

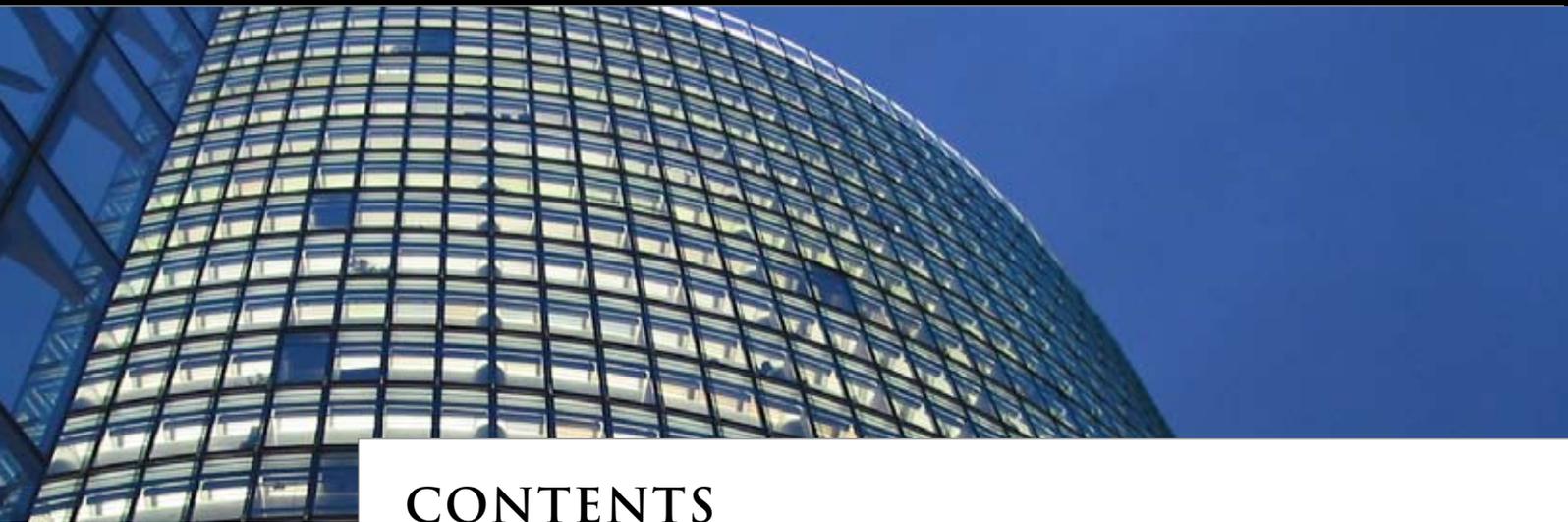
# INSIGHT

## CORPORATE GOVERNANCE

---

## GERMANY

**Essential:** Information, Analysis and Opinion for Investment Professionals, Advisers and Academics



### CONTENTS

- |                  |  |                  |   |
|------------------|--|------------------|---|
| <p><b>02</b></p> | <p><b>COMPANIES</b><br/>           IWKA and the Corporate Governance<br/>           Buhlmann's Corner:<br/>           Chapeau, Mr Cromme!<br/>           Kirch versus Deutsche Bank<br/>           Christian Strenger: A bonus for voting<br/>           – right way or wrong way?<br/>           Clashes over golden handshakes<br/>           Unexpected disclosure duties regarding<br/>           executive remuneration</p> | <p><b>16</b></p> | <p><b>PEOPLE</b><br/>           Restructuring at Balda, IWKA and HVB<br/>           Surprises at Merck</p>  |
| <p><b>10</b></p> | <p><b>FINANCIAL INVESTORS</b><br/>           End of the easy times<br/>           Insurers discover alternative investments</p>  | <p><b>19</b></p> | <p><b>CAMPUS</b><br/>           The Supervisory Board as sparring<br/>           partner for the management board<br/>           Non-transparent remuneration reports</p>   |
| <p><b>12</b></p> | <p><b>POLITICS</b><br/>           Zypries plans Public Corporate Govern-<br/>           ance Code<br/>           BDI calls for a pause in investor protec-<br/>           tion<br/>           Open door for avoidance litigants?<br/>           Growing liability risk for board members</p>   | <p><b>21</b></p> | <p><b>CAPITAL NEWS</b><br/>           Holdings: Buying &amp; Selling in November<br/>           Insight shareholder structure DAX30<br/>           Insight Shareholder ID: Epcos<br/> <b>New:</b> Directors' Dealings</p> |
|                  |  | <p><b>30</b></p> | <p><b>INDEXES OF COMPANIES<br/>           AND PERSONS</b></p>   |

## “IWKA does not have good Corporate Governance”

The influence of US financial investor Guy Wyser-Pratte in machine and plant builder IWKA over the company's strategic orientation is raising criticism. “IWKA plainly does not have good Corporate Governance,” opines Manuel René Theisen, Professor of Business Economics at Ludwig-Maximilians-Universität, Munich. If first the CEO and then almost the whole Supervisory Board runs away just because investor Wyser-Pratte says boo, that speaks for itself. Theisen thinks it is not right for an investor with a holding of not even 10 % to control the company. Wyser-Pratte holds around 7 % of the IWKA shares. Major shareholders, according to IWKA's indications, are Fidelity (5.61 %), K Capital Partners (5.29 %), LBBW (5.11 %), Schrodgers (5.05 %), Hermes (4.98 %) and The Capital Group (4.8 %).

Under pressure from the US investor, after prolonged disputes going as far as open threats to break up IWKA, CEO Hans Fahr resigned and has been replaced by well-known troubleshooter Wolfgang-Dietrich Hein. The rep-

resentatives of the capital side resigned their Supervisory Board posts. Wyser-Pratte, who is not on the Supervisory Board, is said to have helped find the new members for the oversight body. These include representatives of companies competing with IWKA in individual areas of business. Thus, Supervisory Board member Herbert Demel is President and CEO of competitor Magna Drivetrain. Whether corporate governance at IWKA will now improve, says one observer, likely depends decisively on how conflicts of interest are handled.

## Scandal costs VW more than 5 million Euros

The expert report by audit company KPMG on the so-called Volkswagen Affair has, according to VW Supervisory Board member and Audit Committee chair Klaus Liesen, cost the car manufacturer “several” million Euros. He estimates the damages from concealed transactions with bogus firms at around 5 million Euros. However, the swindles had according to the current state of knowledge remained “basically trials”. VW is drawing further conclusions from the swindle affair and largely restructuring internal procedures. Thus, a group-wide ombudsman system is being brought in, and internal authorization and verification procedures tightened up. On the management board too, “mutual authorization procedures” are being introduced for all expense reports. VW is in the words of **VW CEO Pischetsrieder** to become “an inwardly and outwardly more transparent company”.

VW had in late June reported offences to the Brunswick department of public prosecutions. The public prosecutors are now investigating ten people for aiding and abetting criminal breach of trust and for criminal breach of trust and fraud. Among the accused are also ex personnel manager Dr. Peter Hartz and ex Group Works Council chair Klaus Volkert, who had both resigned in connection with the affair.



## VW Supervisory Board member accepts consequences

VW Supervisory Board member Gerhard Cromme, who is also chair of the Corporate Governance Code Commission, is no longer standing for re-election to the car manufacturer's Supervisory Board in May 2006. According to press reports, E.ON Supervisory Board member Hans Michael Gaul and Lord David Simon of Highbury are no longer available either. Roland Oetker, President of the Deutsche Schutzvereinigung für Wertpapierbesitz (DSW), said in reply to an enquiry that he had been elected to the Supervisory Board as representative of the free shareholders until the 2007 AGM. His present intentions were to "exercise my office for the company's benefit until the date mentioned."

The decisive factor for Cromme's step was the Supervisory Board meeting

on 11 November, when trade-union official Horst Neumann was wholly unexpectedly put up for election. VW Supervisory Board chair Ferdinand Piëch supported his election. With six votes against from the shareholder side, Neumann was elected. "Piëch wants to take over control of VW. That's why he's making common cause with the union," says Thomas Shrager of US fund company Tweedy Browne. This was a clear case of conflict of interests. There had previously been heavy criticism in the media of Piëch's dual role as VW's chief supervisor and co-owner of new VW shareholder Porsche, with an eye to potential conflicts of interests. Porsche is further claiming, for its barely 22 % holding in VW, two additional Supervisory Board seats, for Porsche CEO Wendelin Wiedeking and CFO Holger Härter.

After Neumann's election, VW CEO Bernd Pischetsrieder had to deny that the relationship between him and Piëch had broken down. Pischetsrieder is said to have rejected Neumann. He stated it was "utter nonsense" that he felt disempowered by Piëch. He was sure that Neumann would "fully support" the course embarked on at VW.

Meanwhile, VW works council member Bernd Osterloh censured the disputes between management and supervisory boards. Osterloh: "Given the challenges facing us, we cannot afford possible unprofessional animosities of a personal nature." IG-Metall (Metalworkers' Union) Vice-President Berthold Huber has called on Lower Saxony's State Premier and VW Supervisory Board member Christian Wulf to put a stop to the power struggle at VW.

### BUHLMANN'S CORNER

#### Chapeau, Mr Cromme!

The "wolf in sheep's clothing" – as VIP once dubbed him – is now showing its teeth. And that's no bad thing! Gerhard Cromme has decided no longer to be among the candidates at the next elections for Mr Ferdinand Piëch's (sorry, Volkswagen AG's) Supervisory Board. That means that while for the moment he is still with the group, it will only be for a while – then he'll hold back, perhaps anticipating a conflict with Porsche.

2006 is also when the appointments of the stable E.ON CEO Hans Michael Gaul and the senior Supervisory Board member, Klaus Liesen of Ruhrgas, are to be renewed – Porsche will not hesitate to press strongly for Porsche here. VW's standard Supervisory Board term of five years was introduced in 1987 and is, like many other VW peculiarities, regulated in its charter (§ 11 (2)).

