



EUROCLEAR SA/NV
1 BOULEVARD DU ROI ALBERT II
B-1210 BRUSSELS
BELGIUM

EUROCLEAR SA / NV
1 boulevard du roi Albert II
B – 1210 Brussels
Belgium

Banking, Finance and Insurance Commission
Rue du Congrès 12-14
B-1000 Brussels
Belgium

Brussels, 12 August 2009

Dear Sirs,

We welcome the opportunity to provide you with our comments on the draft law implementing the European shareholders rights Directive (the "Draft Law").

As a market infrastructure, we share the objective of the draft legislation to facilitate the exercise of voting rights by shareholders of Belgian listed companies. The use of a record date and the clarifications provided with regards to the registration and voting procedures in the Draft Law will ease the exercise of the voting rights and contribute to improve the corporate governance in Belgium.

Euroclear is actively involved in several initiatives pursuing the objective to reduce the costs and the risks related to the corporate actions and more particularly to general meetings. We have looked at the Draft Law taking in to consideration the market standards defined by the Joint Working Group on General Meetings (JWGGM)¹ and would like to draw your attention to the fact that some provisions in the Draft Law may lead to undesired side effects.

Key dates and sequence of the general meeting

We appreciate the mandatory use of a record date to evidence the entitlement of the shareholders instead of the current blocking of securities. Based on the positions on a record date, the shareholders will be able to register and to vote to general meetings without having their securities blocked until the date of the general meeting. In order to allow the shareholders to fully benefit from the new

¹ The Market Standards on General Meetings have the objective to harmonize and streamline General Meeting¹ (hereinafter "GM") related operational processes. They are part of the set of measures to remove the obstacles identified as Barrier 3 on corporate actions in the Reports from the Giovannini Group of November 2001, "Cross-Border Clearing and Settlement Arrangements in the European Union", and April 2003, "Second Report on EU Clearing and Settlement Arrangements",.



EUROCLEAR SA/NV
1 BOULEVARD DU ROI ALBERT II
B-1210 BRUSSELS
BELGIUM

law, the financial intermediaries should have enough time at their disposal to carry the registration requests and the voting instructions from the shareholders to the issuer or its agent. It should be noted that the draft version of the transposition may lead to some operational issues:

- In the Draft Law the record date is also at the same time the ultimate date to register to the general meeting. This sequence naturally leads to the communication of registration requests to the issuer before the record date. The monitoring required to ensure that the registered shareholders are still entitled at the record date is costly and technically difficult to implement at the level of the financial intermediaries. In order to avoid this monitoring, there is a risk that the financial intermediaries block the securities of the registered shareholders until the record date. The further away the shareholder is in the holding chain, the longer the blocking period will be ;
- To ensure the entitlement of the shareholders, the financial intermediaries usually wait until the record date to release the voting instructions. However, a record date at 5 days before the general meeting would not offer enough time to carry the information through the holding chain. As a consequence, a record date close to the date of the general meeting would practically force the financial intermediaries to request the shareholders to register and to vote before the record while blocking the shareholders' securities until the record date ;
- The shareholders holding at least 5 % of the issued capital will be able to modify the initial agenda of the general meeting more easily. It is to be pointed out that these amendments can be requested before the record date and that these amendments will be considered on condition that the shareholders still hold the minimum of 5 % at the record date. The situation may thus occur where the modified agenda is not considered at the general meeting because the requestors of the modifications do not hold enough securities at the record date. This would be a source of confusion for the shareholders and a source of unnecessary costs for the issuer and the financial intermediaries ;
- As currently drafted, the law proposes to set the record date at midnight. Practically, this could lead to technical issues for account providers



EUROCLEAR SA/NV
1 BOULEVARD DU ROI ALBERT II
B-1210 BRUSSELS
BELGIUM

operating securities settlement systems with overnight settlement batches. The calendar is also based on calendar days instead of business days. Some milestones could consequently be during the week end or official holidays. Since the moment that the securities are booked on the accounts is not standardized among the account operators, the rules should clarify whether the entitlement is evidenced on basis of the settlement date or of the trade date.

In order to address the above concerns, we propose to segregate the record date and the ultimate date for registration. The record date should come before the registration date sufficiently in advance to allow the financial intermediaries to carry the registration requests and the voting instructions without having to block the securities. The right to modify the agenda thanks to the holding of 5 % of the capital should be based on the entitlement at the record date. To avoid technical or availability issues, the entitlement should be based on positions on the record date at the end of the business day of the issuer CSD. While we understand the reasons for referring to calendar days rather than business days (predictability for shareholders irrespective of their residency), the Draft Law should at least foresee what happens when milestones fall during official holidays or during the weekend.

Communication through the holding chain

The law states that the financial intermediaries, recognized account holders and/or settlement organizations have to deliver attestations to the shareholder and to the issuer. It is not clear whether the attestations can be sent directly to the issuers by the last intermediary in the chain that has the direct contact with the final investor or whether the attestations have to go through the entire holding chain. More generally, it would be worthwhile to clarify whether all the processes (electronic voting, proxy) have to go through all the holding chain or can take place directly between the financial service of the shareholder and the issuer or its agent (or both ways).

In addition, it is unclear to us how the issuer or its agent will be able to check the validity of the information communicated directly by the foreign intermediaries. The setting of stringent procedures could also be detrimental to a sound implementation of the law. For example, the mandatory use of written or signed documents or restrictive requirements for the electronic voting authentication



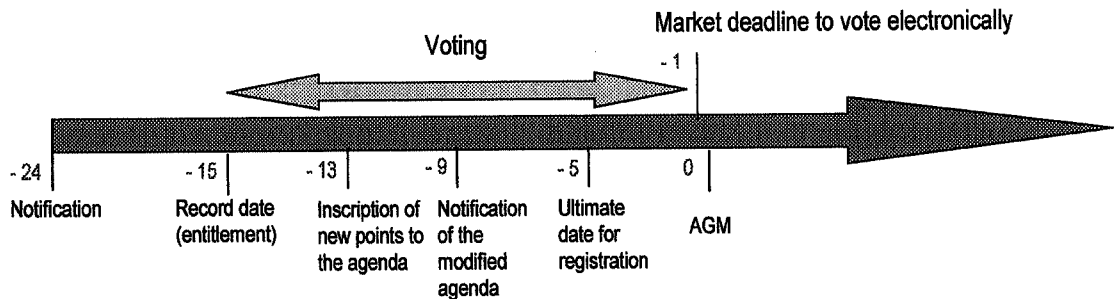
EUROCLEAR SA/NV
1 BOULEVARD DU ROI ALBERT II
B-1210 BRUSSELS
BELGIUM

would make the exercise of the voting rights cumbersome for the shareholders and the financial intermediaries (e.g. Swift not authorized). We suggest that the law define a framework excluding such requirements and applicable to all the issuers.

Registered securities

For registered securities, the shareholder is supposed to prove his entitlement by the registration in the company register. This does not seem to take into account that registered shares may be held in a nominee name². The law should consider this situation and allow the final beneficiaries behind a nominee name to attend or to participate at the voting.

In conclusion, we enclosed a high level calendar proposal based on calendar days. This proposal aims at tackling the concerns expressed above while offering to the shareholders up to 14 calendar days to vote on positions fixed on the record date.



We thank you for having provided us with the opportunity to share our concerns regarding the implementation of the European Shareholder Right Directive in Belgium and look forward to meet you in person to further discuss these issues and related proposals in more detail.

Rudi De Pauw
Product management

Philip Kerfs
Legal division

² Cf. the amendments to art. 651 of the Company Code introduced by the law of 14 December 2005 on the abolition of physical securities.