

MEMO# 21201

June 1, 2007

European Commission Publishes Third Consultation on Shareholder Voting Rights

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TO: INTERNATIONAL COMMITTEE No. 14-07 RE: EUROPEAN COMMISSION PUBLISHES THIRD CONSULTATION ON SHAREHOLDER VOTING RIGHTS

The Internal Market and Services Directorate-General of the European Commission (the "Commission") issued a third consultation paper on shareholders' rights and cross-border voting. [\[1\]](#) The Commission is considering whether to issue a separate non-binding instrument to supplement the directive on shareholder rights. Comments are due July 27, 2007. This memorandum briefly describes some of the specific recommendations and questions posed by the Commission.

Translation of Meeting Documents

The Commission seeks comment on whether it should take no action or recommend the mandatory translation of the meeting convocation, the meeting agenda and documents to be submitted to a general meeting into a language customary in the sphere of international finance.

Depositary Receipts

The Commission believes that it is not necessary to provide receipt holders with voting rights on underlying shares or a right to decide how votes attached to such shares are cast. The Commission, however, seeks comment on whether the depositary agreement should provide that the depositary may not vote the shares without the receipt holder's instructions unless explicitly given that discretion by the receipt holder.

Stock Lending

The Commission states that the consequences of stock lending with regard to voting are not always made clear to lenders. In addition, an intermediary may lend client securities without informing the client. The Commission seeks comment on whether it should make specific recommendations on securities lending including, but not limited to, requiring disclosure in lending agreements to explain the effect on voting rights, allowing intermediaries to lend client securities only with client consent or prohibiting the borrower from voting securities except upon instruction from the lender.

Intermediaries in the Voting Process

The Commission seeks comment on several possible recommendations concerning the role and duties of intermediaries and the exercise of shareholder voting rights.

Recommendations include, but are not limited to, encouraging Member States to ensure intermediaries explain whether, and if so how, a client can exercise voting rights, encouraging Member States to ensure fees charged for assisting clients in exercising voting rights do not substantially exceed actual costs or having intermediaries maintain records of client voting instructions and confirmation that the instructions were carried out.

The Commission also seeks general comment on whether additional recommendations are needed with respect to information available to issuers concerning the identity of shareholders and persons controlling voting rights.

Voting Rights and Management Companies

The Commission seeks comment on whether it should recommend that the definition of “client” include management companies when used in the context of the duties of intermediaries and the exercise of a client’s shareholder voting rights. In addition, the Commission seeks comment on whether it should recommend that Member States ensure management companies can vote shares of an issuer in a different manner (i.e., vote some shares in favor of a proposal and other shares of the same issuer against the proposal).

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The Institute expects to submit comments by the July 27 deadline. If you have specific concerns that you would like the Institute to address, please contact me at 202-326-5813 (solson@ici.org) or Glen Guymon at 202-326-5837(gguymon@ici.org). We will be scheduling a conference call in June to discuss the consultation. The date of the call and the dial-in information will be circulated later.

Susan Olson
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endnotes

[1] European Commission, Internal Market and Services Directorate-General, *Fostering an Appropriate Regime for Shareholders’ Rights*, Third Consultation Document, dated April 30, 2007, available at

http://ec.europa.eu/internal_market/company/docs/shareholders/consultation3_en.pdf

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