

**MEMO# 17426**

May 4, 2004

# **EU CONSULTATION ON BOARD RESPONSIBILITIES AND IMPROVING FINANCIAL AND CORPORATE GOVERNANCE INFORMATION**

ACTION REQUESTED [17426] May 4, 2004 TO: INTERNATIONAL COMMITTEE No. 23-04 RE: EU CONSULTATION ON BOARD RESPONSIBILITIES AND IMPROVING FINANCIAL AND CORPORATE GOVERNANCE INFORMATION The EU Commission is conducting an on-line consultation in preparation for a revision of the EU regime for (1) the clarification of the responsibility of board members for financial statements and key non-financial information, (2) transparency in intra-group relations and transactions with related parties, and (3) disclosure about corporate governance practices.<sup>1</sup> The document provides the initial views of the Commission of the possible content and structure of a Commission initiative, which will likely be in the form of one proposal covering the three enumerated issues. This consultation implements one of the items on the EU's Corporate Governance Action Plan.<sup>2</sup> The on-line questionnaire must be submitted electronically before June 4, 2004. The Institute plans to participate in the on-line consultation. If you have particular thoughts or concerns, please provide them to me at (202) 326-5810 or at [jchoi@ici.org](mailto:jchoi@ici.org) by May 18, 2004. The online-consultation document discusses the three areas to be covered by the Commission proposal.

**Responsibility of Board Members** The Commission intends to confirm at the European level the principle of board members' collective responsibility for financial statements and key non-financial information. In this regard, the Commission believes that the scope of the proposal should take into account that the concept of responsibility varies in the different national laws and that the dual board system (management board and supervisory board) and the differentiation between executive and non-executive board members may have to be considered. Moreover, the Commission notes that the responsibility of board members is dealt with in different ways in Member States and that the extent of the responsibility also varies in Member States. <sup>1</sup> The consultation document is available at, [http://europa.eu.int/comm/internal\\_market/company/board/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/board/index_en.htm). <sup>2</sup> Memorandum to International Members No. 19-03 [16124] (May 29, 2003).

**Intra-group Relations and Transactions with Related Parties** The Commission is concerned that intra-group transactions and a group's transactions with related parties often lack transparency, which can make it difficult for investors and shareholders to assess the true risks of investing in companies. In light of the recent scandals related to intra-group transactions, the Commission takes the view that the

question should be whether parent companies of groups, listed or not, and individual companies should have to disclose material transactions that carry significant risks. The Commission identifies as of particular interest a company's relations with special purpose vehicles, significant sales of assets to another company within the group or to a third party that are directly or indirectly influenced by the group or members of the boards, cash management arrangements, and the use of a group company as an offshore company. The Commission requests responses to 12 questions, including whether there should be certain common definitions at the EU level, whether equivalent requirements should apply to listed and unlisted parent companies, and whether certain material transactions with related parties should be disclosed. The Commission also provides an opportunity for comments on what other specific transactions should be disclosed.

**Disclosure of Corporate Governance Practices** The Commission is of the view that enhanced disclosure about corporate governance practices, which differ across Member States, could provide a useful insight into what happens in practice and promote best practices. To improve information to investors and stakeholders at the EU level about corporate governance, the Commission believes that it would be valuable if listed companies having their registered seat in Europe would disclose their corporate governance elements and structures annually in a specific statement. To achieve this goal, the Commission intends to amend the Accounting Directives. The Commission envisions that the corporate governance statement could include a reference to a national code of corporate governance, applying the comply-or-explain-method, to describe the system of risk management, the company's committees, the procedures for the appointment of board members, the operation of the shareholders' meeting and its key powers. The statement also would include a description of certain other elements that are of key importance for good corporate governance, including the independence and technical knowledge of the board members and the members of the committees and the existence and functioning of an internal control system. The Commission also believes that the corporate governance statement could cover information to help shareholders use their voting rights in the case of cross-border investments and contain certain information about controlling shareholders.

3 In the on-line questionnaire, the Commission requests responses to nine questions, including what specific information the corporate governance statement should cover.

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