ECGS COMMENTS ON THE DIRECTIVE FOR BETTER SHAREHOLDER RIGHTS

Expert Corporate Governance Service (ECGS) is a European proxy advisory company registered in London and managed in Paris as a partnership between independent local market experts which have come together to provide specialized governance research and proxy voting advice. ECGS offers institutions access to unrivalled experience on corporate governance and responsible investment issues.

The Managing Partner of ECGS, Proxinvest is based in Paris . Other active ECGS Partners are DSW (Düsseldorf), Ethos Services (Geneva), Shareholder Support (Rotterdam) and Frontis Governance in Rome. ECGS also employs local governance experts in London (Manifest), Montreal and Melbourne. ECGS acts solely in the interest of all shareholders and is generally free of conflicts of interests in the production and sale of its advisory services.

Voting shares in an open market economy is service rendered to all passive shareholders and to the society as a whole by thoughtful investors: it should be encouraged. ECGS strongly supports the European Commission's proposals for amendments to the Shareholders' Rights Directive regarding long-term Shareholder engagement.

We also support the August 2010 letter of ABI, Eurosif and Eumedion to Michel Barnier: (http://eumedion.nl/nl/public/kennisbank/brieven/2010-08-ec-securities-law-directive.pdf) requesting a better definition of the duties of the security custody franchise be set for banking intermediaries to contribute to the voting of shareholders.

ECGS' comments and suggestions to further improve the Commission's proposals are the following:

• Cross border Voting

In line with many issuers and shareholder representatives, we believe that the ability to vote shares abroad without any obstacles or disproportionate costs is essential. We consider, as many of our investor clients do, that major obstacles still hinder the effective right to cross border voting and we therefore strongly support the Commission's efforts to increase the efficiency of the chain of intermediaries.

Full transparency of the detailed shareholder list at the time of the general meeting should be ensured on the record date and, subsequently used as to facilitate dialogue among shareholders and between investors and issuers. The conflicts of interests of registrars or centralizing banks appointed by the company's management to create the shareholder list should be disclosed in order to foster a

fair voting process. The appointment of substantially conflicted agents such as company investment bankers should further be prohibited.

Any existing restrictions to the right of the shareholder to appoint a personal proxy holder for voting should be lifted and the registrar should be held responsible for insuring that the shares under proxy be associated to the instructions given by the proxy designated by each holder. Because the voting right is a fundamental element of a stock, the voting instructions when they transit through the bank chain should be carefully respected by any agent in the identification chain and its use should not trigger any cost for the individual voting account.

• Bank Voting Fees

In view of the minor cost for securely transmitting information nowadays, the cross-border voting process in the 21st Century should be mostly, if not entirely, internet based and free of any marginal charges for the voting shareholders. The identification costs at custodian level should be borne by all securities accounts holders, clients of this custodian while the centralizing and voting central site costs at registrar level should be borne by the company and should never generate a marginal charge for the voting investor.

As stated above, voting the shares is a service rendered by thoughtful shareholders to all shareholders and to the society as a whole: they should therefore not be further penalized and active voting should be completely free of charge. Because of the lack of serious opposition of investors paralyzed by the banks' influence in the asset management and custody business, custodians, often themselves subsidiaries of universal banks , have used their strong position in order to charge fees per line of shares voted, sometimes exceeding 100€. . They also appear to have opposed any serious attempts to modernize the unreliable and time-consuming "ante voting"identification process (see hereunder).

We maintain that the exercise of cross border voting rights within the EU should not cost much and should be paid either by the general custody fee charged by banks on every securities account in the general account conditions , and ,at central level , paid by the issuer in the name of all shareholders.

The Commission should also consider that in order to avoid frequent conflicts of interests, the AGM centralizing, registrar and vote counting process should be open to non-bank competition as this is not a custodial or financial process[1].

We support the Commission's proposals to regulate the voting fees as they are crucial: a disclosure of prices, fees and charges by intermediaries is not sufficient; we therefore propose that the charges for the identification services should be included in the basic custody fee charged to all shares accounts and no longer charged only on voted shares.

• Shareholder identification

In order to hold fair and well attended shareholders general meetings, intermediaries should contribute by providing the voting shareholder identifiers to the issuer on the legal voting record date, as requested by the August 2010 letter to Michel Barnier.

[1] The registrar services would be much more competitive, fair and efficient if they were stand-alone businesses as is the case in the UK US/Australia/Canada/Scandinavia

When preparing their shareholders general meeting, issuers should have no additional identification rights than to request from the voting shareholder the proof upon record date of its shareholding as attested by the chain of custodians. The Revised SRD should not provide a commercial opportunity for financial intermediaries to charge companies with additional services which they should offer for free (see above). It should further be stated that shareholders should not pay any fees to the intermediaries for identification purposes and should all be equally entitled to initiate the identification process any time before record date for free, using the issuer approved Internet voting site.

