

2 August 2007



Comments from the European Securities Forum on the Third Consultation Document of the European Commission on Fostering an Appropriate Regime for Shareholders' Rights

In response to the invitation for comments on the Consultation Document of the services of the Internal Market and Services Directorate-General on Fostering an Appropriate Regime for Shareholders' Rights, we set out our comments as follows:

The European Securities Forum represents major users of European securities markets and focuses its activities on the objective of achieving an efficient, integrated and safe post trading system in Europe. In this context we cooperate with the European Association of Listed Companies (EALIC), the European Banking Federation (EBF), the European Central Securities Depositories Association (ECSDA) and the Federation of European Securities Exchanges (FESE) in removing Giovannini Barrier 3 (corporate actions) in general and in a joint working group on general meeting related operational processes in particular.

In general, we welcome a recommendation that complements the Shareholder Rights Directive and strongly advise to include in this recommendation a standardised record date for all Member States (Article 7.3. of the Directive).

Our responses to the individual questions are:

Q 1.1.: yes

Q 1.2.: yes

Q 2: yes

Q 3: no: it should be a decision between the Lender and the Borrower as to whether voting rights are attached to the agreement

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Q 4.1.: yes*

Q 4.2.1.: yes*

Q 4.2.2.: yes*

Q 4.2.3.: no, this is an unnecessary provision taking into account existing regulation and sound market practice

Q 4.2.4.: no, fees charged by intermediaries should remain subject to respective contractual agreements in an existing competitive environment

Q 4.2.5: no, not deemed practical but potentially confusing in view of cross border chains of intermediaries

Q 4.2.6: yes

(* these positive answers are subject to a satisfactory and practical solution in regard of a standardised record date)

Q 5: yes

Q 6: yes

As outlined above, we strongly recommend including in the recommendation a **standardised record date for all Member States** (Article 7.3. of the Directive) as we believe that such standardised record date is of paramount importance (i) to achieve the objective to foster the exercise of voting rights *cross-border* and (ii) to render the services of financial intermediaries, where they are involved, in the exercise of voting rights *cross border* practically possible.

The ESF Corporate Actions Expert Group, consisting of senior experts from financial institutions active in the areas of global custody, wealth management and investment banking has worked out a proposal for a standardised record date and a standardised market deadline, i.e. the date on which notification of attendance (or voting instructions respectively) are lodged with the issuing company or its agent.

The chosen approach is characterised by optimisation, i.e. to have the record date as close as possible to the meeting date (to minimise the number of shareholders who participate in the meeting although they have sold their shares in the meantime) but take into account practical requirements at the same time, particularly in regard of long cross-border chains of intermediaries.

As a result of this optimisation process we propose to set (i) the record date 10 days (minimum 7 days) before the meeting date and (ii) the market deadline 2 days (maximum 3 days) before the meeting date, whereby days shall mean business days in the venue of the respective shareholders meeting.

We would be pleased to discuss this proposal with you in greater detail.

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