how governance matters are taken into account in their investment policy, and their voting guidelines
- ▶ how they monitor companies, and how the effectiveness of that monitoring is reviewed
- ▶ an annual summary of their voting record, together with specific voting decisions (plus an explanation) in controversial cases. The summary should include the percentage of shares voted and the extent to which votes have been cast with or against management
- ▶ a list of all companies in which they are a shareholder
- ▶ what resources they have allocated to carry out their governance policy. (If none, this fact should be explained)
- ▶ a list of conflicts that could potentially impede an independent approach, plus procedures for dealing with such conflicts
- ▶ the names of agents to whom ownership functions have been outsourced

Institutional investors should make these disclosures at least once a year on their website, as well as in their annual report.

## Conflicts of interest

Institutional investors compete for corporate pension fund business, a fact which could potentially impair an independent approach towards investee companies.

In addition to disclosing any potential conflicts (see above), the ICGN draft principles suggests that “where such a conflict has the potential to harm the interests of beneficiaries of their investment in the company, they should consider outsourcing the power to perform their ownership responsibility to a separate independent agent or trust company set up for that purpose.”

Agents too, of course, may suffer conflicts so the institutional investor should ensure that any agent acts fully independently from corporate management or other conflicting business relationships. The institution should regularly review the performance of the agent and ensure that the agent’s decisions can be overridden if need be.

Given the large differences in market development round the world, it is evident that this statement will be a good deal more challenging for some institutions than others. “However,” says the draft, “the ICGN believes that if institutional investors take their responsibilities seriously then this can contribute significantly to the creation of an environment suited for solid long-term investment. Therefore, all institutional investors are encouraged to establish an action plan working towards full implementation of the Statement’s recommendations as soon as practicable.”

The draft will remain open for comment on the ICGN’s website until April 30th, 2003. The committee will consider the views submitted before drawing up a final text that will be submitted for a vote of the ICGN membership at its annual meeting in Amsterdam on July 11.

[www.icgn.org/documents.html](http://www.icgn.org/documents.html)

### Appropriate actions for institutional investors to give effect to their ownership responsibilities

- ▶ Voting;
- ▶ Expressing concerns to the board, either directly or in a shareholders meeting;
- ▶ Making a public statement;
- ▶ Submitting proposals for the agenda of a shareholders meeting;
- ▶ Submitting one or more nominees for election to the board as appropriate;
- ▶ Convening a shareholders meeting;
- ▶ Teaming up with other investors and local investment associations either in general or in specific cases;
- ▶ Taking legal actions, such as legal investigations and class actions;
- ▶ Lobbying governmental bodies and other authoritative organisations;
- ▶ Incorporating corporate governance analysis in the investment process;
- ▶ Stimulating independent buy-side research;
- ▶ Outsourcing any or all of these powers to specialized agents, for instance in the event the institutional investor concludes that it does not have the ability to muster necessary skills in-house.

### The ICGN Committee on Shareholder Rights and Responsibilities Committee

Geert Raaijmakers, ABP (Netherlands) – Chair  
Stephen Davis, Davis Global Advisers (US)  
Robert Monks, The Corporate Library (US)

Peter Butler, Hermes (UK)  
Christian Strenger, DWS (Germany)

## Bob Monks collects award

Robert Monks recently collected his ICGN award for making an outstanding contribution to corporate governance. He received his award at an event organised by Hermes, the fund manager and ICGN member, in November last year.

His fellow 2002 laureate, Jesus Estanislao, former head of the Development Bank of the Philippines and Secretary of Finance, was presented with his award at the ICGN’s eighth annual conference in Milan in July 2002.

Monks received his award from Sir Adrian Cadbury, also an ICGN award winner. Sir Adrian said: “Bob has been in the forefront of corporate governance for over 20 years, during which time he has made a major contribution to the theory and practice of corporate governance both in the US and the UK.”

Bob Monks said, “I am delighted to receive this award from the ICGN which continues to be the global thought leader on issues of corporate governance. In the wake of economic downturn and corporate failures, corporate governance is more important than ever to long term growth and sustainability.

“I believe we are winning the intellectual and economic arguments supporting our cause and that the value of sound

corporate governance has become widely recognised. Good governance is the essential component of equity culture; a healthy equity culture is the basis of personal and national wealth. Organisations like the ICGN make a vital contribution to this campaign and I look forward to the new challenges that lie ahead for the corporate governance movement in the future.”

ICGN awards are made to individuals who have markedly improved the state of corporate governance in one or more jurisdictions, overcoming challenging obstacles requiring vision, courage and fortitude.

## 2003 Awards

The ICGN will be making further awards to individuals who have made outstanding contributions to improved corporate governance.

Members of the ICGN may propose a candidate for an award. Nomination forms will be sent to members shortly, and the deadline for submissions is April 14 2003.