This obviously brings Porsche closer to its goal, as long as the shareholders do not block the way. Only if they let it can Porsche win the race. At the start the successful team from the Swabian town of Zuffenhausen with its 20 % is barely stronger than the State of Lower Saxony, homeland of the encumbered laggard from Wolfsburg. After the mismatch (today grand coalition, formerly parity-based codetermination) between cost-killer Ferdinand Piëch (top supervisor of VW and major shareholding driving force at Porsche) and the variously shaken-up

employee representatives, the next thing to come is the surprise coalition between an omnipresent Piëch without conflicts of interest and the State of Lower Saxony. The objective here is retention of the VW Act and the power structures.

It's obvious who's getting left behind here. Where is the race going? Are assessments and redistributions already being made? What is Audi worth: can VW do without its cash flow – in exchange for Porsche's VW shares? Or will they be merging with the Piëch family's distribution hub in Salzburg and offering the main plant complete for it? This circuitous family route would end up bringing grandfather Piëch's creation back into the hands of grandson Ferdinand.

The body of shareholders is now called on to decide. As far as Porsche is concerned, the advantages cannot yet be discerned. Should they emerge, the minority shareholder will not have to seek protection. As far as VW goes, we shall anxiously watch the testing that group management and its personalities will inevitably have to undergo in the light of the conflicts of interest. Cromme has shown form and proved a valiant upholder of interests – now the decision lies with the shareholders, and that too is as it should be.



Hans-Martin Buhlmann is the founder of VIP Vereinigung Institutiveller Privatanleger e.V. ([www.vip-cg.com](http://www.vip-cg.com)), a proxy voting agency

## COMMENT

## Extra dividend for voting shareholders – Is Germany on the right track?

**T**here is a great concern among German managers: continually declining GM attendances are bringing growing fears that random majorities might enable far-reaching GM decisions against the company's interest (which is formulated by the management and supervisory board). In fact, the average attendance rate for DAX30 companies has fallen from 61 % in 1998 to 48 % most recently; at Deutsche Bank and Deutsche Boerse AG even to 30 % or less. It is therefore hardly surprising that the proposal for a dividend bonus as a reward for voting formed almost reflexively some support. But does it stand up to an analysis of the facts, and is it ultimately convincing?

First, the fears lack real substance. The much-cited example of Deutsche Boerse AG is anything but suitable proof of the undesirable consequences of a random majority, since the attendance at this year's GM was at a near-record 60 % (up 28 % from 2004) and thus in the range of average attendance in neighbouring European countries (60 % in the UK, 58 % in France). In other cases too (like Infineon) attendances rose significantly when critical developments arose. Thus shareholders exercise their voting rights even without bonus payments when things get 'serious' in their company. And low attendances are increasingly seen as an expression of shareholders' relative satisfaction with their company and its performance.

At least three further reasons can

be discerned for the years of declining attendances: (i) The sale of big blocks of share by banks and companies led to a significant broadening of shareholdings (especially into international hands). (ii) Until this year the exercise of voting rights in Germany was cumbersome for international shareholders. Due to the former legal German requirement to 'deposit' the shares, Germany was considered a 'share blocking'-country. Institutional investors only exercised their votes if they regarded it compelling enough to activate their Proxy Committee. (iii) Many German banks and savings institutions stopped proxy voting services for private customers.

### How is the dividend bonus proposal to be assessed?

The additional votes generated by a dividend bonus would in many cases result in a windfall gain, since simply checking the box for the management's proposal enables maximum profit at minimal additional cost. Hitherto passive shareholders would bring about a dilution of the influence of active, informed shareholders because of the bonus incentive. Major detailed aspects of practical implementation are still unclear, for instance allocation issues. At Repsol in Spain more than 100 % of the share capital turned out as bonus-claiming shareholders. The introduction of the record date, while desirable in its own right, means the gap between voting entitlement (21st day before AGM) and regular

dividend entitlement (date of AGM) has to be resolved. Furthermore, how should the emerging duality of stock returns with and without dividend bonus be accounted for in the financial analysis?

A further serious drawback of the dividend bonus is that it works only in case of a GM with profit distribution. A dividend distribution to shareholders without profits is not permissible (§§ 57, 58 Stock Companies Act), and cannot easily be changed by legislation, since these rules are laid down in the EU's Second Company-Law Directive. Without distributable profits (e.g. corporate restructurings) or at extraordinary general meetings there could accordingly be no vote sweetener. Finally, the present obstacles to cross-border AGM participation would likely conflict considerably with the principle of equal treatment for all shareholders under § 53 Stock Companies Act.

### Sensible alternatives

More convincing ways to raise GM attendances would be intensified efforts towards more voting by institutional investors. As German mutual funds are voting in line with their statutory duties, voting reserves could be found among special funds, insurance companies and pension funds. As for foreign institutions, the opportunities of the record-date system brought about by the UMAG ought to be exploited through intensive communication efforts and increased recourse to proxy agents. >>

»» For instance, the important US pension fund Calpers has indicated a changed attitude towards voting their German shares. Fiduciary duties are increasingly calling for proof of qualified exercise of voting rights if there are not too-high obstacles. Also, the utilization of technical solutions for non-discretionary proxy voting provided for in the German Corporate Governance Code should be increased.

A dividend bonus should engage legislative attention only if post-UMAG voting attendance is clearly not increasing, and the alleged, though not proven, detriment to the company's interest from low attendance is really established.

**Von Christian Strenger**, Member of the Supervisory Board of DWS Investment GmbH, Frankfurt, and Roland Rott, Corporate Governance Research & Consulting and Goethe University Frankfurt

## HVB reviewing golden handshakes

The Supervisory Board and Works Council of HypoVereinsbank do not, according to an FT Germany report, wish to send off resigning executives Christine Licci and Stefan Jentzsch with a "golden handshake". The HVB Supervisory Board wanted a legal opinion on whether Licci and Jentzsch could draw on the change-of-control clauses in their contracts. The HVB Works Council too was forming up against the lump sums. Its representative on the Supervisory Board, Peter König, would vote on the Supervisory Board's presiding committee against paying them, it was stated. However, he too is said to have approved the executive appointment contract.

## Schumacher versus Kley

Ex-CEO of semiconductor group Infineon, Ulrich Schumacher, is according to a newspaper report preparing to sue Infineon. Schumacher is suing for some 2.5 million Euros on his executive appointment contract that Infineon is not paying out. In late 2004 Schumacher and Supervisory Board chair Max-Dietrich Kley had agreed the CEO, dismissed nine months earlier, would receive 5.2 million Euros in settlement of his executive entitlements. After Schumacher was according to newspaper reports brought into investigations of the corruption case around ex Infineon executive Andreas von Zitzewitz, Kley stopped the payment. It is not yet clear whether the company will be bringing claims for damages against Schumacher.



**How do you make sure that your confidential boardroom documents do not fall into the wrong hands?**

Brainloop Secure Boardroom protects confidential boardroom documents from unauthorized access while ensuring immediate availability to authorized users from any location, helping you reach important risk management and compliance objectives. Find out more at [www.brainloop.com](http://www.brainloop.com) or at +49-89-444699-0.



## INTERVIEW

## “A power game between Supervisory Board and manager”

**Dr. Schütz, how can a company protect itself against being thrown into a leadership crisis by the resignation of managers, as we recently read about at HVB?**

**SCHÜTZ:** If a board member resigns without good reason, the company can terminate the executive appointment contract within a two-week period. That eliminates payment of compensation for the unexpired remainder of the contract. In the HVB case the bank's legal advisers certainly have to check on this.

**Does the Supervisory Board ever resort to dismissal?**

**SCHÜTZ:** In practice things are not allowed to go that far. If management is clear that it has lost the Supervisory Board's confidence, say because there is a new majority shareholder, then they usually depart by themselves, and that is also what the Supervisory Board wants. In that case, too, a good reason is as a rule present, since management cannot work without the Supervisory Board's support.

**Why, then, is there a change-of-control clause in most management contracts?**

**SCHÜTZ:** This clause is in fact not strictly necessary. But managers very often insist on it. It creates legal certainty: entitlement to resign is beyond dispute, and the manager has a contractual guarantee that in the event of a change of ownership he can resign and still receive the compensation for the unexpired term of his contract.

**But what happens if a resignation merely conceals broken career dreams, say?**

**SCHÜTZ:** If the right to resign is misused, the company has to bring proof of that in order not to have to pay out the compensation. That proof is very hard to furnish. Ultimately the manager can always appeal to the change-of-control clause. Morally, of course, one might evaluate this quite differently. But as a lawyer, that is not my job.

**Can a company sue a manager for damages in the event of, say, a totally unexpected resignation that brings the company into difficulties?**

**SCHÜTZ:** While a manager has the right to resign for good reason, he may not use that right at the wrong time and thereby needlessly damage the contractual partner. Abusive exercise of a right infringes the general principle of good faith. In the HVB case the question certainly arises whether a manager would not have been able to continue in office to enable the carrying

out normal business activities for a transitional period, i.e. until a new executive could be found. To assess that, however, we should have to know how the time-limits for exercising the change-of-control clause are defined.

**Does a long term of the executive appointment contract in combination with a change-of-control clause not offer a manager too much security?**

**SCHÜTZ:** First of all, you must not forget that a manager has a fixed-term contract and can be dismissed, albeit for good reason, and thus rendered unemployed at any time. He thus enjoys no dismissal protection. The legislature has taken account of this position by basically decoupling the filling of the office and the term of the appointment contract that regulates remuneration from each other. Dismissal from the board accordingly does not automatically entail termination of the appointment contract and therefore of remuneration. Early termination of the contract similarly requires good reason. Ultimately, however, the pattern of the contract is a power game between Supervisory Board and manager. To protect the company from damage, a Supervisory Board must decide the conditions responsibly, and in awareness of its responsibilities. It must seek to evaluate, and also be able to, whether the contract is economically appropriate for the company. This is why the independence of Supervisory Board members called for in the Corporate Governance Code is decisive. It comes down ultimately to the Supervisory Board member's qualifications and personality whether he allows extraneous criteria into his decision-making or handles his duties of oversight over the management board independently and responsibly. The outcome will be a quite different negotiating position for the appointment contract.