Additionally, in some countries companies and regulators have imposed shareholding declaration thresholds: such statutory and or legal provision, imposed to all shareholders, forces them, if they want to keep their voting power, to disclose their identity whenever they exceed a threshold as low as 0.5% of the company's capital.
We, at ECGS, consider that these declaration threshold rules imposed to all potentially influential shareholders is fair, practical and efficient. Here however, ECGS supports Better Finance because all information related to the shareholder given by the shareholders to the company should also be given to all shareholders and their associations to create a level playing field.

These two complimentary above mentioned identification processes respect the appropriate agency direction and no conflict of interest is created: it is clearly on request of the shareholders' voting end that custodians, paid by depositors, should disclose the holder's identity and share holdings. The custodian chains should be legally obliged to provide the identification to the issuer but only upon request of the voting shareholders for the AGM record date[2]. The simple use of these two tried fair processes should result in an improved disclosure for the benefit of all shareholders.

We also support the way that the privacy rights of small or non-voting shareholders are being preserved if they so wish by granting anonymous shareholding for non-voting shareholders. The money laundering issues should be treated by other methods than adding unnecessary burden to the useful shareholder voting process. In all cases the full final identification obtained by the issuer should be made available to all shareholders on the attendance list.

• Investor engagement and transparency

Improvement of the commitment of institutional investors and asset managers should be encouraged because of their responsibility towards their retail investors and savers. Funds and other institutional investors are welcome to justify and disclose their activities in order to fulfill their fiduciary duties. We see as a fundamental financial regulation requirement that investment management teams must act in the interests of clients and that doing otherwise be considered an offence.

ECGS welcomes the proposals regarding the increased transparency of the voting practice of institutional investors, especially when these belong to a publicly distributed or open investment funds or collective pension funds. We also welcome when investors demonstrate how their

[2] ECGS does not support the proposal according to which the ownership of company shares should be registered in real time by electronic means and be available to issuers and shareholders. Such a system would be far too expensive and not environmentally healthy. It would "heat the planet for nothing" as it would impose billions of unneeded computer signals as thousands of daily share change of hands although no one should or will really care 364 out of 365 days for the identification of these small changing stakes.

investment, voting strategies and practices are aligned to their liability profile and "how it contributes to the medium to long term performance of their assets".

Some consider that the lack of voting diligence and engagement is a result of structural conflicts of interests which are not well addressed through additional disclosure requirements from investors. Specifically, independent asset managers should not be subject to additional disclosure.

The end-investors of publicly offered assets should be protected by regulators because the asset-management business is often subject to important conflicts of interests (as in the case of assets managed by multi-business financial groups). For them, a disclosure requirement on their independent voting and other diligences should therefore be made compulsory and should not be left to a "comply or explain" minimal requirement. Besides, the conditions to meet a "comply or explain" requirement are not clear in the Commission proposal.

Their due diligence should also include the active search for judiciary redress in cases of market damages due to third responsibility including the participation to possible class actions.

When asset managers are part of multi-business financial groups, the management of conflicted situations could be easily improved by the compulsory introduction of sufficient number of independent non-group directors at the board of the asset management firm as it is practiced by the asset management subsidiaries of groups like the AXA group.

• Say on Pay

The General Meeting of Shareholders is the sovereign body of the corporation. It is by delegation of power from the GM that the Board supervises the accounts, appoints or controls management and, in case of failure of the Board to act, the GM is expected to take all relevant decisions.

It is primarily because of the Board's failure to control and limit reasonable executive pay levels that governments or parliaments have requested a Say on Pay vote at the AGM. ECGS therefore supports the proposal by the Commission for shareholders to have the right to approve the remuneration policy via either a binding or non-binding vote.

The Say on Pay vote is especially important with respect to the annual short term variable pay. ECGS is therefore in agreement with the Commission that this should be performance-related and not exceed the base salary. Furthermore, ECGS is in favor of a cap on directors' pay at all publically listed companies in Europe.

Another justification for this practice is the lax control of Related Party Transactions. The RPT process was in some European countries the legitimate legal framework for controlling the exceptional pay and benefit remitted to Managing Directors, but it was not seriously enforced.

Shareholders also need clear and understandable information especially on the maximum possible pay in a best-case scenario and/or a general pay cap. There should not be any reward for failure and a reasonable ratio should be maintained between the directors' pay, the next management levels and the peer group.

• Related Party Transactions

ECGS also sees room for improvement with regard to the control and an increased transparency of Related Party Transactions.