The ICGN Award Committee: Stephen Davis, Jon Lukomnik, Christian Strenger. Contact [smd@davisglobal.com](mailto:smd@davisglobal.com)

# European reform wins ICGN support

Alastair Ross-Goobey, chairman of the ICGN, has written two letters to Frits Bolkestein, the European Internal Markets Commissioner, in support of European Commission initiatives to improve governance standards in Europe.

In 2001, Bolkestein established a High Level Group of Company Law Experts to examine how European company law could be harmonised and obstacles to good governance removed. The group was chaired by Jaap Winter, an academic and legal adviser to Unilever. Winter spoke to the ICGN conference in Milan in July 2002.

The committee made wide-ranging recommendations on issues including board structure, corporate disclosure, and audit. A separate report was issued covering cross-border voting, with a recommendation that the Commission implement it with urgency.

## The Winter report

Ross Goobey wrote that the “ICGN very much endorses the general thrust of the report and the individual recommendations it contains.”

In particular, it welcomed the suggestion that each member state designate a corporate governance code as a yardstick against which companies should comply and explain. “This,” wrote Ross Goobey “ensures compatibility with local legislation and usage while remaining flexible for companies with different characteristics and circumstances and allows for evolutionary changes – and future convergence – of norms.”

The letter was equally supportive of Winter’s view that alternatives to inflexible regulation should be found. The letter said: “disclosure is a powerful regulatory tool that can often yield better results than hard and fast substantive legislation or regulation.”

While welcoming Winter’s call for active and engaged boards, Ross Goobey suggested that regulators should be “extremely cautious with respect to the role of shareholders regarding directors’ and executives’ remuneration ... it should perhaps be made even clearer that it is not intended to infer that shareholders would become involved with the actual definition of policies, still less with the determination of individual remuneration packages.”

## Cross border voting

An earlier letter from Ross Goobey tackled Winter’s separate recommendations on improving the voting process.

Jaap Winter’s committee established three central principles for facilitating improved voting:

- ▶ Throughout Europe it should be made clear who is entitled to vote or should have the right to determine how the votes are executed
- ▶ These persons or institutions should be enabled to exercise their voting rights

▶ It should be ensured that those entitled to vote receive the relevant information to exercise their voting rights in an informed manner

The report called for an EU directive determining who has the right to vote. The report stated: “If regulation as to who is entitled to control the voting rights is left up to all member states individually, the present problems of cross-border voting will not be solved.”

The ICGN approved Winter’s principal recommendations, with only minor qualifications. Ross Goobey wrote: “the flow of information from listed companies to investors and the exercise of voting rights by shareholders are core requirements of good governance.” The ICGN also “enthusiastically endorsed” the recommendation that share blocking be prohibited, and was similarly supportive of the call for electronic voting.

Find the ICGN letters at: [www.icgn.org/documents.html](http://www.icgn.org/documents.html)

## Committee news

**Cross border voting committee:** In association with Institutional Design, the London-based consultancy, the committee carried out a detailed study of the 2002 proxy process at five companies – one each from the US, UK, Germany, Italy and Japan. Several leading institutional investors each co-operated with the study, as did their custodians, sub-custodians and voting agents. John Wilcox, who describes the analysis as an ‘audit’ of the proxy process, says: “It’s a study that’s designed to look into the inner workings of the cross-border voting process. It’s a start at looking at what really goes on.” The results of the analysis will be circulated to ICGN members in the Spring.

**ADRs:** At the 2002 Milan annual meeting, a sub-committee of the cross-border voting committee presented recommendations relating to the rights of holders of American Depositary Receipts. The committee has since been working on a survey of institutional investors, based on that report. The questionnaire has been completed and will be mailed to members shortly. The results will be presented to the 2003 annual meeting in Amsterdam.

**Accounting and audit practices:** In November last year, the International Accounting Standards Board issued proposals for requiring companies to account for employee stock options as an expense to the business. The comment period closes in March 2003, and the accounting and audit practices committee, chaired by TIAA-CREF’s Liz Fender, has written to the IASB to support the principle that options should be accounted for.

**Executive compensation:** The committee secured an ICGN endorsement of the recent report on executive compensation by the Conference Board, the business research group. It has also produced a bullet point summary of the ICGN pay principles, and will be producing a report on local market compliance with those principles.

**Stock lending:** The ICGN board has agreed to convene a new committee to review the issue of stock lending, a practice which raises complex issues of ownership, particularly with regard to voting. TIAA-CREF’s Andrew Clearfield has been tapped to chair this new committee.