**This is reminiscent of the Mannesmann case, where bonuses were allegedly hastily approved.**

**SCHÜTZ:** In business there was once a time when certain things were simply not done. If a company or a manager broke those unwritten rules, their reputation as a business partner was ruined; he was persona non grata, even without the case appearing in the press. This self-restraint through moral sanctions unfortunately works all too seldom today. The attempt to replace an absent sense of honour and decency by laws or codes can succeed only to a very limited extent.



Dr. Carsten Schütz is a partner in Preussner Schütz & Partner, Rechtsanwälte und Steuerberater, Berlin

## Insider investigations of Daimler managers halted ...

The Stuttgart public prosecutors have halted their investigations of suspected insider dealings by DaimlerChrysler group CEO Rüdiger Grube and Communications chief Hartmut Schick. The prosecutors had apparently not found any basis for the insider accusations in their investigations. Following the unexpected resignation of CEO Jürgen Schrempp in July both the Federal Financial Supervisory Authority BaFin and the Stuttgart prosecutors had begun investigating suspicions of prohibited insider trading. Grube's and Schick's homes and workplaces had also been searched.

## ... and taken up on suspicion of breach of the External Economic Relations Act

The Stuttgart public prosecutors have begun investigations of an ex-manager of car manufacturer DaimlerChrysler. Suspicions are that he has been in breach of the External Economic Relations Act. The occasion is the UN's Volcker Report on graft in connection with the Oil for Food Programme for the Saddam Hussein regime. More than 2,200 companies worldwide, including Siemens and Carl Zeiss, are alleged to have paid bribes and illegal price hikes amounting to 3.3 billion dollars to get orders under the UN aid programme with its 64-billion-dollar endowment.

## RWE Supervisory Board members to visit the notary

The 20 Supervisory Board members of utility RWE must according to a report in news magazine Der Spiegel give affidavits that they have not given any confidential information to the press.



The occasion is apparently a letter from **Paul Achleitner, Allianz executive and a Supervisory Board member,** to RWE Supervisory Board chair WestLB boss

Thomas Fischer, the contents of which the banker was to inform the other members of, but were then made public. Achleitner sharply criticized the planned appointment of former Works Council member Alwin Fitting as labour-relations director. The employee representatives on the Supervisory Board had offered to give affidavits they had not given any details from the letter to the press. Now all the members are to visit the notary.



They've been writing about us\* ...

...but we'd like to show you!

\*MADAUS QUANT VALUE

MADAUS Capital Partners GmbH  
 Königinstraße 29 · 80539 München  
 Telefon +49 89 37 42 679 0  
 E-mail: info@madauscpc.com



## Kirch versus Deutsche Bank

On 21 December the Frankfurt regional court is to render judgment in the action for avoidance by media magnate Leo Kirch against the Deutsche Bank for irregularities at an AGM of the bank. Presiding judge Stefan Möller indicated that Kirch's suit would fail. The Deutsche Bank's 2003 AGM was, despite a few legal irregularities, ultimately able to take effective decisions, said Möller. Kirch's accusation against the bank is that KPMG had retroactively changed the original minutes following consultations with the Deutsche Bank. Additionally, he claims, the Supervisory Board elections are invalid, since voting had inadmissibly been by a list procedure.

Kirch is bringing a number of actions against the Deutsche Bank. The media tycoon attributes his firm's insolvency essentially to declarations by Deutsche Bank Supervisory Board chair Rolf-E. Breuer. On 6 December the Bundesgerichtshof is to give its verdict on damage claims in triple digits of millions.

## Dispute over Siemens dividend

The announced dividend increase for Siemens shareholders has according to a report by news magazine Der Spiegel brought a dispute between Supervisory Board and management board of the electronics group. The management board is said to want despite the fall in profits to raise the distribution by 10 cents to 1.35 Euros per share, to revivify the share quotation. The increase reflected confidence regarding the target year 2007, he is said to have argued. Supervisory Board members are said to have warned against this. A sweetener to shareholders would be inappropriate. To put some oomph into the share price, the management board would do better to make more specific statements on the group's future orientation and on solutions to the problems in the communications or IT service sectors. The Supervisory Board finally agreed to the dividend increase, though apparently with several members voting against.

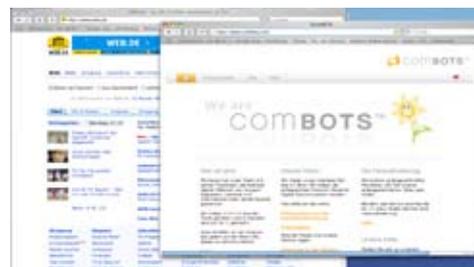
## Criminal complaint against Allianz executives Vorstand

A criminal complaint has been lodged with the Stuttgart public prosecutors against Gerhard Rupprecht, CEO of Allianz Life Assurance and member of the Allianz Group management board, with other executives of Allianz Life, by the law firm KTAG, which specializes in capital-market questions. Allianz Life allegedly manipulated the business results intentionally to the detriment of customers and in favour of shareholders, thereby breaching the duty of care vis-à-vis others' assets. Allianz Life rejects the accusations.

## Further local-authority shareholders want out of RWE

Local-authority shareholders will according to indications from Düsseldorf lord mayor Joachim Erwin increasingly be selling their RWE shares. A number of city councils are said to be currently consulting about a break. The City of Düsseldorf is the third-biggest local-authority shareholder, and is divesting itself of its 15.5 million shares, or some 2.8 % of the capital stock, by options and convertible loan stock. Cities, municipalities and other local authorities hold some 31 % of the shares, making them the most important shareholder group.

## Web.de renamed ComBOTS



Internet service provider Web.de AG has since 16 November been using the new company name ComBOTS AG. The exchange listing will be changed to the new name on the target date of 22 December, simultaneously with conversion of the shares to registered shares. Web.de had sold its core business, the Internet portal web.de, to United Internet and is concentrating on the area of Personal Digital Communication.

## OPINION

## Unexpected disclosure duties regarding executive remuneration

**A**fter sharp legal-policy debate, the legislature has enacted the Executive Remuneration Disclosure Act (VorstOG), obliging listed companies to publish salaries and benefits of their executives individually. This applies for the first time to salaries for financial 2006, which therefore have to be disclosed in the 2007 annual accounts. However, the new disclosure duties go well beyond what the German Corporate Governance Code hitherto (voluntarily) required by way of individualized salary disclosure. They cover in particular third-party benefits and pension and severance assurances. By contrast with what was suggested in the political debate, the VorstOG by no means constitutes simply a statutory obligation to make the disclosures recommended in the Code, but goes manifestly farther.

A particularly important obligation in practice will be the one put in at the last minute by the Legal Affairs Committee, to disclose benefits guaranteed or promised to an executive by a third party in connection with his post. This is intended to avoid conflicts of in-

terests from the outset. Individual disclosure thus applies especially to all types of incentive provided to an executive by a shareholder or other third party. Financial investors in particular not infrequently promise the CEO of a target company incentive benefits of this kind, whether in the form of shares or of monetary payments. If and insofar as such benefits are not based on any other adequate activity or service by the executive to the investor, they come under the disclosure requirement. But benefits accruing to the executive through a group company are hereby also to be disclosed.

It is hard to determine where the boundary of disclosure runs, since the Act has no de minimis provision. Thus, for instance, even Christmas presents or other hospitable gifts in principle come under the VorstOG. Of course, within certain limits room for discretion must be allowed, at least as long as conflicts of interests are ruled out. One still unclarified point is whether the executive is under a statutory disclosure obligation vis-à-vis the company for such third-party benefits, or whether at least

the company must provide such notification in the appointment contract.

Even benefits promised the executive for regular or early termination of his service are by the VorstOG to be disclosed in the first place. This includes both retired pay and pension benefits and all types of lump-sum or contractual payments. Among the latter are, say, such things as assurances in the event of non-renewal of contract, or change-of-control clauses. In the case of all these promises it is presumably not their (cash) value but the underlying data (e.g. lump sum or pension as % of last annual salary) that must be indicated. Particularly with lump sums and golden parachutes repeatedly flaring up in the political debate, the "information hunger" of the free float will markedly increase further in future.



**Dr. Stefan Simon is a company-law expert at the Flick Gocke Schaumburg law firm**

## FINANCIAL INVESTORS

## End of the easy times for private equity



In the next four to five years the European private equity sector is threatened with a bitter setback. "There is a lot of money in play, and new funds are pushing onto the market. That will make yields fall," expects **Nigel McConnell** of British financial investors Electra Partners Europe. 20 years ago investors would have been signing up for a new fund in the expectation

of gains of 35 %. Ten years later it would have been only 25 %, and today 15 %. Banks often offer credit packages five to eight times bigger than the operating result, he said – irrespective of the quality of the company concerned. Capital inflows would be unchecked, since the hedge funds would massively demand the certified credits. This would have to lead to a major correction.

## Lupus Alpha criticizes Entry Standard

Lupus Alpha warns against any too-high expectations of the new exchange segment Entry Standard at the Frankfurt Stock Exchange. Above all the transparency provisions had disappointed fund managers, says Peter Conzatti, Portfolio Manager at the fund company, which specializes in sundry securities. Companies were required to disclose possibly price-relevant information only on their Internet sites. Conzatti calls for such information to be disseminated via an electronic provider. The burden on a fund manager handling large numbers of quotations would be too high if he had to go through the Websites of all the firms daily. The provisions on tested annual accounts (submission within six months of the end of the business year) likewise set the bar too low.

