



PRUDENTIAL

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DG MARKT,
Unit F2,
European Commission,
B-1049 Brussels

24 July 2007

Your ref
Our ref GS/RW/tel: 020 7548 3848

Dear Sir,

European Commission: Fostering an Appropriate Regime for Shareholders' Rights - Third Consultation Document

Prudential welcomes the opportunity to comment on the proposals set out in the above consultation document.

We set out below our comments, on the questions raised in the CP from the perspectives of both an issuer and an investor.

Comments on specific questions

*Question
number*

Language of meeting documents

Q1.1 *Do you think there is a need for action in that area?*

We note the current permissive regime in the EU whereby companies are allowed to post general meeting related documents in other languages, in addition to the national language.

We feel that there is no need for action at EU level and that this is a matter that should be best left to the market.

Q1.2 *If your answer is yes, do you think a recommendation along the following lines would go into the right direction?*

"1. Companies should make available to their shareholders the convocation for a general meeting, the meeting agenda and the documents to be submitted to the general meeting at least also in a language customary in the sphere of international finance, unless the General Meeting decides to the contrary.

2. Point 1 should not apply to companies

- that fulfil at least two of the criteria established by Article 11 of the Fourth

Prudential plc, Laurence Pountney Hill, London EC4R 0HH.

Incorporated and registered in England and Wales. Registered Office as above. Registered number 1397169.

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Company law Directive on annual accounts (not exceeding a balance sheet total of EUR 3 650 000, a net turnover of EUR 7 300 000 and an average number of employees during the financial year of 50), or
- that neither have a wide foreign shareholder base (on average under 10% of the subscribed capital) nor are actively seeking foreign investment.
For these companies, the obligation referred to in point 1 should only apply where this is requested by shareholders representing at least 1/3 of the subscribed capital."

As mentioned above, we do not believe that a recommendation along the lines set out above is required. Subject to this comment, if a recommendation is considered to be necessary, our specific comments on the draft wording are as follows.

With regard to point 1 above, in relation to UK companies, we assume that the words "the documents to be submitted to the general meeting at least also in a language customary in the sphere of international finance....." mean that UK companies would not have to publish documents in a 2nd language in addition to English on the basis that English is already the customary language. It would be helpful to have clarification on this point.

The meaning of the words "For these companies, the obligation referred to in point 1 should only apply where this is requested by shareholders representing at least 1/3 of the subscribed capital" is unclear to us. We assume it means that in relation to the power under point 1 for the General Meeting to decide not to provide a translation, this has to be requested by shareholders owning at least 1/3rd of the issued capital? Greater clarity on this point would be helpful.

We support both exemptions set out in point 2. With regard to the second exemption in point 2 for companies "that neither have a wide foreign shareholder base (on average under 10% of the subscribed capital) nor are actively seeking foreign investment" – we assume that both these conditions have to be satisfied.

Depository Receipts (DRs)

Q2 *Do you think a recommendation along the following lines would go into the right direction?*

"The depository agreement should provide that the depository is not allowed to vote on the shares without instructions given by the depository receipt holder, unless the latter has given the depository explicitly such discretion."

We strongly agree a recommendation along the lines set out above. The wording needs to ensure that holders of depository receipts should be entitled to issue voting instructions and that depositaries must follow these instructions.

Stock lending

Q3.1 *Do you believe that stock lending needs to be addressed at EU level? Please give your reasons.*

We feel that there is no need for EU involvement in relation to the impact of stock lending on voting rights – the market is already well managed and regulated. However, we would not oppose the introduction of recommendations that support good market practice.

We would make the following general points in relation to stock lending:

- (i) We understand that the average volume of shares on loan is generally small (average 2.5%-3.5%), although in individual instances it can be much higher thereby having an impact on voting at specific shareholder meetings. Shares are generally not recalled to vote unless there is a contentious issue;
- (ii) Standard market documentation enables investors to recall shares to vote - and the procedures work well in practice. Stock lending does not, therefore, disenfranchise institutional investors who engage in stock lending if they wish to



exercise their voting rights by recalling loans;
(iii) The market code of conduct discourages borrowing to vote - however we recognise that there are isolated incidents where this does happen.

The question raised in the consultation document relates to the impact of stock lending/borrowing on voting rights. Notwithstanding the comments made above, we acknowledge that there is a general transparency issue, from an issuer perspective, regarding the impact of stock lending on companies' share registers. When securities are lent, legal ownership transfers to the borrower (although the economic interest remains with the lender as the lender continues to receive the cash dividends and can sell the lent shares and settle the transaction by recalling the lent stock at no cost to the lender). Accordingly the name of the borrower or his custodian/nominee will appear on the company's share register. This raises the possibility of issuers not being able to rely on their share registers to identify their true long-term shareholders. Also, in an extreme example, a company that has a significant amount of its shares held by borrowers might have difficulty in achieving the required voting levels to support the passing of its resolutions at an annual general meeting, given that borrowers do not vote the shares, even though the proposed resolutions are non-contentious. See also our comments regarding questions 4.1 and 5 below.

- Q3.2 *If your answer is yes, would you support recommendations along the following lines?*
- "1. Stock lending agreements should contain provisions informing the relevant parties of the effect of the agreement with regard to the voting rights attaching to the transferred shares.*
 - 2. Member States should ensure that shares can only be lent by financial intermediaries where the investor has explicitly agreed to his shares being used for stock lending in the framework agreement with his financial intermediary.*
 - 3. Borrowed shares should not be voted, except where the voting rights are exercised on instructions from the lender.*
 - 4. Stock lending agreements should provide that borrowers have to return equivalent shares to those borrowed promptly upon the lender's request."*

Subject to our comments set out in response to question 1 above, with reference to each point of the draft recommendation, we make the following comments.