## The Ninth annual ICGN conference - Amsterdam Making Corporate Governance Work

A message from the ICGN Chairman – Alastair Ross Goobey

“The ICGN annual conference has established itself as the prime venue for advancing the corporate governance debate. This year’s conference in Amsterdam has a very interesting list of speakers, including EU Commissioner Bolkestein and the author of a recent report on non-executive directors in the UK, Derek Higgs. Everyone who is active in promoting good corporate governance around the world makes a real effort to be present. They know that the discussions and debate will be well-informed and aimed at addressing the weaknesses in the current system, in both companies and investors. It is not just another talking shop.”

## Conference Sponsors

- ▶ Euronext ([www.euronext.nl](http://www.euronext.nl))
- ▶ PGGM ([www.pggm.nl](http://www.pggm.nl))
- ▶ The Foundation for Corporate Governance Research for Pension Funds ([www.scgop.nl](http://www.scgop.nl))
- ▶ The Corporate Library ([www.thecorporatelibrary.com](http://www.thecorporatelibrary.com))

### Wednesday July 9

14:00 – 18:00 Registration, Grand Hotel Krasnapolsky

18:00 – 20:30 Welcome Reception, Grand Hotel Krasnapolsky – Winter Garden

21:00 – 22:30 Official Greeting, Boat Trip on the Amsterdam Canals

### Thursday July 10

08:30 – 09:00 Registration and coffee

09:00 – 09:15 Opening Address “Making Corporate Governance Work”, Alastair Ross Goobey, Chairman, ICGN (UK)

09:15 – 09:30 Host Address, George Möller, Chief Operating Officer, Euronext Beurs van Berlage

09:30 – 10:00 From the South Sea Bubble to Dot Coms: A tour of Corporate Governance through four Centuries, Paul Frentrop, Author, Director Déminor Netherlands

10:00 – 11:00 Global Accounting & Reporting Convergence

11:00 – 11:30 Coffee Break

11:30 – 12:15 **Parallel Session A:** Governance & Corporate Social Responsibility, Conflict or Compliment? **Parallel Session B:** Securities Class Actions, An update on this key shareholder remedy

12:15 – 13:00 Absentee land-lords? Governance of Institutional Investors. Who are the real owners of pooled investment vehicles and what is their role?

13:00 – 14:00 Buffet Lunch

14:00 – 14:45 Re-defining the Role of Non-Executive Directors: Who can shareholders trust? Can NEDs really be the watchdogs in the boardroom that shareholders need?

14:45 – 15:30 Pay for Performance

or Rewards for Failure? The Top Pay Conundrum

15:30 – 16:00 Tea Break

16:00 – 16:40 Forward Look at Corporate Governance

16:45 – 17:30 **Parallel Session C:** The Coming of Age of Corporate Governance Ratings **Parallel Session D:** Unequal Share Voting – Can voting restrictions ever be justified? Switch with collective instruments

17:30 – 18:00 ICGN Awards Presentation, Stephen Davis, Awards Committee Chairman

19:30 – 23:00 Gala Dinner, De Oude Kerk (The Old Church)

### Friday July 11

08:30 – 09:00 Coffee in Reception area

09:00 – 09:15 Chairman’s Introduction & Re-cap, Alastair Ross Goobey, Chairman, ICGN

09:15 – 09:45 An Insider’s Story: Conversation with a Whistle-blower

09:45 – 10:30 Emerging Governance Markets: A timely look at developments in three separate jurisdictions

10:30 – 11:00 Coffee Break

11:00 – 11:45 Making money from Governance: Differing approaches to governance in the portfolio management process

11:45 – 12:15 EU Regulatory Developments

12:15 – 13:00 Chairman’s Conclusions & Closing Remarks, Alastair Ross Goobey

12:30 – 14:30 Buffet Lunch

14:30 – 16:30 ICGN Annual Meeting (ICGN Members only)

▶ Business Agenda

▶ Committee Reports

▶ Briefings by ICGN Partner Organizations

The International Corporate Governance Network seeks to bridge the gap between corporate management and shareholders. The ICGN is an international, informal network of institutional investors, shareholder advocates and corporate governance experts. ICGN members together hold assets totalling some US\$10 trillion.

The ICGN Board of Governors

- Peter Dey, Osler, Hoskin & Harcourt LLP, Canada
- Alastair Ross Goobey (chairman), Hermes Focus Asset Management, UK
- Stephen Davis, Davis Global Advisors, USA
- Peter deKoning, Corporate Governance Research

Foundation For Pension Funds, Netherlands

- Leo Goldschmidt, European Assoc. of Securities Dealers (EASD), Belgium
- Sandra Guerra, Instituto Brasileiro de Governanca Corporativa (IBGC), Brazil
- John Wilcox, Georgeson Shareholder, USA

- Sophie L’Helias, Franklin Global Investor Services, France

- Jon Lukomnik, Sinclair Capital, USA
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The ICGN Secretariat is administered by Ms Caroline Phillips, Director of the Policy Unit of the Institute of Chartered Secretaries & Administrators (ICSA).

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