## Insurers discover alternative investments

German pension funds and insurance companies are no longer investing almost exclusively in fixed-interest securities and shares, but broadening their portfolios increasingly to so-called alternative investments, among them private equity and hedge funds. The proportion of insurance-company capital invested in private equity is still below one per cent. "But rethinking is in the air. We believe that German institutional capital investors will on average go to 3 %," says Maximilian Brönnner, partner in investment company LGT

Capital Partners. He has identified a group of 10 to 20 investors wanting in future to invest 3 to 5 % in private equity. The Munich consultancy firm Avida Advisors has surveyed 32 European pension funds, insurance companies and asset managers of families with managed assets of 364 billion Euros, over half of them from Germany. Around 50 % of those questioned want to raise their investments in private equity. The private-equity share of managed assets would almost double, from 3.9 to 7.3 %.

## Dürr sees danger from hedge funds averted

Highly indebted plant and machine builder Dürr has announced that the attack by hedge funds has been warded off. According to statements from CFO Martin Hollenhorst, the company has negotiated a new credit line of 120 million Euros and made progress in restructuring, so that in the long term it should meet the credit terms. Commerzbank had sold 29 % of the total debt volume in summer to hedge funds, through investment bank Morgan Stanley. Over the 33 % threshold financial investors had had the chance to take part in the credit negotiations. But all the other banks (including Deutsche Bank and LBBW) had stuck by Dürr.

## Hedge funds sign up strongly for IPOs

Hedge funds have, according to indications from Friedrich-Wilhelm Göbel, Chief Executive Officer of financial consulting firm Viscardi, signed for 25 to 30 % of the shares in all German IPOs this year. That makes them the biggest investor group.

## Higher dividends for DAX30 companies

DAX30 companies will be distributing a total of 17.5 billion Euros to their shareholders for the business year 2005, HVB Group analysts expect. In the previous year, at 15 billion Euros, 17 % less dividend was paid. To be sure, some companies have also raised their registered capital. HVB reckons that in the coming dividend season 22 of the DAX30 companies will raise their distribution, seven pay out the same dividend, and probably only chip producer Infineon score another duck.



### Shaping tomorrow together

HOCHTIEF is building the future. Together with you as our partner, we seek to bring space to life—no matter how big or complex your project is. In this, you benefit from our know-how as an international construction services provider. We offer you a spectrum that ranges from development and physical construction, with all related services, to concessions and operation.

Turning Vision into Value.

 **HOCHTIEF**  
[www.hochtief.de](http://www.hochtief.de)

## POLITICS

Headquarter  
of the BDI  
in Berlin.



## BDI calls for a pause in investor protection

The Confederation of German Industry (BDI) is asking the new government for a “creative pause for thought” on investor protection. “We do not need any new Ten-Point Programme from the federal government. We need some quiet on the ongoing building site of Corporate Governance,” says Klaus Bräuning of the BDI. The numerous regulations now have to stand the test of practice. The business association welcomes the fact that the demand for external liability of managers for wrong capital-market information has not been reflected in the new government’s coalition agreement, and also that there is no mention of tightening up disclosure

obligations for executive salaries. However, as Michael Meister, Vice-Chair of the CDU/CSU parliamentary party, pointed out, no decision has yet been taken on the subject of manager liability.

The risk of a competition of investor protection legislators in the US, the EU and Germany is warned of by Georg Kämpfer, executive of accountancy firm PwC. German and European regulators should wait before transferring any further legislative initiatives over here from America, said Kämpfer, with an eye to experiences of US-listed German companies with the Sarbanes-Oxley Act.

### Zypries plans Public Corporate Governance Code

Federal minister of justice Brigitte Zypries wants to bring in a Corporate Governance Code for federal undertakings. To draw up

the Code, a Commission is to be set up to draft rules of conduct, on the model of the Code for listed companies. The Code for listed companies is not to be transferred one-to-one. In Zypries’s view, consideration should further be given to whether comparable transparency provisions

should be developed for undertakings in which the Länder and municipalities are involved. Zypries also wishes – independently of the planned Code – to embody in law the disclosure of managerial salaries in enterprises with predominant federal participation.

## Open door for avoidance litigants?

The Federal Justice Ministry has in lawyers' view drafted the Executive Remuneration Disclosure Act (VorstOG) unclearly, thereby supplying "predatory shareholders" with a model for avoidance actions. By the VorstOG, companies must disclose executive remunerations broken down by individual board members in the separate and group accounts.

The legislature has expanded the relevant provisions on disclosure of the management board's total emoluments in the separate accounts (§ 285, 1st sentence, No. 9 HGB [German Commercial Code]) and the group accounts (§ 314(1) No. 6 HGB) to individualized disclosure, and also taken account of the opting-out arrangement in the provision for the separate report (§ 286(5) HGB) and the group report (through a reference in § 314(2), 2nd sentence, HGB to § 286). The lawmakers have, however, in lawyers' view failed to bring in the opting-out arrangement for the IAS/IFRS group final accounts too. This is the year when for the first time listed companies in Germany have to draw up their final group accounts in accordance with the new IAS/IFRS accounting standards. But the list of HGB provisions (§ 315a(1) HGB), which now apply in the age of IAS/IFRS, lacks the opting-out authorization for the IAS/IFRS group final accounts. "The Federal Justice Ministry's inadvertence has the consequence that the Annual General Meeting cannot, on a literal reading of the HGB, allow the exemption from individualized disclosure of executive remuneration at a listed company desired by the legislator, the so-called opting-out provision, without risking actions for avoidance," says Dr. Stefan Simon, a legal expert with the Flick Gocke Schaumburg law firm in Bonn. Shareholders specializing in actions for avoidance have thus been given an open door for AGM disputes.

The Federal Justice Ministry sees it differently: "The assumption that the annual general meeting cannot give exemption from individual indications for IAS/IFRS group final accounts is a misreading of the legislative intent." The reference (for the HGB group final accounts) in § 314(2), 2nd sentence, HGB enables the opting-out possibility for the group supplement – and, of course, also where the group final accounts are drawn up on IAS/IFRS standards. The legislative intent to enable opting out also for IAS/IFRS group final accounts is unambiguous on Simon's view too. Unfortunately, however, this has not been reflected in a reference in § 315a HGB to § 314(2), 2nd sentence, HGB, so that here one can work only using legal interpretation. Says Simon: "Experience shows, however, that avoidance litigants get every legal point in company law not absolutely beyond doubt clarified by the courts."

## Codetermination Commission remains active ...

The new federal government has decided that the Government Commission on the Further Development of Codetermination is to continue its work. The so-called Biedenkopf Commission is to make German codetermination "Europe-ready". The new SPD General Secretary Hubertus Heil has at the same time called for expansion of codetermination at work in internationally active undertakings. The point here is not to transpose the German model one-to-one, but to enable codetermination at all in groups operating worldwide.

## ... and companies squeeze out codetermination

German groups of companies are already making energetic use of avoidance strategies on codetermination. "Codetermination avoidance consultancy is enjoying a boom in business offices," says Martin Henssler, Director of the Institute for Labour Law and Commercial Law at the University of Cologne. Increasing numbers of companies, he said, are choosing one of the many opt-out variants for minimizing employee influence in codetermination. Through skilful use of company law, a firm could, even with the current law in force, bid farewell completely to codetermination in the company, for instance by international company constructions like a holding company in the Netherlands with subsidiaries in Germany, or by founding a German limited partnership with a foreign corporation as general partner.

## OPINION

## Growing liability risk for board members

**A**t least since the discussion draft Capital-market Information Liability Act (KapInHaG) in late 2004, the liability of managers has been a much-discussed topic, in public too. According to the draft, members of management and supervisory boards would have been directly liable to investors for at least grossly negligent fault in giving wrong capital-market information. The bill was, however, shelved. The grand-coalition agreement of 11 November 2005 does not contain external liability for managers either. That means that at least for the moment managers will in principle continue to be liable even for faulty capital-market information only within the company. External liability applies solely in special exceptional cases.

Yet the liability position for managers has nonetheless changed. The Act on corporate integrity and modernization of the right of avoidance (UMAG), which entered into force on 1 November 2005, strengthened shareholders' rights to sue, by considerably lowering the thresholds for minority shareholders to bring an action against management or supervisory board members. However, they can themselves sue only where there is a suspicion that the board member can be accused of dishonesty or gross neglect of duty. Additionally, the minority shareholders must go through a special admissibility procedure. This is intended to avert abusive suits.

The innovations in the UMAG could strengthen shareholders' growing readiness to sue. Even before its introduction, there were recently a number of publicly effective actions

against individual board members, in such cases as Informattec and EM.TV. There has been a concomitant professionalization in the representation of shareholders suffering damage. This trend will continue, in the light of the Capital Investors' Class Action Act (KapMuG) which came into force on 1 November 2005. According to this Act, capital-market legal disputes may be joined where at least ten similarly-minded actions happen together.

In this connection, finally, we must mention the new enforcement procedure. Proceedings for reviewing the accounting of capital-market-oriented firms are triggered inter alia where there are specific indications of balance-sheet errors. They are, to be sure, not carried out in the interests of individuals, for instance investors harmed by faulty accounting. It is, however, to be expected that where there are suspicions of balance-sheet errors they will be set going by individual shareholders, so that any findings of error made may be used as the basis for an action for damages.

Summarizing, it may accordingly be stated that the liability risk for board members of a company is growing. This also means increasing importance attaching to documentation of board decisions, since in the event of an action for damages the board member will because of the distribution of the burden of proof have to produce considerable amounts of exculpatory evidence.

