European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken

EACB answer to the consultation document submitted by the **Joint Working Group on General Meetings** on "*Market Standards on General Meetings*"

15 February 2009

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.200 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 160 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

For further details, please visit www.eurocoopbanks.coop

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149
www.eurocoopbanks.coop • e-mail : secretariat@eurocoopbanks.coop

General remarks

1. The Joint Working Group on General Meetings (JWGGM) was set up with the objective to dismantle cross-border obstacles related to General Meeting (GM) related operational processes. The EACB welcomes the opportunity to respond to the consultation document and intends to contribute actively to the dismantling of the GM-related obstacles.

2. We welcome that after consultations with the EuropeanIssues in mid 2008 some views of financial intermediaries were taken into account more accurately in the standards on GM. For instance a clause of opt-out was entered that allows intermediaries to ease the reach of the standards notably as for the obligation to spread the information until the end shareholder.

   However we would like to highlight that important objections and comments of the financial intermediaries were taken into consideration either not sufficiently or not at all.

3. Main assumptions in the consultation paper are based on processes that do not yet exist in a standardized way, like the described communication channels to the clients. We consider that this fact should be mentioned in the consultation document explicitly. Otherwise a wrong impression towards third parties might be created in relation to the possibilities of actually realizing the proposed processes.

   The proposed standards would require significant investments for depository banks in their IT landscape. It is not mentioned in the consultation document who would be the one to shoulder those, since banks are active mainly for the issuers on this matter.

4. In general the issuers are responsible for forwarding information prior to a GM to the shareholder. Only in the case that the issuers do not have the possibility to reach the investor – e.g. bearer shares – financial intermediaries and/or banks can support this process. For banks the costs for offering the respective services are high. Therefore the banks charge compensatory payments to the issuers. We would welcome if this important fact would be mentioned in the consultation document.

5. We would like to emphasize that definitions made in the consultation document for General Meetings should be aligned with definitions made in the consultation document for Corporate Actions. This applies to the glossaries in both documents as well.

Chapter I: Explanatory notes

6. **Members of the Working Group (p. 3):** As already mentioned in the general remarks, we consider the set up of the JWGGM as unbalanced. The issuers do not only hold the chair, but they are also the strongest group in the WG. The consultation document reflects this unbalance.

7. **Methodology (p. 4):** We do agree with the proposed methodology indeed. However, we would like to emphasize that in spite of the two mentioned consultations that took place, the view of the intermediaries – brought forward also in written – was not included sufficiently in the current draft of the consultation document.

8. **Selection processes (p. 4/5):** As already mentioned in the general remarks, we would like to highlight that there is no standardized process for an electronic based communication between the bank and its retail customers so far. The implementation of the technical basis for such communication channel would mean massive costs for banks. This fact is not mentioned in the consultation document.

9. **Scope of application (p. 5/6):** We would suggest distinguishing in this paragraph as well as in the whole document between "bearer shares", "registered shares" and "registered shares hold by a nominee (nominee shares)".

   We would not limit the standards to "regulated markets", since this would exclude companies that are listed, but whose shares are not traded in regulated markets in the European Union. We consider that the standards should be valid also for those companies.

10. **Opt-out of the communication with the (End) Shareholder (p. 6/7):** The possibility of an opt-out is reasonable. However we would like to highlight that a detailed arrangement can only be negotiated between the bank and the client in form of bilateral contracts and not by the standards.

    In relation to the "general principles on cost/pricing" – formulated from an issuer and end shareholder perspective – we would like to emphasize that banks do not communicate with their clients via email since it is not a legally verified communication channel between the two parties. Additionally we question the sense of non-translated information from foreign issuers to the end shareholders via their depository bank.

11. **Glossary (p. 7/8):** As already mentioned in 9), the definition of "Issuer" should also include companies whose shares are not traded in regulated markets in the EU. Accordingly, also "bearer shares" and "nominee position" should be included in the glossary.

    In relation to the "notification of attendance" we would like to point out that there is no legal fundament at all for information to issuers on a possible attendance and/or vote of an end shareholder at a GM. The sense of this information ex ante is unclear for us.

Chapter II: Standards – Process 1 (Meeting Notice)

12. **Standard 1.5 (p. 10):** In order to avoid additional efforts and respective costs we consider it as necessary to define a clear authorization criterion. In case of taking into consideration "pending positions" this would lead to considerable additional efforts, since the intermediary would have to scrutinize over and over whether the transaction was executed in the meantime. We therefore would advice to take into account only those positions that are actually in the portfolio of the investor.

    In addition it should be highlighted that an information is only required when it is really necessary for the processing.

