

25th November 2011

Laurent Degabriel
European Securities and Markets Authority (ESMA)
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France

Submitted online at: info@esma.europa.eu

Dear Mr Degabriel

J.P. Morgan's Response to ESMA's Call for Evidence on Empty Voting

We are writing in response to the above and are pleased to have this opportunity to share J.P. Morgan's views with you on empty voting.

Through its Worldwide Securities Services and Prime Brokerage businesses, J.P. Morgan acts as both an agent lender, lending securities on behalf of beneficial owners such as pension funds and asset managers, and a borrower, in its capacity as prime broker, borrowing securities to facilitate short positions for hedge fund clients. In both capacities, we are one of the world's largest industry participants and have a holistic view of the market, seeing both cash settled and derivative positions across a wide spectrum of instruments, and are therefore well positioned to observe market and client behaviour.

We recognise the importance of meaningful transparency and would highlight our view that empty voting, as a practice, is inappropriate. As a firm, we are opposed to empty voting, do not facilitate empty voting and follow standards, practices and policies that prohibit empty voting. We are unaware of any recent examples of empty voting in the wider industry. We expect this is due, in part, to clear messages from industry groups (and resultant standards) that such practices are considered to be inappropriate.

While voting rights and economic rights can be separated via securities lending and derivative arrangements, we are of the view that the risk of empty voting has been generally addressed through a combination of the establishment of new industry standards, practices, and legal documentation and, in the case of derivative arrangements, existing and evolving regulation. For example, in a securities lending context, express disapproval of such practices are referenced in clear, accepted industry standards. These standards and related practices are described in more detail in the Appendix to this letter.

In a derivatives context, we note that relevant derivatives are not constructed with a view to "selling" voting rights but rather they are created as hedging vehicles. While we do not believe that trading in such derivatives occurs for the purpose of empty voting, we welcome the proposed extension of the Transparency Directive to cash settled derivatives which will, if implemented, further enhance transparency of voting rights related to derivatives.

Ways of exercising empty voting

Q1. Please identify the different types of empty voting practices and the frequency with which you think they occur within the EU. Where possible, please provide data supporting your response.

We do not believe that the decoupling of voting rights from economic exposure for the purpose of empty voting is common practice in the EU, particularly in light of the implementation of the securities lending industry standards and related practices referenced in the Appendix.

Q2. Please identify specific examples where empty voting practices have occurred within the EU. Where possible, please provide data supporting your response.

We are aware of only one notable case which occurred in 2002 in the U.K. According to press reports, this case involved an activist investor obtaining increased voting rights via contracts for difference in British Land prior to a general meeting, while owning a significantly smaller amount of the issuer's stock. This practice was widely condemned within the industry and steps were taken by industry bodies to address it. We are not aware of any cases since that time.

Consequences of empty voting

Q3. a) What in your view are the negative consequences that can occur as a result of empty voting (relating to e.g. transparency, corporate governance, market abuse)?

Corporate boards are ultimately governed by the wishes of shareholders. Empty voting, if it were to occur, would prevent the views of genuine shareholders from being expressed. However, as mentioned above, we believe that the risk of empty voting has generally been addressed.

b) To what extent do you consider those consequences to occur in practice?

In our experience, as one of the largest EU participants in the securities lending and financing business, we have not seen evidence that empty voting as a practice, is used by market participants. The only example we are aware of, as mentioned previously, is British Land in 2002.

c) To what extent have you encountered those consequences in your own experience?

Please see our response to question 3b above.

Where possible, please provide data supporting your response.

Not applicable.

Q4. a) Do you believe that empty voting has influenced the results of voting at the general meeting of shareholders within the EU?

Please see our response to question 2 above.

b) Has this ever occurred in your own experience?

Please see our response to question 2 above.

Where possible, please provide data supporting your response (including the type of empty voting that you are referring to).

Not applicable.

Internal policies relating to voting practices

Q5. What kind of internal policies, if any, do you have governing the exercise of voting rights in respect of securities held as collateral or as a hedge against positions with another counterparty?

J.P. Morgan adheres to industry standards and practices as referenced herein in relation to not facilitating the borrowing of securities for the purposes of voting. Through its Prime Brokerage business, it is able to prevent voting in respect of any borrowed securities that it lends to hedge fund clients, to the extent that they are retained on its Prime Brokerage books and records. J.P. Morgan also has strict vetting procedures around counterparties to which it is willing to lend securities within its Equity Finance business.

In addition, the Worldwide Securities Services division of J.P. Morgan does not permit lending clients to vote on securities held as collateral in its securities lending programme. Furthermore, through our derivatives activity, clients are aware that no voting rights are passed through the contract and J.P. Morgan has a separate internal policy to abstain from voting in most instances of hedge trading positions, as they are temporary in nature.

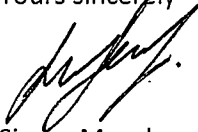
Need for regulatory action

Q6. Do you think that regulatory action is needed and justifiable in cost-benefit terms? If so, which type of empty voting should be addressed and what are the potential options that could be used to do this? Please provide reasons for your answer. Kindly also provide an estimate of the associated costs and benefits in case of any proposed regulatory action.

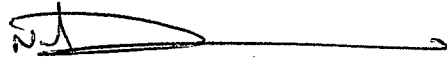
In our experience, as one of the largest participants in the securities lending and financing business, we have not seen evidence that empty voting as a practice, is used by market participants, and therefore see no reason for regulatory action. Accordingly, we would suggest that it is unlikely that any cost-benefit analysis would support regulatory action.

We would welcome the opportunity to discuss this further with you.

Yours sincerely



Simon Moseley
Executive Director
Equity Finance



Nick Davis
Executive Director
Agency Lending

APPENDIX

SECURITIES LENDING INDUSTRY STANDARDS/PRACTICES

J.P. Morgan complies with established industry standards/practices, including:

1. The industry document *Securities Lending and Corporate Governance* commissioned by The International Securities Lending Association (ISLA) clearly states that shares should not be borrowed for the purpose of voting.
2. The Securities Lending and Repo Committee's *Securities Borrowing and Lending Code of Guidance* is similarly clear that empty voting practices in a securities lending context are inappropriate:

There is a consensus, however, in the market that securities should not be borrowed solely for the purpose of exercising the voting rights at, for example, an AGM or EGM. Lenders should also consider their corporate governance responsibilities before lending stock over a period in which an AGM or an EGM is expected to be held. Beneficial owners need to ensure that any agents they have made responsible for voting and for securities lending act in co-ordinated way.

3. The U.K. Stewardship Code was implemented in 2010 to "...enhance the quality of engagement between institutional investors and companies to help improve long-term returns to shareholders and the efficient exercise of governance responsibilities." The Code encourages such investors to define, communicate and adhere to their own voting policies. Many of J.P. Morgan's securities lending clients have signed up to this Code.
4. In practice, many lenders will regularly recall their borrowed stock for the purpose of voting themselves, particularly where the vote relates to a contentious issue (for example a takeover).