**Dr. Henning Hönsch,**  
Corporate Governance  
Chief at Pricewaterhouse-  
Coopers AG auditing  
company

## Dissent among the Länder over elimination of stages of appeal

The move by the State of Baden-Württemberg to shorten the sequence of courts in actions for avoidance is meeting with varying attitudes from other German Länder. Baden-Württemberg has proposed that shareholders in future no longer be able to appeal through three stages against resolutions of annual general meetings. For actions of avoidance the Higher Regional Court (OLG) is to be directly competent, no longer the district courts (Landgerichte). The possibility of appeal would thereby be eliminated. On other company-law matters too, such as payoffs in the event of a squeeze-out, the OLG is already to be the first instance. Particularly the State of Bavaria rejects this move, asserting that there are longer and harder fights at the OLG than at the Landgericht; moreover, there would likely be burdens on State budgets. The Federal Justice Ministry rejects Baden-Württemberg's proposal. Particularly with actions for avoidance and those about payments to squeezed-out minority shareholders, eliminating a stage of appeal would mean "a considerable reduction in legal protection".

## Sanio expects self-regulation from hedge funds ...

The President of the Federal Financial Supervisory Authority (BaFin), **Jochen Sanio**, presumes that a self-regulation offer “will be coming”. However, the bank regulator regards such a solution sceptically. “The prime brokers will be exposed to extreme conflicts of interest, since they make high profits from business with the hedge funds,” says Sanio. The hedge funds are closely tied to the banks, since they as prime brokers also provide credit to these funds. The Deutsche Bundesbank, for instance, worries that the strong competition among institutions in this business may be detrimental to credit standards.



## ... and awaits judgment at the highest level on Acting in Concert

Sanio notes an unclear legal position in relation to acting in concert: “I desire nothing more earnestly than as soon as possible a judgment at the highest level, so as to avoid trial risks in such cases in future.” The balancing of legal goods between the interests of the minority shareholder and of the shareholders acting in concert must be drawn by the Federal Court of Justice or the Constitutional Court. There are at present two differing judgments as to acting in concert; the Frankfurt Regional Appeals Court (OLG) had set the bar for proof of action in concert by shareholders here clearly higher than the OLG in Munich.

### YOUR FEEDBACK

→ Have you any questions, criticisms or suggestions?

We look forward to hearing from you:

verlag@icgg.biz

→ Do you wish to subscribe to the Newsletter?

Please send a mail to :

verlag@icgg.biz

You can search for mushrooms, or find treasures.



#

Mergers & Acquisitions

Equity Capital Market

Private Equity

Structured Finance

Network Corporate Finance #

Private Advisors.

For further information [www.ncf.de](http://www.ncf.de)

## PEOPLE

## Management and Supervisory Board changes in DAX30, MDAX and TEC30



Paul A. Stodden

In connection with changes in the stockholder structure of **Balda**, the following new members are coming on to the Supervisory Board of the high-performance plastic precision component manufacturer: **Paul A. Stodden**, CEO Debitel, **Richard Roy**, management consultant and ex-Vice-President Microsoft EMEA, **Othmar T. Vock**, management consultant and ex-CFO Givaudan SA, and **Lutz Völker**, managing director of aspect corporate advisors GmbH. Present Supervisory Board chair Gerhard Holdijk is resigning on 31 December; his successor has not yet been named. Dr. Thomas Bentz, Dietrich Fürst, Berndt Kriete and Jochen Rölfs have resigned their Supervisory Board appointments.



Josef Unterlass

**Werner Faber** was called on to the management board of **Epcos** as from 1 November. There he will be Chief Technology Officer (CTO). Faber has since 2001 headed the SAW components sector, and since 2004 additionally the condenser sector. The contract of director **Josef Unterlass**, which ends on 31 March 2006, has not been renewed. Unterlass will be taking up new duties outside the company, it is understood.

At **GEA Group**, **Hartmut Eberlein** will be CFO as from 1 December. At the technology group he succeeds Peter Steiner, who came onto the board in March 2004. Steiner is leaving the company "by mutual agreement" at the year's end.



Wolfgang Sprißler

Following the takeover of **HVB Group** by Italian bank UniCredit, current HVB CFO **Wolfgang Sprißler** becomes HVB board spokesman and thus responsible for the whole group's Germany business. The present spokesman, Dieter Rampl, is moving to the chair of the UniCredit administrative board. The UniCredit management board is being joined by: Dr. Michael Kemmer (former HVB Chief Risk Officer), who will be responsible for the Risk Management sector, Franz Herrlein for the Integration sector and **Johann Berger** (former HVB director for the areas Germany, Firms and Self-employed Customers,) for the Real Estate sector. Berger also continues as HVB director for the Real Estate and Firms sectors. Directors Christine Licci (Germany, Private Clients, Private Banking) and Dr. Stefan Jentzsch (Corporates & Markets) resigned in early November. Jentzsch is now a director of the Dresdner Bank.



Stephan Bub

Since 1 December **Stephan Bub** is a director of **Hypo Real Estate Holding**, where he is responsible for the group's public-finance business and capital-market activities. Bub is also CEO of the future Hypo Public Finance Bank in Dublin. Since early 2004 Bub has been a member of the Board of Directors of Hypo Real Estate Bank International in Dublin; previously he was with HVB.



Pepyn René Dinandt

**IWKA** CFO **Hans Lampert** resigned on 28 October in connection with the reorganization of group management. The financial sector at the machine constructor is being provisionally taken over by Wolfgang-Dietrich Hein, chairman of the Executive Board. At an extraordinary general meeting on 9 November Dr. **Rolf Bartke** was elected Chairman of the Supervisory Board. Bartke is head of the vans unit and an executive in the Commercial Vehicle Division at DaimlerChrysler; he replaces current Supervisory Board chair Reinhard Engel. Other new Supervisory Board members are Dr. **Reiner Beutel**, since 1 October CFO at automotive supplier Schefenacker, Dr. **Herbert Demel**, President and CEO of IWKA competitor Magna Drivetrain, **Pepyn René Dinandt** of Mannesmann Plastics Machinery, Dr. **Helmut Leube**, director of Webasto, and Dr. **Herbert Meyer**, CFO at Heidelberger Druckmaschinen. Also leaving the IWKA Supervisory Board are Volker Doppelfeld, Professor Jürgen Hubbert, Dr. Mathias Kammüller, Heinz-Jörg Platzek and Christian L. Vontz.

The **K+S** Supervisory Board has extended the appointment of CEO **Ralf Bethke** by one year, through 30 June 2007. Executive director **Norbert Steiner** has been appointed Vice-Chairman as from the start of next year. The appointment of **Thomas Nöcker**, Personnel Director at the salt and fertilizer manufacturers, has been extended by five years, until 31 July 2011.

„In my profession I need verified information about persons, companies, their financial statements and business relationships at every time.“

**No Problem – I have LexisNexis® Wirtschaft**



**Try out one of the most extensive business research tools!**

<p><b>News</b></p> <p><b>Business</b></p> <p><b>Legal</b></p>	<p>Reports on a day-to-day basis and automated search profiles about compliance, detailed information about companies and their balances, up-to-date sanction lists like Bush and OFAC with structured data and concised listings of PEPs (politically exposed persons) from more than 200 countries.</p>
---	---

LexisNexis Deutschland GmbH  
 Feldstiege 100 • 48161 Münster  
 Tel.: +49 (0) 2533 93 00-900  
 Fax: +49 (0) 2533 93 00-15  
[www.lexisnexis.de](http://www.lexisnexis.de) • [service@lexisnexis.de](mailto:service@lexisnexis.de)

On 22 November the chairman of the Executive Board of **Merck KGaA**, Professor Dr. **Bernhard Scheuble**, left the pharma and chemicals company with immediate effect. Merck gave no reason, leading to media speculation about differences on future company strategy. His successor is erstwhile Executive Board Vice-Chairman Dr. **Michael Römer**; he maintains his current responsibility for the production, engineering, corporate purchasing, environmental issues and logistics sectors. Additionally, Elmar Schnee becomes a member of the executive board, responsible for the Pharmaceutical Business sector.



Stephan Esch

The Supervisory Board of telecoms company **Mobilcom** appointed **Axel Krieger** as CFO and **Stephan Esch** as CTO on 9 November, with immediate effect. Krieger and Esch are management board members at merger partner freenet.de. Till now the executive positions for Finance and IT were not separately filled on the Mobilcom board; departing CEO Thorsten Grenz had also managed the financial sector. Michael Grodd, director for Marketing and Sales, retains that position on the board.

Dr. **Marlies Sproll** became a Management Board member at **MorphoSys** on 1 November. On the biotech firm's executive body she will be responsible for research and development, as well as alliance management. Sproll came to MorphoSys in October 2000 from Boehringer Ingelheim. Since 3 September 2004 the post had been vacant, after Dr. Thomas von Rüden had left the company with immediate effect.



Thomas Kölbl

**Thomas Kölbl**, acting member of **Südzucker's** Executive Board, has been appointed ordinary member with effect from 1 Januar 2006. Kölbl is to move up as successor to CFO Dr. Christoph Kirsch, due to resign because of age at the AGM in July 2006.

Dr. **Horst Neumann** is as from 1 December responsible on the **VW** management board for the Personnel sector, as labour-relations director. The successor to Neumann in his present role as Audi executive responsible for the Personnel and Social Services sector is to be decided later. His predecessor at the car manufacturer, Dr. **Peter Hartz**, retired on 4 August in the wake of the VW affair.

Since 16 November **Michael Greve** has been CEO of ComBOTS (formerly web.de). On the **web.de** management board, co-founder Greve was previously responsible for the technology sector. **Matthias Greve**, co-founder and previously board member responsible for web.de portal business, is moving to the management board of 1&1 Internet AG.

