

DG Internal Market Services
Financial Services Policy
'Green Paper on long-term financing of the European economy'
European Commission
Brussels
Belgium

Submitted by email to: markt-consultation-long-term-financing@ec.europa.eu

25 June 2013

Dear Sirs

ICSA response to the European Commission Green Paper on the Long-Term Financing of the European Economy

The Institute of Chartered Secretaries and Administrators (ICSA) is the professional body that qualifies chartered secretaries. We are an international body and many of our members are company secretaries and corporate governance professionals in public listed companies and are closely involved with the raising of long-term finance for their companies, as well as their companies' relationship with shareholders.

The Green Paper on the Long-Term financing of the European Economy covers a wide range of topics. However, we have confined our specific comments to the corporate governance proposals under Question 21, where our members have direct knowledge and expertise.

Corporate Governance arrangements

Q21 What kind of incentives could help promote better long-term shareholder engagement?

We support the promotion of improved long-term shareholder engagement and ICSA has produced specific Guidance on Enhancing Stewardship Dialogue¹. However we would highlight the importance of having a balance of both long and short-term shareholders to provide a functioning market for equities, with sufficient liquidity. We would also mention that long-term shareholding does not necessarily increase engagement. If the aim is greater engagement, it may be worth encouraging some form of tax allowance for investors or fund managers who engage with companies, to offset the administrative costs of engagement.

The ideas suggested to encourage greater long-term shareholding include the possibility of granting increased voting rights or dividends to long-term investors and, whilst this can appear an attractive option, it poses a number of practical difficulties. Incentives such as increased voting rights or dividends would require reliable identification of individual shareholders and the ability to track all trading activity of individuals in a way that is not currently possible in the UK. The vast majority of companies' shares are held through

¹ www.icsaglobal.com/stewardship

intermediary accounts where the assets of multiple investors are 'pooled'. Individual registered shareholders can often hold shares for multiple beneficial owners and there is no mechanism for accurately tracking ownership of the underlying positions. In addition, confusion would arise when the registered shareholder of such accounts changed but beneficial ownership of the underlying shareholders remains the same. This can occur for various reasons, such as a change of custodian or account restructuring.

Further difficulties would be encountered under the practice of stock lending, where all rights attaching to shares are transferred for the period stock is on loan. Loan transactions cannot always be identified as such, amongst other transactions, and stock lending only requires an 'equivalent number' of borrowed shares be returned, so it would not be possible to attach additional rights to the individual shares.

From a legal perspective, the proposals would also run counter to UK rules that require equality between shareholders, such as the duties of directors to '... have regard to the need to act fairly between members of the company'² and the London Stock Exchange Listing Rules which states 'a listed company must ensure that it treats all holders of the same class of its listed equity shares ... equally in respect of the rights attaching to such ... shares'³. Whilst the delivery of an effective incentive scheme based on tenure is not impossible, there are some very real barriers that would need to be effectively overcome, assuming of course the case for the corporate governance benefits warrants this being progressed.

We hope you find our response useful and please contact me if you would like any additional information or would like to discuss any of these issues in more detail.

Yours faithfully

A handwritten signature in black ink that reads "Seamus Gillen". The signature is written in a cursive, flowing style.

Seamus Gillen
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² s172(1)(f) Companies Act 2006

³ Principle 5 of the UK Listing Authority Listing Rules