

EuropeanIssuers' Comments on the SEC Concept Release on the U.S. Proxy System - File Number S7-14-10

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EuropeanIssuers welcomes the SEC Concept release paper concerning the US proxy system.

Although striking differences exist between the US proxy regime and those available in Europe, there are comparable concerns relating inter alia to shareholder identification and proxy advisory firms and justifying our comments.

EuropeanIssuers would like to refer to the three areas of concern in the U.S. proxy voting system identified in the SEC release: first, the accuracy, transparency, and efficiency of the voting process; second, the communications and shareholder participation; third, the relationship between voting power and economic interest in connection with proxy advisory firms.

General Comments

EuropeanIssuers has been deeply involved in improving cross-border communication and share voting. In Europe, when an investor decides to buy and hold foreign shares, a chain of financial intermediaries intervenes in the process, each of them operating in different markets with different rules, customs and practices. Issuers have serious difficulties in passing the information down this chain to the end investor so that he/she is duly informed and able to participate in the general meeting. Moreover, the same problem happens when the issuer has to determine who is entitled to vote and to collect votes ahead of the meeting. Over the last four years, companies, investors, banks and market infrastructure providers in Europe have worked together to make it easier for investors to participate in shareholder meetings across borders. This initiative, sponsored by the European Commission, recently resulted in a set of market standards for cross-border communications and operations: the Market Standards on General Meetings. The standards pave the way for a timely and efficient exchange of information related to general meetings. They offer a practical toolbox to implement some of the key aspects of the Shareholder Rights Directive of July 2007. The Joint Working Group on General Meetings will now start working on the implementation procedure.

Given the cross-border nature of shareholdings, we are happy to share the results of these discussions with the SEC in case they may be of wider international relevance – see spotlight dated 9 September 2010 at www.europeanissuers.eu.

EuropeanIssuers chairs the Joint Working Group on General Meetings and remains at the SEC's disposal for any clarification of the standards.

(1) Accuracy, Transparency, and Efficiency of the Voting Process

A. Over-voting and under-voting

EuropeanIssuers considers that the issue of over-voting should be considered in a broader context. As it is increasingly the case in Europe, there should be no stock lending without the shareholder's explicit consent and there should be complete transparency towards all concerned parties, including the issuer.

Specifically, where the lender is not the shareholder, the latter should be duly and timely informed by the borrower of how he can exercise his voting rights directly or indirectly in practice. In addition, the lender should inform the issuer of stock lending agreements, in a period running before the record date up to the date of the general meeting, disclose the identity of the shareholder and of the borrower.

In addition, institutional investors should clearly disclose their policy with regard to stock lending.

B. Vote confirmation

We agree with the Commission's statement that "both record owners and beneficial owners should be able to confirm that the votes they cast have been timely received and accurately recorded and included in the tabulation of votes and issuers should be able to confirm that the votes they receive from securities intermediaries . . . properly reflect the votes of . . . beneficial owners."

We note the suggestion made by the ICGN that votes could be confirmed and audited by assigning a unique identification code for the account of each beneficial owner or vote decision-maker but would suggest that such a system should be set up internationally to allow for cross-border voting confirmation. EuropeanIssuers has been a long-term supporter of shareholder identification, for which a unique identification code could be a useful tool.

(2) Communications and Shareholder Participation

A. Issuer Communications with Shareholders

EuropeanIssuers welcomes the questions, as identification of shareholders is central to issuers' concerns. EuropeanIssuers supports a shareholder identification system such as exists in the UK or France, which enables the company to seek information on the holders of its shares. This would reduce the costs incurred by companies currently in paying intermediaries to get hold of this information. As a result we support the removal of the OBO/NOBO distinction. We agree

that the OBO/NOBO system has outlived its usefulness now that transparency, corporate governance, share voting and improved technology for communications between issuers and shareholders have taken priority over takeover concerns.

In addition, in Europe we believe that vesting issuing companies with the right to identify their shareholding could facilitate the effective operation of the comply or explain regime for corporate governance codes here and that such information could also be made available to other shareholders to enable them to exercise their collective stewardship responsibilities. If you do not know who the major investors in companies are, how can you judge whether they are exercising their responsibilities as long-term investors effectively?

We support the suggestion to eliminate brokers, banks and intermediaries from an active role in the voting process, thereby reducing costs and increasing efficiency. We agree that issuers should have more control over the selection and payment of intermediaries and service providers.

We also support competition between providers of voting and information services. We do not support a right to privacy. If, however, it exists, the costs should be borne by those using it.

(3) Relationship between Voting Power and Economic Interest

A. Proxy Advisory Firms

EuropeanIssuers welcomes the questions as issuing companies have expressed similar concern about potential conflicts of interests of proxy advisors and their operating conditions. It has been noted in several instances that proxy advisors are providing services to the issuer, for example for the preparation of general meetings, while at the same time preparing voting recommendations for investors.

Regarding the operating conditions, it must further be stressed that voting recommendations are often being prepared without the proxy advisors entering into a dialogue with the issuer and giving the issuer an opportunity to comment on their recommendations before publication, so that they can correct any errors or prevent any misunderstanding.

In addition, there is a more deeply grounded concern about proxy advisers' operating practices. Proxy voting guidelines are increasingly being based on proposals requiring companies to adopt practices and procedures, which go beyond national standards and disregard the particular conditions of the relevant market. Where a company is operating in accordance with local best practice, this should be reported to the proxy voting adviser's clients.

EuropeanIssuers will soon issue a more detailed paper on proxy advisory firms which we will be glad to share with the SEC.

EuropeanIssuers was set up to represent the interests of publicly traded companies in Europe, which are subject to complex rules on issues such as shareholder rights, corporate governance and reporting and market regulations. Our members include both national associations and companies from all sectors in 14 European countries, where there are some 9.200 such companies with a combined market value of some € 5.000 billion.

EuropeanIssuers' ultimate goal is to achieve well functioning European financial markets which serve the interests of their users, together with good corporate governance and responsible share ownership. More information can be found at www.europeanissuers.eu.