

**MEMO# 24382**

June 24, 2010

## **European Commission - Consultation on the Modernization of the Transparency Directive**

[24382]

June 24, 2010

TO: INTERNATIONAL COMMITTEE No. 8-10

INTERNATIONAL INVESTING SUBCOMMITTEE No. 4-10

INTERNATIONAL MEMBERS No. 11-10 RE: EUROPEAN COMMISSION - CONSULTATION ON THE MODERNIZATION OF THE TRANSPARENCY DIRECTIVE

The Internal Market and Services Directorate-General of the European Commission (the "Commission") recently issued a consultation paper on the modernization of the Transparency Directive (the "Directive") regarding transparency requirements for listed companies. [\[1\]](#) The consultation addresses: (1) the attractiveness of regulated capital markets for smaller listed companies; (2) disclosure of information related to voting rights; and (3) issues arising from diverging national measures and unclear obligations in the Directive. Comments are due by August 23, 2010.

This memorandum briefly describes some of the recommendations and questions posed by the Commission regarding transparency and holdings of voting rights. The Commission is seeking comments related to voting rights because it believes that the Directive does not guarantee issuers or investors full information around major holdings of voting rights due to (1) areas not covered by the Directive, (e.g., cash settled derivatives); and (2) insufficient transparency. As a result, the Commission is concerned that there may be information asymmetries regarding issuer ownership and the misalignment of investor intentions and the long-term interest of firms.

With respect to voting rights, the Commission generally seeks comment on the following:

1. Whether cash-settled derivatives should be disclosed and aggregated for purposes of triggering reporting thresholds;
2. Possible approaches for reducing empty voting to increase transparency of holdings;
3. Enhancing disclosure of investors' intentions with regard to their holdings and how they financed their purchase; and

4. Increasing consistency by having a uniform rule on aggregation of holdings.

## **Disclosure of Cash-Settled Derivatives**

The Commission states that there are calls for an EU regime on holdings of cash-settled derivatives. The Commission is seeking comment on whether it would be beneficial to require disclosure of cash-settled derivatives holdings because they can be used to acquire control of voting rights. If such disclosure is recommended, the Commission seeks comment on whether holdings of cash-settled derivatives should be aggregated to holdings of voting rights and/or to financial instruments that give unrestricted access to voting rights to calculate the disclosure threshold. The Commission also seeks comment on which threshold should be applied if disclosure is done independently of voting rights and of other financial instruments (e.g., the thresholds provided in Article 9(1) of the Directive should be applied (5%, 10%, etc)).

## **Transparency of Holdings and Empty Voting**

The Commission defines “empty voting” as the exercise of voting power without a corresponding economic interest and states that there are calls to reduce the risk of empty voting resulting from security lending. Specifically, the Commission seeks comment on whether it should focus on achieving transparency by establishing a disclosure mechanism for holders of voting rights who do not hold shares between the record date and shareholders meeting or if it should simply limit or prohibit empty voting practices. If a specific disclosure obligation is recommended, the Commission seeks comment on which voting rights threshold should be applied to trigger disclosure (e.g., 0.5%, 1%, other) and which time-limit should be set for the disclosure to be useful (e.g., immediate disclosure).

## **Disclosure of Investors’ Intentions**

The Commission is seeking comment on several recommendations concerning enhanced disclosure for investors that have significant holdings of voting rights. Recommendations include, but are not limited to, requiring investors to disclose their future intentions with respect to their holdings, how they financed their acquisitions, and their voting policies. Although some Member States have imposed these disclosure requirements, the Commission is concerned about the potential adverse consequences, particularly the market for corporate control. The Commission seeks comment on the best way to achieve greater transparency in the investment process. In addition, the Commission seeks opinions on whether such disclosures would be useful, what minimum threshold should trigger disclosure, and which disclosure format should be used (e.g., checking of a box to indicate an intention to change control or writing narrative explanations).

## **Consistency and Aggregation of Holdings**

The Commission states that Member States have implemented the Directive differently, which has created inconsistent disclosure requirements across Europe. In some Member States, an investor’s holdings are treated independently to determine whether the notification requirement is triggered, while in other Member States, investors are required to aggregate holdings of voting rights with holdings of financial instruments to calculate if the disclosure threshold is reached. The Commission is seeking views on whether it should impose a universal threshold rule for disclosure, requiring voting rights and financial

instruments to be aggregated. The Commission seeks additional comments on whether there are other cases of inadequate transparency concerning corporate ownership and whether it is desirable to have a uniform EU Regime for the notification of major holdings of voting rights.

If you have specific questions, please contact Susan Olson at (202)326 5813 or [solson@ici.org](mailto:solson@ici.org).

Susan Olson  
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**endnotes**

[1] European Commission, Internal Market and Services Directorate-General, Consultation on Modernization of the Transparency Directive, dated May 27, 2010, available at [http://ec.europa.eu/internal\\_market/securities/docs/transparency/directive/consultation\\_questions\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/transparency/directive/consultation_questions_en.pdf)

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