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**Re: Call for evidence on empty voting**

Dear Sir, Madam,

We appreciate the opportunity to respond to your call for evidence on empty voting. While in practice we rarely see the occurrence of “empty voting” in the European markets, we recognise the potential issues that are listed in the call for evidence. Below we set out some suggestions to address them.

*The occurrence of empty voting*

By buying up a large number of shares, thus diluting voting rights, and subsequently voting on a number of the shares, any party could represent a relatively large vote without having a long term or economic interest in the company.

However, in reality this is rarely done. Therefore, as the practice of voting with borrowed shares is extremely rare and generally frowned upon by the industry as is reflected in various industry documentation (in fact, the practice is not permitted under internal DB policy), we would caution against disproportionate measures.

*Options to address empty voting*

In our view there are no practical ways to fully guarantee that no party ever “abuses” the borrowing of shares in order to vote, without significantly impacting the market. However, we do see several options to put in place measures that would place clear responsibilities around the practice.

Option 1: Legislate at “stock level”, i.e. anyone who has the voting rights of a particular party in his possession at the time of a shareholder vote, is responsible for making sure the lender of the share can carry out its vote.

Option 2: Contracts are constructed such that a borrower has to declare that he will not use voting rights unless this is specifically agreed between the lender and the borrower.

Option 3: ESMA could adopt as guidance the main elements of the *Securities Borrowing and Lending Code of Guidance* which was established in 2009 by the Securities Lending and Repo Committee (SLRC). The SLRC is made up of international repo and securities lending practitioners, representatives of trade organisations, clearing parties, the UK Debt Management Office, the London Stock Exchange and the FSA. The guidance addresses the main issues around empty voting:

(Paragraphs 7.3 and 7.4)

Securities lending involves the absolute transfer of title to both the securities lent and the collateral taken and any voting rights are transferred along with title. Securities must therefore be recalled by the lender, or collateral substituted by the borrower, if



they wish to exercise the voting rights attaching to particular securities. It is in the interests of both parties to a securities lending relationship to understand each other's attitudes to voting from the outset.

A person could borrow shares in order to be able to exercise the voting rights and influence the voting decision at a particular meeting of the company concerned. There is a consensus in the market, however, that securities should not be borrowed solely for the purpose of exercising the voting rights at, for example, an AGM [annual general meeting] or EGM [extraordinary general meeting]. 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.

We trust these comments are helpful and would welcome further discussion.

Yours sincerely,

Andrew Procter  
Global head of Government and Regulatory Affairs