    The text in the consultation document should be changed accordingly:

    a) The (I) CSD should without undue delay and at the latest within 1 business day from receiving the Meeting Notice, communicate it to all his Participants who have a holding ~~***or pending acquisition***~~ *in the concerned security* ***with a final settlement****.* ~~***The (I)CSD should also communicate it to not yet informed Participants who would later acquire an entitled holding, without undue delay and at the latest 1 business day from generating the pending settlement transaction.***~~
    b) The (I) CSD should inform his Participants of any update of the Meeting Notice, ***that is relevant for processing****, applying the same diligence.*

13. **Standard 1.7 (p. 10/11):** We are not in favor to determine accurate delays. The respect of time delays is the sole responsibility of the (I)CSD participant vis-à-vis its clients.

    We would suggest changing the text in the consultation document accordingly:

    b) The Participant should communicate the Meeting Notice without undue delay from receiving it or from recording the new acquisition, ~~***and at the latest***~~
    ~~***i) within 1 business day to Intermediaries***~~
    ~~***ii) within 2 business days to (End) Shareholders.***~~

    We would suggest to delete the footnote 23.

14. **Standard 1.8 (p. 11):** The participant should only be informed in case of relevant, major changes in the organization of a GM.

    The text in the consultation document should be changed accordingly:

    The Participant should inform his clients of any ***significant organizational*** *update* ***(e.g. cancellation)*** *of the Meeting Notice, applying the same diligence.*

15. **Standard 1.11 (p. 11/12):** It is crucial that the intermediary is not responsible for the content of a Meeting Notice; it only provides its clients with the information of the issuer. This fact should be mentioned in the consultation document. The text should be changed accordingly:

    The contents of the Meeting Notice ***as transmitted by the issuer*** *should comprise at least the following…*

The “rights” mentioned in bullet point 10 should not contain detailed information on the legal basis in order to keep the Meeting Notice in a reasonable size. Respective links to the relevant legal basis should be provided to the shareholder in order to enable him to access this information if desired. The deadlines to exercise his rights should still be in the Meeting Notice.

As already outlined in 11) the bullet point on “notification of attendance” should be deleted.

Chapter II: Standards – Process 2 (Record date and entitlement)

16. **Standard 2.1 (p. 12):** It should be outlined clearly that the avoidance of a blocking should be limited to the time between the record date and the GM.

17. **Standard 2.2 (p. 13):** Actually, the eligible position of each shareholder is not determined on the basis of the (I)CSDs bookings but rather on those positions as accounted for within the books of the Intermediaries. With regards to the date/time at which positions are struck, we are of the opinion that the present technical standards should not seek to modify the substance or supplant national legislation (when such national legislation is in conformity with European legislation). We would suggest specifying clearly that the entitlement to vote is calculated on the basis of position in the book of Intermediaries either:

    The Entitlement should be determined at close of business on the Record Date, starting from

    i) the settled positions as reflected in the books of the (I)CSD ***or in the books of the Intermediary participant*** *or*
    ii) the share register, in the case of registered shares

18. **Standard 2.6 (p. 14):** We would suggest deleting this standard. We agree that the duty of reconciliation of stocks must be achieved on a daily basis by the Intermediaries such as the custodians. However it is not relevant to add such a duty, because the standards deal with General Meeting and record date, not the methods of reconciliation of stocks by custodian.

19. **Standard 2.7 (p. 14):** It is not always clear to the single intermediary who the "last intermediary" really is. An automated provision with a proof of entitlement for every end shareholder is from our point of view not the most efficient approach. Such a proof of entitlement should only be provided to the end shareholder in case he requests it. This approach would minimize the costs for the issuer.

    In addition we would suggest deleting the second sentence. As already mentioned in 11) a forwarding of the requested data by the last intermediary is out of question because of data privacy protection.

20. **Standard 2.10 (p. 15):** In relation to the identification mentioned in the bullet point 1 we would like to highlight that there is the option of a proxy voting. This person may not be known to the intermediary.

Chapter II: Standards – Process 3 (Notification of Attendance)

21. **Standard 3.1 (p. 16):** We consider the issuer market deadline as to short and would advice a deadline of five working days before the GM.

22. **Standard 3.2 (p. 16):** We consider the proposed intermediary market deadline as to short. Intermediaries should at least have two working days to provide the issues with relevant information.

23. **Standards 3.3 – 3.9 (p. 16/17/18):** As already described in 19) it is not clear who the "last intermediary" is. In addition (see 11) the information requested in the notification of attendance cannot be provided.

    There are furthermore technical arguments against the here described approach. There is currently no standardized interface that would enable such an automated backflow of information from the shareholder through the whole chain to the issuer. The establishment of such a system is linked with massive costs. The consultation paper does not make any reference to this fact.

    Keeping this in mind we consider as the only legally possible way the introduction of a web based portal that enables the shareholder to directly contact the issuer, in order to have access to relevant information.

Contact:

For further information or questions on this paper, please contact:

Mr Alessandro SCHWARZ, Advisor Financial Markets (a.schwarz@eurocoopbanks.coop)