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PUBLIC STATEMENT

The 14th meeting of the Market Participants Consultative Panel

The Market Participants Consultative Panel held its 14th meeting on 21 June 2007 in Paris.

The discussion was facilitated by the vice-chair of CESR, Carlos Tavares and covered the following issues: (1) public oversight of auditors and the needs and costs of a public company's oversight board, (2) corporate governance in the European context and (3) the future role of CESR in the context of the forthcoming evaluation of the Lamfalussy procedure.

1. Public oversight of auditors and the needs and costs of a public company's oversight board

Theodoros Philippou gave a presentation on the objectives, needs, cost/funding of public oversight of auditors in the context of the Statutory Audit Directive and with a view to the system in the US. The presentation served as a start for a policy discussion among the members of the Panel about possible ways forward in Europe in this area.

In his introductory remarks Theodoros Philippou emphasized that the objective of public oversight is to improve public confidence and the credibility of high quality financial reporting. The Statutory Audit Directive requires Member States to establish an effective system of public oversight of statutory auditors and audit firms but leaving to member states the manner to configure this body according to transparency and fairness principles established by the directive (for example, system of inspection by staff of a public oversight body or as a system of delegated inspection by a professional body of 'peers').

In the context of cost of public oversight Theodoros Philippou underlined that the Directive does not make a distinction between monitoring and monitored peer review, whereas the latter system can be significantly less costly. From a funding point of view, it was noted that few Member States fund the system of oversight in total. In the majority of the Member States the auditors and the audit firms are funding the cost of public oversight.

Theodoros Philippou compared the EU system of public oversight in the making with the US oversight system by the (Public Company Accounting Oversight Board (PCAOB), created by the Sarbanes-Oxley Act 2002, and which sets its own budget and levies fees on US public companies. Based on the first years of its existence, it is stated that the standards introduced by the PCAOB have imposed substantial compliance costs on registered accounting firms and their public company clients. Additionally, the high cost of compliance disproportionately affects smaller public companies and will have long-term negative implications for the US economy. Given the fact that this system is still in its infancy, it was concluded by the MPCP that the EU should not converge to this US quality assurance system. In general, it was suggested that a combination of self-regulation and public oversight, i.e. a mechanism which combines the benefits of significant auditing expertise with the benefits of public confidence of independent non-practitioners will deliver the best results.

In the following discussion, one member underlined the need to have outsiders on the board in case oversight is being conducted by a professional body of peers. Other members noted that the auditing-industry is a strong oligopoly where public authorities must be able to influence the outcome if the first line of supervision is carried out by peers. The German system of oversight, organized under private law and under the umbrella of the Bafin, was presented as a balanced solution between self-regulation and public oversight.



2. Corporate Governance in the European context

Dr. Rolf Breuer introduced the subject of Corporate Governance by stating the reasons for the enhanced interest over the last few years mainly had to do with (1) an attempt to restore loss of public confidence after various corporate incidents and (2) as a way to deal with present day shareholders' activism. With regard to the first reason, Dr. Breuer holds the view that there is no reason for EU Commission to deal with Corporate Governance. The present EU framework for corporate governance with a mixture of principles and rules avoids the US box ticking approach. Current convergence between 1-tier and 2-tier corporate governance systems (with more emphasis on independent directors and a changing role of the supervisory board respectively) and enhanced transparency improve the present approach in the EU.

Dr Breuer noted that shareholders activism follows in most cases a similar model; a voting stake is being build up, discussion with management follows, views are being made public, the voting stake is being accumulated and supporters are being solicited. According to Dr Breuer, there is nothing wrong with this pattern, but from a corporate governance point of view, management should not be taken by surprise, be aware about corporate strengths and weaknesses and communicate these with its shareholders. In this context it would be advisable to improve the quality of shareholders registers. Other types of shareholders' activism (abuse of stock lending) require enhanced awareness among lenders or ('acting in concert') is difficult to proof. It was concluded that some improvements in the area of corporate governance might be helpful, but members emphasized the risk of overregulation and the need to create a European consensus on the matter.

In the discussion that followed, members broadly agreed with the presentation, but underlined the importance of 'knowing your shareholder' and the need to disclose the ownership of derivatives positions, in case these are used for voting. It was concluded that the collection of voting power around an AGM is difficult to counteract. The creation of a double record date could possibly be helpful in this respect. Dr Breuer also suggested introducing a system of declaration of "non-concert" by certain shareholders. Finally, further guidance given about the independence of outside-directors could also improve the system.

3. The future role of CESR in the context of the forthcoming evaluation of the Lamfalussy procedure

On the basis of an introduction by CESR Vice-Chair Carlos Tavares, the members of the Panel were invited to give their views on the way forward for CESR. One member noted that - although the Lamfalussy-concept is clearly a success - there is still too much detail at Levels 1 and 2 and issues are sometimes addressed too late in an on-going process. Other members noted that too many options for Member States in EU-directives will not drive harmonisation, there is a clear need to have a balanced debate about the pro's and cons of CESR's current legal status.

4. Partial renewal of the Panel

Members took note of the end of the current mandate of five members; Rolf Breuer, Theodorus Philippou, Rudiger von Rosen, Zoltan Speder and Tom Healy (resignation). The members of CESR will be asked to suggest candidates by September 2007 (including possible renewals).

5. Next meetings of the Market Participants Consultative Panel

- Lisbon, 15 or 16 October 2007 (jointly with CESR members)
- Paris, January 2008