1. We have no objection to this recommendation. The investor must be made aware of the transfer of voting rights. This is standard market practice and is part of the market's code of conduct. We believe that everyone is agreed that there should be procedures in place regarding the recall of stocks for voting between lending agent and investor.

2. We have no objection to this recommendation. Explicit agreement to lend is already standard practice via the securities lending agreements in place between investors and lending agents.

3. Shares represent proportional ownership rights and the right to vote must not be detached. It is impractical to suggest that borrowed shares shall only be voted as instructed by the lender. Legal title passes when securities are lent, with the likelihood of subsequent sale to investors. It is essential that voting rights pass through to the subsequent buyer. We strongly support the revised wording suggested by the International Securities Lending Association as follows:

"Securities should not be borrowed knowingly for the principal purpose of acquiring voting rights"

4. We have no objection to this recommendation. We understand that the standard market agreements for securities lending already require borrowers to return equivalent shares at the lender's request within the normal market settlement timetable (i.e. promptly).



Chain of intermediaries

Duties of intermediaries

Q4.1 *Do you consider that the duties of intermediaries in the voting process need addressing?*

We recognise that it is crucial that the voting chain operates properly and efficiently, both within the UK and across borders, to ensure votes are recorded and to help achieve higher voting levels. If a significant number of shareholders are unable to exercise their votes, voting outcomes at shareholder meetings may be distorted and there is greater risk that a shareholder with a minority stake will determine the outcome of the meeting.

We feel this is already being addressed in the UK, but have no view in relation to other EU Member States. In the UK, the Myners Review on impediments to voting UK shares has highlighted these issues. We also point out that in the UK, the Companies Act 2006 specifically provides (section 152) that a shareholder who is a nominee can split his nominee holding and exercise voting rights attached to shares in different ways. This accommodates nominee shareholders who hold shares on behalf of more than one person.

Q4.2 *If your answer is yes, would you consider recommendations along the following lines as adequate?*

- "1. Member States should ensure that before entering into relevant agreements, intermediaries explain to clients whether, and if so how, they will be able to give instructions about the exercise of voting rights.*
- 2. Where a client is entitled to give instructions about the exercise of the voting right, Member States should ensure that financial intermediaries that are part of the chain of intermediaries between that client and the issuer either cast votes attached to shares in accordance with the clients' voting instructions or transfer the voting instructions to another intermediary higher up in the chain.*
- 3. Financial intermediaries should keep a record of the instructions and provide confirmation that they have been carried out or passed on for a period of at least one year.*
- 4. Member States should ensure that fees charged by intermediaries for the services referred to above do not exceed substantially the actual costs incurred by that intermediary.*
- 5. Member States should ensure that intermediaries take the necessary measures to have the client's name registered in the register of companies which have issued registered shares. This obligation should not apply where the client objects to his name being registered.*
- 6. "Client" within the meaning of this provision is the natural or legal person on whose behalf another natural or legal person holds shares in the course of a business."*

Subject to our comments set out above in response to question 4.1 and other than set out below, we have no particular comments to make regarding the draft recommendation wording.

We strongly support the requirement in point 3.

With regard to the draft wording in point 5, we feel there is a danger of confusion between "registered" owners on the share register and "beneficial" owners. For example, we would not support intermediaries being compelled to register multiple designations for all their clients' holdings. This could result in excessive costs for themselves, their clients and issuers. We would point out that in the UK the Myners Review has recommended the ability of custodians to offer designation of accounts, but concluded that investors should consider the benefits of designation against the



costs involved when choosing their custody arrangements.

Disclosure of investors

Q5 *Would you agree that the transparency directive, once implemented, will give a breakdown of voting rights and that further action at EU level would be premature?*

Generally we support the view stated in the consultation document that "taking further action [at EU level] on the disclosure of voting rights at this stage, i.e., before the operation of the Transparency Directive has been assessed, would seem premature".

We would, however, emphasise the need for proper transparency in relation to disclosing companies' investors. Companies need to have a clear picture of who their investors are to help them consider what would be best for shareholders generally in the long term. We feel that there is a need for greater disclosure in relation to instruments such as contracts for difference so that companies understand the true position regarding ownership and control.

Management companies of investment schemes

Background *The ECON committee of the European Parliament, in its opinion of 27 November, proposed a specific rule for management companies of investment schemes concerning the exercise of the voting right. These companies manage funds on behalf of their investors, but often at the same time also portfolios for institutional investors. Given that they are therefore not the legally recognized shareholder for all the shares they manage in the same account, they will normally not be able to benefit from the future rule on split voting contained in Article 13 of the draft directive on the exercise of shareholders' voting rights. The question is whether rules are justified that would address specifically the situation of these companies.*

Q6 *Do you think there is a need for a recommendation along the following lines?*

*"1. Management companies, the regular business of which is the management of collective investment schemes, shall be deemed to be 'clients' for the purposes of the draft recommendations set out in section V.1.
2. Member States should ensure that management companies referred to in point 1 shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares."*

We strongly support the need for management companies which hold shares of the same issuer in a collective account on behalf of several investors, to be able to split the votes according to the voting instructions that investors have given to them.

Accordingly, if it is felt that management companies are unable to benefit from the future rule on split voting contained in Article 13 of the draft Directive on the exercise of shareholders' voting rights, we would support an EU recommendation along the lines set out above.

Yours sincerely,

Bob Walker

Bob Walker
Deputy Group Secretary – Technical Adviser