ECGS welcomes the proposal to let shareholders vote on relevant related parties' transactions and excluding the related party beneficiary shareholder(s) or Director(s) from the vote.

As many company boards are not in majority independent, an approval excluding the interested party is a central protection item of minority shareholders. This process should apply to all direct or indirect group transactions in the interest of the Director of significant shareholders. In order to make the company's life easier it can be limited to an ex-post approval but it should not be restricted to transactions representing more than 5% of the company's assets or transactions. It should be extended to "all material transactions that are not in the company or the group's usual business line or not concluded in normal arms-length conditions since shareholders are not expected to vote on minor matters.

The external auditor should have a special legal responsibility to insure that such RPTs are transparent and properly reported to directors and shareholders.

A survey of the application of the French protective RPT proceedings conducted by Proxinvest has revealed that, based on current disclosure practices, shareholders are not informed of RPTs transactions through controlled subsidiaries. The research shows that when RPTs are reported by a listed subsidiary and benefit to a Managing Director of both parent and subsidiary company they are not reported to the parent company shareholders. Such failure to properly enforce the French law offers a significant opportunity to freely transfer wealth out of the group's shareholder equity for the benefit of one or several interested managing parties. This approach does not ensure adequate protection of minority shareholders of the top company.

Our experience has shown that RPTs have become a black-box for shareholders. We therefore question whether an "independent report" confirming that transactions were fair and reasonable is sufficient when the independent party is appointed by the Board, especially where the interested parties can vote for the approval of its own self-dealings.

ECCG believes that the European basic RPT regulation should create a binding control over these transactions for the shareholders and leave no room to circumvent companies' information duties to all shareholders. In line with the recent British FCA proposal for premium listing, ECGS recommends that the special auditors' report and or the independent report describing the RPT should be subject to the binding majority approval of all shareholders excluding the RPT beneficiaries.

• Transparency• of Proxy Voting Agencies

We welcome the Commission's suggestion that there should be better understanding of the role of shareholder voting research services. However it is surprising that the Commission is seeking to regulate this area so soon after ESMA's positive 2012 review of the industry.
We therefore recommend that the Commission takes into account the recent publication by the industry of the Best Practice Principles for Corporate Governance Research Providers (http://bppgrp.info/). These principles cover a number of substantial and material issues following detailed public consultation.

In formulating the final Directive we would point out that proxy voting agencies are responsible to their clients, the investors, under contracts drawn up with detailed commercial terms. In many cases

they compete against many similar private advisors such as lawyers, associations, remuneration consultants and proxy solicitors paid for by the companies for the defense of management. A balanced treatment of all agents advising for the vote should be ensured.

The research and advisory services provided to investors are undertaken by private independent companies under commercial contractual terms. Where these services are paid for by investors they are far less exposed to conflicts of interests than other services along the share voting chain. We at ECGS consider that such conflicts of interest should be avoided as much as possible and fully disclosed whenever they occur.

In line with the recently released Best Practices Principles for proxy advisory services, agencies should be also fully transparent on their voting principles and methodology: the Best Practices Principles group recommended a "comply or explain "approach for voluntary compliance, which ECGS supports.

However, if any new European regulation of these services is imposed then this must be done in a non-discriminatory way and made compulsory for all types of advisory services including those made by banks, proxy solicitors or trade associations. There should be no exceptions in order to enable the necessary level playing field; we believe that this is consistent with fundamental EU law.

• Amendments to the AGM Agenda

We believe that it is of paramount importance that shareholders are able, individually or jointly, to table binding resolutions at the AGMs subject to the demonstrated holding of at least 0.1% of the issued shares. The current European legal frameworks and current practices are by far more demanding and as a result, the shareholders' engagement and control efficiency are reduced accordingly. Moreover, as the investor community is generally under the influence of conflicted multi-business financial groups such as universal banks who act as both asset managers and advisors to the issuers, the shareholder rights are poorly enforced and the number of external initiatives is very low in Europe and this also reduces the possible actions of shareholders for better governance.

For ECGS, this right to initiate a binding resolution is certainly more important than any right to discuss a non-voted point or present an amendment to a resolution presented by the Board.

Certain EU members require very low thresholds to put forward items for discussion in AGMs: the United Kingdom requires a minimum of 100 shareholders, each holding 100 pounds in shares; or even, in more progressive countries like Sweden, one shareholder holding one share can suggest an amendment for discussion at the AGM. German law allows a shareholder with only one share to file a counter proposal. French law allows any shareholder holding only one share and participating to the AGM to propose the dismissal of a Director or an amendment, however, this is only carried out if the meeting chairman accepts to put it for a vote. Therefore, ECGS supports the move to include the right of a shareholder holding at least one share to put forward issues for discussion in the AGM agenda.

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