BNP PARIBAS RESPONSE TO THE EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA) CALL FOR EVIDENCE ON EMPTY VOTING DATED SEPTEMBER 14th, 2011

Please find herein after the answers of the BNP Paribas Group. BNP Paribas supports a system of transparency of the empty voting practices over the period of general meetings and, to this purpose, considers that the French regime of transparency of shares held under a stock-lending agreement is a step in the right direction.

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.

Empty voting practices refer to situations where a shareholder votes in a general shareholders meeting whereas he does not support the economic risk attached to such vote.

The empty voting can be used in an objective which can be illegitimate when the shareholder, protected from the variations of share value which can be consequence of the decision taken by the general shareholders meeting and to the adoption of which he will have contributed (or even directly benefiting from those), follows his personal interest, disconnected from the social interest.

There are several techniques of empty voting among which the borrowing securities during a period of general shareholders meeting thanks to which a shareholder borrower with, by definition, short-term interest in the company, is entitled to vote [1], but also more complex techniques linked, for example, to the use of derivative products (for example, these products can ensure the covering of the economic risk attached to the shares with which the shareholder will vote).

With regard to the sale of shares after the record date and before the general shareholders meeting ("Record date capture issue" referred to in the Consultation Paper dated May 27th, 2010 of the European Commission on the modernization of the Directive 2004/109/CE), it should be stressed out that in France, the record date is fixed at the third business day preceding the shareholder meeting at 00:00, Paris time (this in coherence with the rules relating to the transfer of property which currently occurs at the end of the third day after the execution date).

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

We are only aware of the cases that have been publicly disclosed: the Laxey case in the United Kingdom, OMV/MOL case in Hungary and outside the EU, the Perry Mylan case in the United States and Henderson Land case in Hong Kong.

[1] Under French law, the borrower is the owner of the shares

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

See answer given above to question 1.

To what extent have you encountered those consequences in your own experience?
Where possible, please provide data supporting your response.

As an issuer, BNP Paribas has never been in this situation.

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

We are not aware of tangible facts allowing to affirm that the practice of empty voting influences the exercise of the voting right in the general meeting of shareholders within the EU.

Has this ever occurred in your own experience?

As an issuer, BNP Paribas did not receive any declaration in accordance with the article L. 225-126 of the French Commercial Code[2] and more generally, has not been informed of empty voting practice in its general shareholders meetings.

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

See answer given above.

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?

With regard to the shares held for our own account in a trading book, the voting rights attached to the shares held as hedging of such positions cannot be exercised if it is intended to benefit trading book exemption.
If the voting rights are exercised and consequently the exemption of trading book not applied, the Transparency declarations have to be provided in accordance with French law (threshold disclosures and, if applicable, disclosures on securities lending before general meeting).

With regard to the shares owned in collateral for client's transactions, the voting rights should not be used by the credit institution or investment firm.

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.

It is desirable to closely supervise the empty vote practices over the period of general meetings. For this purpose, the recommendation made by the European Corporate Governance Forum in February 2010 which recommends, without prohibiting them, the transparency of those transactions and the French regime of transparency of shares held under a stock-lending agreement [3]are in the right direction.

[2] In accordance with this article, any holder of shares held under a stock-lending agreement or any type of agreement providing for the return of the shares to the original seller (lender) and representing at least 0,5% of the voting rights of the issuer (except for shares held by investment firms in their trading book), is required to declare the holding of such shares to the issuer and to the AMF at the latest three days prior to the date of a general meeting. Failing such declaration, the holder of such shares will be deprived of his voting rights for all future shareholders' meetings.
[3] See footnote 2

Generally, it is advisable to ensure that shareholders are induced to cast their vote (which binds the company and all the other stakeholders for a long period) only when they have real economic interests in the company.

Such transparency will have (i) to ensure that shareholders and issuers are properly informed on the empty voting practices, (ii) to give relevant information by excluding shares held in the trading book under the same conditions than those requested in the Transparency directive, (iii) to provide for adequate sanction and avoid situation in which resolutions adopted in a general meeting attended by an “empty voting” shareholder would be systematically called into question.