

European Securities and Markets Authority
103 rue de Grenelle
75007 Paris
France
www.esma.europa.eu

Chris Barnard
Germany

15 September 2011

**- Your Ref: Comment letter on ESMA's call for evidence
on Empty Voting**

Dear Sir,

Thank you for giving us the opportunity to comment on and towards your call for evidence on Empty Voting.

The European Corporate Governance Forum has stated that empty voting techniques increasingly exercise significant influence on listed companies, and has proposed the following recommendation:¹

The Forum recommends the introduction of an assumption in company law that shareholders who take part in a general meeting own the corresponding economic interest in the voted shares. A principle should then be introduced that where shareholders who have retained legal title to the shares and exercise the vote that goes with them but have ceded all or part of the economic interest should disclose this to the market above an appropriate threshold. Parties not making the required declarations may be considered to have made an untrue statement.

I concur with this. Empty voting is, by definition, abusive and manipulative. I would therefore recommend that empty voting should be prohibited. Voters should be required to certify that they hold the full economic interest in the shares being voted, with punitive fines for misuse or misstatement.

¹ See paragraph 5, Statement of the European Corporate Governance Forum on Empty Voting and Transparency of Shareholder Positions, 20 February 2010; available at:
http://ec.europa.eu/internal_market/company/ecgforum/index_en.htm#statements

Answers to specific questions raised by ESMA

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)?

The biggest problem is lack of transparency and the consequent erosion of trust in the basic shareholder principle; that shareholders vote in the interest of increasing shareholder value. At its most pernicious, empty voting can even be associated with a negative economic interest in the company, i.e. a preference to reduce shareholder value.

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.

Yes, in order to enhance transparency, improve confidence in financial markets and promote market integrity. As a regulatory minimum, empty voting above real economic interest should be disclosed. I would prefer that empty voting was prohibited. Voters should be required to certify that they hold the full economic interest in the shares being voted, with punitive fines for misuse or misstatement.

Yours faithfully

C.R. Barnard

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