## The Supervisory Board as sparring partner for the management board

A Supervisory Board should be not just a body for oversight of the management board, nodding through management proposals, but also a sparring partner. If supervision of companies was not to decline into *ars gratia artis*, in the view of former Axa CFO Wolfram Nolte, management and supervisory boards had to create suitable framework conditions:

- › the more complex the company (lines of business, regions, markets, technologies), the more sense it makes to have a division of labour on the Supervisory Board. In committees, substantive work should be done for defined competences – as a basis for definitive decisions by the whole board.
- › the ideal is to have complementary skills profiles of board members, so as to have a broad mix of know-how represented on it. Experience of chairing the management board, frequently still the most important criterion when appointing a member, is not always usable; more important are know-how that adds to the body, and sufficient time.
- › because of the headlong pace of change in market and competition conditions as well as technologies, it is the management board's task to update Supervisory Board members on new developments. Visits to branches, production plants and subsidiaries at home and abroad should be a matter of course for the work of the Supervisory Board, as should refresher seminars on major core themes as part of each member's obligatory programme.
- › agendas for meetings must allow enough time for regular review of strategy, critical operational topics and major projects – and for discussions. Weaknesses must not be glossed over. Routine items like budget, quarterly results, balance-sheet questions, annual accounts etc. are important, but should not be too much in the foreground.
- › control reports should not be confined to financial indicators, but also go into underlying causes and problems. This should be a matter of course where discussion of self-set goals or benchmarks of competitors turns lively. If the management board moves ahead here, the Supervisory Board can retrace things at higher level.
- › given its advisory role, the Supervisory Board has the job of making suggestions and bringing in new viewpoints. If this is promoted and channeled by the chair of the Supervisory Board, this is a stimulus to members to go into the meat of what is going on in the company, something that may also be achieved by bringing in committees for conceptual questions.

→ [www.faz.net](http://www.faz.net)

### Firmly rooted value orientation in companies and on Supervisory Boards

Value-oriented supervision by the Supervisory Board is already firmly rooted in companies, is the outcome of a survey by the Deutsches Aktieninstitut (DAI) in collaboration with Professor Dr. Hans-Joachim Böcking of the Goethe-Universität Frankfurt. For the study on „Value-oriented supervision by the Supervisory Board –selected findings of a survey,“ Supervisory Board chairs and their deputies at companies in the Prime Standard segment of the Frankfurt Stock Exchange were questioned. 80 % of Supervisory Board members reported that they received multiple data on the management board's value-oriented conduct of business. However, the supervisors found potential for improvements to communication of the value contributions of segments and the amount of equity costs. Several important pieces of data were reported to the Supervisory Board in writing only once per year. In doing their job Supervisory Board members are, according to the survey findings, no longer chiefly dependent on management board reporting, but equally take into account information from auditors and internal information systems.

→ Study: [www.dai.de](http://www.dai.de)

## DSW criticizes remuneration reports



The transparency of DAX30 companies regarding their executives' remuneration is not yet satisfactory. The investor association Deutsche Schutzvereinigung für Wertpapierbesitz (DSW) has analysed the remuneration reports for the business year 2004 and given only software producer SAP and utility RWE a mark of "good"; both firms had shown fixed, variable and other compensation comprehensibly in tabular form. RWE was additionally the only company to show the accrued pension rights of active executives. The reports from pharma company Fresenius Medical Care and chip manufacturer Infineon were

"inadequate"; investors learnt, in the DSW's view, practically nothing about the amount and structure of executive salaries, and the little information was mostly scattered incomprehensibly around various places in the report. Over half the firms received only an "adequate" mark. The information is according to the DSW too often not disclosed in a coherent report, and there were still considerable shortcomings in comprehensibility of remuneration structures at several firms. All the same, 18 of the 30 DAX companies, nine more than last year, had published individualized executive salaries; the newcomers were Allianz, Commerzbank, Continental, E.ON, Lufthansa, Metro, Schering, Siemens and TUI.

→ Study: [www.dsw-info.de](http://www.dsw-info.de)



## Developments in international corporate governance

The Federation of German Industries (BDI) and the auditing company PwC have done a survey of corporate-governance regulations and recommendations and developments in them in the last three years in Germany, the USA and at European level, and present prospects for likely regulatory regulatory initiatives.

→ [www.pwc.de](http://www.pwc.de)



**QSC AG –  
GOOD CONNECTIONS  
ARE GOOD FOR SUCCESS**

As a nationwide provider of innovative voice and data telecommunication services, we offer one-stop shopping for all of your organization's communication needs. So that nothing will stand in the way of your success.

**QSC AG – PARTNERSHIP-  
SECURITY-INNOVATION**

The right partner for turning your visions into reality.

[www.qsc.de](http://www.qsc.de)

QUALITY SERVICE COMMUNICATIONS  **QSC AG**

## CAPITAL NEWS

## Buying & Selling in November

### Changes in holdings in DAX30, MDAX and TEC30

**Aareal Bank (ISIN DE0005408116):** The capital increase at Aareal Bank by 10 % has been fully subscribed by Aareal Holding Verwaltungsgesellschaft mbH. The holding company bought the shares at € 25.75 apiece. Aareal Holding Verwaltungsgesellschaft now holds some 40% (before the capital increase 34.6%) of the shares.

**Commerzbank (ISIN DE0008032004):** Italian insurer Generali has subscribed nearly 2.9 million shares in connection with the capital increase at Commerzbank. After the increase in capital stock Generali holds 8.7 % of Commerzbank's registered capital (previously 9.1 %).

**DaimlerChrysler (ISIN DE0007100000):** On 22 November Deutsche Bank placed 25 million DaimlerChrysler shares with institutional investors at a price of € 43.20 each (total value nearly 1.1 billion Euros). This means the bank has lowered its share in the car group from 6.9 to 4.4 %. The Deutsche Bank had most recently on 28 July reduced its holding by 35 million shares from 10.4 to 6.9 %.

**Deutsche Euroshop (ISIN DE0007480204):** Current major shareholder Alexander Otto reduced his holding in the shopping-centre operator on 8 November to around 3.5 %. This includes the voting rights attributable to him of Arosa Vermögensverwaltung GmbH (2.5 %). The Otto family was still involved in October with 21 % of the Euroshop capital.

**Deutsche Lufthansa (ISIN DE0008232125):** On 1 November shareholders in the airline restructured their holdings. The Dresdner Bank now holds its share of voting rights (4.3 %) directly, after withdrawing the shares from MGL Münchener Gesellschaft für Luftfahrtwerte mbH. MGL now holds only 4.3 % of the votes, for the Bayerische Landesbank.

**HVB Group (ISIN DE0008022005):** Italian major bank UniCredit was in the course of its takeover bid for HypoVereinsbank offered 93.9 % of HVB's registered capital by the end of the acceptance period on 11 November.

**GEA Group (ISIN DE0006602006):** By 26 October the holding of Capital Group in the technology group was only a good 4.9 %. Major shareholders in GEA Group are according to the company's indications the Kuwait Investment Office (7.9 %), Allianz (10.1 %) and Dr. Otto Happel (20.7 %).

**KarstadtQuelle (ISIN DE0006275001):** Madeleine Schickedanz, the main shareholder in the commercial group, bought a further nearly 2.6 million shares (purchase price 25.2 million Euros) between 31 October and 3 November. The Schickedanz family holding is accordingly at the 60 % mark.

**K+S (ISIN DE0007162000):** Fund company Fidelity reduced its voting share in the fertilizer and salt group to 4.9 % in mid November. Previously, investment company Prudential and its subsidiary M&G Investment Management had scaled back their share to 4.7 %. The biggest shareholder is BASF with a 10 % voting share.

**MLP (ISIN DE0006569908):** Bankgesellschaft Berlin has beefed up its holding in financial services provider MLP in recent months to a good 8 %. The management board of Bankgesellschaft Berlin wants to buy still more shares.

**Premiere (ISIN DE000PREM111):** Since 15 November The Capital Group has been a shareholder in the media firm, with a holding of 5.5 %. Permira holds, according to company indications, 5.9 %, HVB and BayernLB 1.1 % each, Bawag 0.4 % and the management (Georg Kofler, Michael Börnicke and Hans Seger) 14.9 % altogether.

## Capital measures in November

**adidas-Salomon (ISIN DE0005003404):** The sports goods manufacturer has placed nearly 4.6 million shares through accelerated book-building with institutional investors in connection with a cash capital increase excluding shareholder pre-emptive rights. The shares were sold at € 143 each. The proceeds of the issue amount to 648 million Euros, to be used to help finance the takeover of US competitor Reebok. The amount of the capital increase corresponds to nearly 10 % of the company's outstanding share capital.

**Commerzbank (ISIN DE0008032004):** In a first stage on 17 November, Commerzbank placed 57.7 million (10 % of the share capital) new shares at a price of € 23.50 each with institutional investors, to finance its takeover of mortgage bank Eurohyp. The proceeds of the sale amount to nearly 1.4 billion Euros. Altogether, buying the Eurohypo holdings of Deutsche Bank (37.7 %) and Allianz (28.5 %) will cost 4.6 billion Euros. Of this, Commerzbank wants to contribute nearly 2 billion Euros from its own funds. It further plans an issue of hybrid capital.

**DaimlerChrysler (ISIN DE0007100000):** The car manufacturer has floated a loan with a volume of 850 million Euros. It is due on 30 May 2008 and has a coupon of 3.375%. The issue price was set at 99.927 %.

**Deutsche EuroShop (ISIN DE0007480204):** The shopping real-estate company has placed 1,562,499 new shares of a capital increase of around 10 % excluding subscription rights as part of a private placement with institutional investors, at € 43.00 per share. The gross proceeds of the issue amount to around 67.2 million Euros. They are to be used to finance shopping-centre investments already made in the current business year and planned for 2005, with a volume of up to 210 million Euros. Additionally, EuroShop wants to raise the dividend from € 1.92 to € 2.00 per share.

**Heidelberger Druckmaschinen (ISIN DE0007314007):**

The manufacturer of pressure systems is between 9 November 2005 and at latest 19 January 2007 buying back up to 4,295,424 of its own shares (up to 5 % of the share capital). The aim is both to withdraw the shares and furnish an employee share scheme; the shares will be purchased exclusively through the stock exchange.

**Henkel (ISIN DE0006048432):** The manufacturer of

household and body-care products is floating a subordinate loan with equity-capital-like elements (a hybrid loan) amounting to 1.3 billion Euros. The loan has a period of 99 years, is redeemable after 10 years and bears nominal interest of 5.375 %. The loan was sold to institutional investors at a price of 99.735 %. The proceeds are to be used to restructure the financing of pension commitments in Germany.

**Merck (ISIN DE0006599905):** The pharma and special chemicals group has placed a loan of 500 million Euros with a period of seven years, a coupon of 3.75 % and an issue price of 99.716 %.

**Micronas Semiconductor (ISIN: CH0012337421):** The manufacturer of semiconductor systems is making an additional purchase of some 300,000 registered shares on the Swiss exchange SWX to endow its employee option programme.



**MLP (ISIN DE0006569908):** Between 1 and 20 December the financial services provider will be repurchasing its own shares up to 10 % of the share capital (nearly 10.9 million units) on the exchange and later withdrawing them. Additionally, the management board will propose to the 2005 AGM a special dividend of € 0.30 per share (total volume 32 million Euros). That means that altogether MLP is distributing to shareholders over 200 million Euros of the proceeds (totalling 325 million Euros) from the sale at the end of September of the two insurance subsidiaries MLP Versicherung and MLP Lebensversicherung.

**Munich Re (ISIN DE0008430026):** The reinsurer has floated a loan of 110 million Euros for cover against risks of severe storm events in Western Europe. The coupon will be 3-month Euribor plus 475 basis points. That would correspond to a seasonalized spread of 415 basis points over Euribor. The loan's period is until 31 March 2009.

**Puma (ISIN DE0006969603):** The sports-goods manufacturer repurchased a further 115,000 of its own shares in the third quarter, thus completing the first part of its announced share buyback programme. As per the

end of September Puma holds 800,000 shares in its own hands, corresponding to 4.7 % of the subscribed capital. The company has authorization to repurchase up to 10 % of its own shares.

**Tele Atlas (ISIN NL0000233948):** The digital map-data provider has sold nearly 7.3 million new shares at € 18,50 apiece and a good 17.9 million shares from the holdings of shareholders (IAM, Oak Investment Partners, New Enterprise Associates, Robert Bosch, Meritech, Telesoft Partners, Stanford University). The proceeds from selling the new shares amount to some 134 million Euros. Additionally, Tele Atlas secured proceeds amounting to around 16 million Euros in connection with exercise of subscription rights by certain selling shareholders. The offer will raise the dispersed holdings from about 21.5 to some 46.5 %. Tele Atlas ordinary shares were on 19 November also admitted to the Eurolist of Euronext Amsterdam.

**Web.de (ISIN DE 0005296503):** On 24 November the Internet service provider started a further programme to buy back its own shares (a good 1.6 million units). The shares will be sold exclusively through the exchange.

Global Investment Intelligence.



By Invitation Only  
[www.privatedn.com](http://www.privatedn.com)



# Directors' Dealings

**BB Biotech (ISIN CH 0001441580):** On 7 November Clive Meanwell, member of the administrative board, bought 3,500 shares at 74.00 Swiss francs each, for a total of 259,000 Swiss francs.

**Bilfinger Berger (ISIN DE 0005909006):** On 14 November Supervisory Board member Harald Möller bought 160 units at a rate of € 36.42, for a total of € 5.827.

**Commerzbank (ISIN DE0008032004):** 2.500 shares were bought by Dr. Achim Kassow, director of the bank, on 17 November at € 23.66 each, for a total of € 59,150.

**Deutsche Lufthansa (ISIN DE0008232125):** On 11 November CFO Karl-Ludwig Kley bought 2,500 shares at a rate of € 11.45, for a total of € 28.625 Euro, as an own-capital investment to participate in the Lufthansa Performance Programme. On the same day Captain Carl Sigel, Executive Vice-President Operations for Lufthansa Passage Airline, bought 2,472 shares at € 11,54 each (total volume € 28,526.88) as an own-capital investment to participate in the Lufthansa Performance Programme.

**Depfa Bank (ISIN IE0072559994):** On 3 November Gerhard Bruckermann, Chairman & CEO of the bank, bought 300,000 shares for nearly 3.9 million Euros.

**Douglas Holding (ISIN DE 0006099005):** On 21 November the Dr. August Oetker Finanzierungs- und Beteiligungsgesellschaft mbH holding company, which is close to Supervisory Board members Dr. August Oetker and Dr. Ernst F. Schröder, sold over the counter 250,000 put options for a total of € 252,500. The same company on 9 November sold 270,000 put options for a total of € 294,300.

**Drägerwerk (ISIN DE 0005550636):** 13,000 shares were bought on 17 November by Theo Dräger, member of

the Supervisory Board, at € 46.00 apiece, for a total of € 598,000.

**Elmos Semiconductor (ISIN 0005677108):** On 3 November Laila Rottmann, wife of Elmos director Dr. Frank Rottmann, bought 246 shares at € 9.47 each, for a total of € 2,329. One day later director Dr. Anton Mindl bought 1,000 shares at a price of € 9.45 for a total of € 9,450.

**Fresenius Medical Care (ISIN DE0005785802):** On 4 November director Roberto Fusté exercised share options totalling 20,828 options and sold the preference shares on the exchange for nearly 1.4 million Euros. Director Dr. Amanuele Gatti, also on 4 November, exercised 41,800 share options and sold the preference shares for nearly 2.8 million Euros.

**Henkel:** Supervisory Board chair Albrecht Woeste sold 57,000 ordinary shares between 9 and 16 November for a total of € 4,136,160 and bought 52,627 preference shares for a total of € 4,133,329. On 24 November Christoph Henkel sold 83,000 ordinary shares at € 72,49 each for a total of a good 6 million Euros.

**HVB Group (ISIN DE0008022005):** 2,500 shares were sold by Supervisory Board member Hanns-Peter Kreuzer on 1 November at € 23.50 each, for a total of € 58,750.

**K+S (ISIN DE 0007162000):** Dr. Thomas Nöcker, director, on 18 November bought 300 shares at a price of € 54.96 each, for a total of € 16,488. One day earlier CEO Dr. Ralf Bethke bought 10,971 shares at € 54.71 for a total of € 598,121.

**Linde (ISIN DE 0006483001):** On 10 November director Dr. Peter Diesch bought 400 shares at € 59.46 each, for a total of € 23,784.

**MorphoSys (ISIN DE0006632003):** Several top executives of the biotech company sold shares on 2 November from the conversion of convertible loans to shares: CEO Simon E. Moroney 12,000 shares at € 36.00 each for a total of € 432,000 Euro, Supervisory Board chair Gerald Möller 2,500 at € 37.55 for a total of € 93,875, Supervisory Board member Geoffrey N. Vernon 1,500 at € 37.14 for € 55,710, Supervisory Board member Andreas Plückthun 1,500 at € 37.20 for € 55,800, Supervisory Board member Daniel Camus 1,500 at € 36.77 for € 55,155. Möller, Vernon, Plückthun and Camus no longer hold any shares from convertibles; Moroney still has 7,474.

**MPC (ISIN DE 0005187603):** On 15 November director Ulrich Oldehaver sold 222,029 shares at € 59.32 each, for a total of nearly 1.4 million Euros.

**Salzgitter (ISIN DE 0006202005):** Between 14 and 16 November CEO Wolfgang Leese sold 40,000 shares at € 38.86, for a total of nearly 1.6 million Euros. The wife of Salzgitter CFO Dr. Heinz Jörg Fuhrmann, Christiane Fuhrmann, sold 4,980 shares on 14 November at € 39.13 each, for a total of € 194,867.

**Siemens (ISIN DE0007236101):** Thomas Ganswindt, director, on 18 November sold at € 64.99 each 20,000 shares from the Stock Options Plan 2001, for a total of 1.3 million Euros.

**Singulus (ISIN DE0007238909):** The Familie Roland Lacher Vermögensverwaltung GmbH sold 200,000 shares on 18 November for € 12.66 each, for a total of a good 2.6 million Euros.

## BUSINESS DIARY

## December

## MDAX

**Vossloh (ISIN DE0007667107)**

09.12. Balance-sheet press conference, DVFA analysts' conference

**Norddeutsche Affinerie (ISIN DE0006766504)**

20.12. Provisional annual accounts 2004/05

**Wincor Nixdorf (ISIN DE000A0CAYB2)**

14.12. Report and accounts 2004-5

**Techem (ISIN DE0005471601)**

14.12. Report and accounts at 30.9, Balance-sheet press conference, DVFA analysts' conference

→ **AGM dates: [www.vip-cg.com](http://www.vip-cg.com)**

**United Internet (ISIN DE 0005089031):** CFO Norbert Lang and his wife Bärbel Lang on 22 November together realised 282,300 shares in NBL Vermögensverwaltung GmbH & Co. KG, owned by both.

**Web.de (ISIN DE 0005296503):** Supervisory Board member Felix Greve did several securities transactions in Web.de shares: on 11 November, in three stages, he sold 460,000 shares for a total of € 4,348,400 (price per share € 9.44 and € 9.50) through asset management and holding companies FARAH, MAG and MIRA. On 15 November, in three stages at € 9.46 and € 9.53 per share, he bought altogether 459,100 shares for a total of € 4,350,065 through the same companies in roughly the same distribution.

## NEWSLETTER

→ **Yes, I am interested in an advertisement insertion in ICGG Insight Corporate Governance Germany.**

Please send an email to: [verlag@icgg.biz](mailto:verlag@icgg.biz)



## INSIGHT Shareholder ID: DAX 30

Companies	Own Shares in %	Management in %	Notifiable Shareholders*	Share in %	Reporting KAG **	Change from previous month in percentage points	Biggest Share	Biggest reporting KAG* in %
adidas-Salomon		5	Barclays PLC	5.27	19.86	-3.85	DWS	1.64
Allianz	1.00	0	Münchener Rück Deutsche Bank	4.90 2.50	18.33	-0.22	Cominvest	1.48
Altana	3.42	0	Susanne Klatten	50.10	13.76	-0.61	Fidelity (Lux.)	2.00
BASF	1.80	0	Allianz	2.70	23.80	2.03	Cominvest	3.97
Bayer	0	0	Capital Group Companies Allianz	5.04 4.76	19.83	-1.10	DWS	2.06
HVB	0	0	UniCredito	93.81	9.83	-0.59	American Funds	2.18
BMW	1.34	0	Quandt Family	46.60	11.7	-0.60	DIT	1.40
Commerzbank	0.28	0	Assicurazioni Generali Münchener Rück Mediobanca BSCH	9.10 4.99 0.60 0.60	13.79	-2.78	MEAG	3.43
Continental	0	0	AXA Barclays PLC Capital Group Companies	10.05 5.49 5.1	24.71	-0.93	Harbor Fund	2.56
DaimlerChrysler	0	0	Emirat Kuwait Deutsche Bank Emirat Dubai	7.2 4.4 2.2	11.85	-0.68	Deka Investment	1.09
Deutsche Bank	6.6	0			15.90	-1.28	Deka Investment	1.62
Deutsche Börse	1.07	0	TCI Fund Management Atticus Capital Capital Group Companies Fidelity Management	7.89 5.01 4.91 4.84	23.21	-1.05	Fidelity USA	2.01
Deutsche Lufthansa	0	0	Allianz	4.44	29.23	4.73	Cominvest	6.03
Deutsche Post	0	0	KfW	44.7	11.52	-0.17	DWS	2.59

## INSIGHT Shareholder ID: DAX 30

Companies	Own Shares in %	Management in %	Notifiable Shareholders*	Share in %	Reporting KAG **	Change from previous month in percentage points	Biggest Share	Biggest reporting KAG* in %
Deutsche Telekom	0.06	0	KfW Bundesanstalt für Post und Telekom	22.10 15.44	13.02	-0.63	DWS	1.08
E.ON	4.77	0	Freistaat Bayern Allianz	4.86 3.60	18.67	-1.18	DIT	1.01
Fresenius Med.Care		0	Fresenius	50.76	12.45	-0.94	Jupiter (GB)	1.17
Henkel	4.13	0	Familie Henkel Jahr Vermögensverwaltung Familie Schwarzkopf	51.48 6.11 3.89	11.79	-0.49	Deka Investment	1.20
Infineon	0	0	Siemens Capital Group International	18.23 10.00	11.10	-1.19	Deka Investment	0.86
Linde	0	0	Allianz Commerzbank Deutsche Bank	12.30 10.04 10.00	18.91	-0.75	Artisan	2.23
MAN	0	0	AXA Deutsche Bank Allianz	10.09 4.99 0.82	26.10	-0.86	DWS	5.84
Metro	0	0	Otto Beisheim Vermögensverwaltung und Fam. Schmidt- Ruthenbeck Franz Haniel & Cie GmbH	36.58 19.00	10.80	-0.69	Deka Investment	0.78
Münchener Rück	0.6	0	HVB Allianz	9.97 9.40	15.84	-0.91	Deka Investment	1.43
RWE	0	0	Städte und Gemeinden RW Energie-Beteiligungsgesellschaft Münchener Rück Allianz Belegschaft	21.00 10.00 4.60 4.00 2.00	13.96	-0.85	DIT	1.24

**INSIGHT Shareholder ID: DAX 30**

Companies	Own Shares in %	Management in %	Notifiable Shareholders*	Share in %	Reporting KAG **	Change from previous month in percentage points	Biggest Share	Biggest reporting KAG* in %
SAP	2.07	0	Hasso Plattner GmbH & Co. Beteiligungs-KG Dietmar Hopp u. Dietmar Hopp Stiftung Klaus Tschira Stiftung Dr. h.c. Tschira Beteiligung Hasso Plattner Förderstiftung Golfplatz St. Leon-Rot Dr. Klaus Tschira	9.90 8.90 5.10 5.00 1.70 1.50 0.20	11.72	0.35	OppenheimerFunds	1.11
Schering	2.1	0	Allianz Brandes	12.50 5.00	13.81	-0.94	Union Privatfonds	1.15
Siemens	0	0.11	Siemens Vermögensverwaltung	6.10	16.66	-1.05	Deka Investment	1.52
ThyssenKrupp	2.98	0	Alfried Krupp von Bohlen und Halbach-Stiftung	20.00	11.68	-0.70	Deka Investment	1.40
TUI	0	0	Familie Riu CAM	5.10 5.00	17.47	-0.30	Deka Investment	1.71
Volkswagen	12.97	0	Porsche Land Niedersachsen Brandes Capital Group	18.53 18.20 8.58 3.50	7.23	-0.70	Deka Investment	1.36

\* Notifiable shareholders plus those indicated by the company

\*\* Source: AfU Investor Research GmbH (n.paulsen@afu.de)

The AfU company information agency lists over 18.000 funds and investment companies making disclosures.

The position shown is taken from recently published annual and quarterly reports.

**YOUR FEEDBACK**

➔ **Have you any questions, criticisms or suggestions?**  
**We look forward to hearing from you:**  
 verlag@icgg.biz

➔ **Do you wish to subscribe to the Newsletter?**  
**Please send a mail to :**  
 verlag@icgg.biz



**INSIGHT Shareholder ID: Epcos**

**Notifiable Shareholders**

Morgan Stanley	2644650	4.05 %
The Capital Group	3212760	4.92 %
Deutsche Bank	3245410	4.97 %
AXA S.A.	3291120	5.04 %
Matsushita Electric Europe	8162500	12.50 %
Siemens	8162500	12.50 %
<b>Total</b>	<b>28718940</b>	<b>43.98 %</b>
<b>free float</b>		
Investment companies(KAGs) making disclosures	12637453	19.35 %

**including the following TOP 10 KAGs**

Deka Investment	1.541.200	2.36 %
Fidelity USA	1.128.400	1.73 %
Cominvest	1.091.979	1.67 %
MainFirst	825.000	1.26 %
SüdKA	717.185	1.10 %
JPMorgan Fleming Funds Sicav	630.895	0.97 %
Universal-Inv.	540.087	0.83 %
Lupus Alpha (D)	490.000	0.75 %
UBS Lux	420.000	0.64 %
CS EF (Lux)	405.668	0.62 %
<b>Total</b>	<b>7790414</b>	<b>11.93 %</b>

➔ For further information please send an e-mail to: [n.paulsen@afu.de](mailto:n.paulsen@afu.de)

COMPETENT - INFORMATIVE - INDEPENDENT

**For all those interested in the German stock market:**

Yes, I wish to subscribe to Insight Corporate Governance Germany immediately, initially for one year, at the annual rate of € 480 plus statutory VAT (currently 16 %, or € 76.80).

Title \_\_\_\_\_

Surname \_\_\_\_\_

Forename(s) \_\_\_\_\_

Company \_\_\_\_\_

Country \_\_\_\_\_

Postcode/ zip code \_\_\_\_\_

Place \_\_\_\_\_

Street address \_\_\_\_\_

E-mail \_\_\_\_\_

**Send to:**  
 Corporate Governance  
 Informationsdienste  
 Am Niddatal 3  
 D-60488 Frankfurt am Main  
 Germany  
 or via Email [verlag@icgg.biz](mailto:verlag@icgg.biz)

The subscription may be cancelled in writing within ten days, running from the order date, without giving any reason. Unless I cancel this subscription request by six weeks before the end of the subscription year (date of receipt), the subscription will be automatically renewed for a further year. The yearly fees will be billed annually in advance and are payable within six weeks.

## Index of Companies:

Allianz	8	Electra Partners	10	Porsche	3
Avida Advisors	10	Epcos	29	PwC	20
DaimlerChrysler	7	HVB	5,6	RWE	7,8
DAI	19	Infineon	5,6	Siemens	8
Deutsche Bank	8	IWKA	2	VW	2
DSW	20	LGT Capital Partners	10	Web.de	8
Dürr	11	Lupus Alpha	10		

## Index of Persons:

Hans-Joachim Böcking	19	Christine Licci	5	Ulrich Schumacher	5
Hans-Martin Buhlmann	3	Horst Neumann	3	Carsten Schütz	6
Gerhard Cromme	3	Wolfram Nolte	19	Stefan Simon	9
Henning Hönsch	14	Ferdinand Piëch	3	Christian Strenger	4
Stefan Jentzsch	5	Bernd Pischetsrieder	2,3	Manuel René Theisen	2
Leo Kirch	8	Roland Rott	4	Guy Wyser-Pratte	2
Max-Dietrich Kley	5	Gerhard Rupprecht	8	Brigitte Zypries	12
Klaus Liesen	2	Jochen Sanio	15		

## PUBLISHER'S IMPRINT – INSIGHT CORPORATE GOVERNANCE GERMANY

### Publisher:

Hans-Martin Buhlmann, Club of Florence  
email: Editor@icgg.biz

### Chief Editors:

Dr. Hans-Peter Canibol, e-mail: canibol@icgg.biz  
Rita Syre, e-mail: syre@icgg.biz

### Translations:

Iain L. Fraser, e-mail: iainfraser@gmail.com

### Publishing House:

Corporate Governance Informationsdienst  
Am Niddatal 3  
D-60488 Frankfurt  
Telephone +49 69 40568170  
e-mail: verlag@icgg.biz  
Website: www.icgg.biz

This Newsletter is intended exclusively for a privileged circle of people. Any unauthorized retransmission in whole or in part to third parties is explicitly forbidden, except for media quotes with citation of source. The editors accept no liability for unsolicited manuscripts. The editors accept no liability for the content of Web sites cited.