RiskMetrics Group

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Banking, Finance and Insurance Commission
Congresstraat\Rue du Congrès 12-14
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Dear Sirs and Madams,

ISS Governance Services, a business unit of RiskMetrics Group, welcomes the opportunity to react on the consultation document with regards to the draft legislation on the transposition of the shareholder right directive.

By way of background, ISS Governance Services is a leader in proxy voting and corporate governance matters and delivers its services to more than 2,000 institutional investors and 35 global custodian banks. From offices located around the globe, we analyse over 40,000 shareholder meetings across 100 markets; more specifically for Belgium, we provide research analyses for general meetings of about 200 companies incorporated in Belgium and we physically attend over 100 general meetings on behalf of Belgian and foreign custodian banks. We also actively work with over 250 subcustodians worldwide, sending them instructions on behalf of institutional clients and global custodians.

RiskMetrics hereby expresses its support for the draft transposition of this directive and appreciates the general outcome of this draft legislation, being the empowerment of shareholders in Belgian publicly listed companies. The new legislation truly improves shareholders' ability to exercise their voting rights and thereby reinforces the checks and balances within publicly listed companies; it also clarifies procedures with regards to raising questions, written proxies, electronic voting and disclosure of voting results, among other things.

By lowering the minimum ownership threshold for investors to submit agenda items from 20 percent to 5 percent, reference shareholders will share the aptitude to influence general meetings' agendas with a broader shareholder base. The introduction of electronic voting procedures is another necessary update of the legal framework just as the instalment of a compulsory registration requirement.

We acknowledge that this legislation will truly be a milestone in the history of Belgian company law. However, we fear that the draft transposition might lead to some undesired side-effects, as some measures may hamper shareholders' voting turnout. More particularly, we would like to draw your attention to the chosen procedures on electronic voting, identity verification for proxy voting, record date procedure and the close succession of deadlines in advance of general meetings.

> <u>Comments on electronic voting and identity verification for proxy voting</u>
> Regarding this, we would like to point out that the directive aims at suppressing all unnecessary barriers to the exercise of shareholders rights both by local and foreign

shareholders. We consider that the draft legislation could go further in this direction by unmistakably requesting issuers to abolish avoidable procedures in the following respect.

Proxy service providers and other intermediaries should not be required to provide the company with any written or signed documents from the shareholders/beneficial owners. As such, a simple list of shareholders provided by the bank, proxy service provider or other intermediary should suffice. There also should be no need to provide any powers of attorney from the beneficial owner or from other parties. Such a regulatory framework should be applicable for all issuers, even for those whose articles of association previously included more stringent procedures.

Comments on the close succession of deadlines and on the record date procedure

Foreign-based investors nearly exclusively vote through a complex chain of intermediaries such as global custodians and local subcustodians. The involvement of these market players moves back the voting cut-off date for institutional investors well in advance of the company deadline for proxy voting, in most cases to a period between 8 to 12 days in advance of the general meeting. This reality is the cause of several application issues with regards to the publication deadline drawn by the draft legislation (24 days in advance for first calls; 17 days for second calls; 10 days for agendas including by shareholder proposals). Shareholders only dispose of a very limited time to make informed decisions, i.e. in between the publication of meeting materials to their sometimes very aggressive voting cut-offs (12 days in advance of the meeting). In case extra items are brought up by shareholders, the publication deadline is set at 10 days; in these situations, foreign investors who do not physically attend meetings are unable to vote on those agenda items, because the voting cut-offs already lapsed.

Experience with subcustodian banks reveals that registration dates set at less than seven days in advance of the meeting leads some of the subcustodians to block the shares, as this procedure is technically speaking easier to implement. This means that the introduction of a registration date at 5 days before the meeting, as proposed by the draft legislation, could in effect maintain the share blocking requirement. This is only true if no record date is set earlier up on the market (see below).

If the registration date is fixed at five calendar days in advance of the meeting, no earlier record date is set and the voting cut-off is at for instance 12 days, this will cause operational issues because within the period between both events, investors might have sold (all or part of) their shares or bought additional ones. In case they sold part of their shares, the proxy will indicate a higher amount of shares to vote on than the owned number of shares, which might invalidate proxies and cause fines to the shareholders who mistakenly voted. This leads to a high level of inefficiencies as Belgian subcustodians can't de facto control if the number of shares voted are higher than those for which the underlying shareholders were entitled to vote. This is often due to the fact global custodians maintain an omnibus account with their Belgian subcustodian. So as long as the number of shares held in the omnibus account is sufficient to cover for the instructions received, the Belgian subcustodian will have no possibility to control that the voted number of shares corresponds in effect to the underlying voting rights. Again, setting up a record date earlier up on the market, at minimum 14 days before the general meeting, prevent this flaw in the process.

These issues frequently arise at cross-border voting. In order to avoid that operational issues prevent foreign-based shareholders from voting, two measures appear extremely valuable. First, by setting the record date well in advance of the meeting (between 14 and

30 days in advance of the general meeting), shareholders, issuers and subcustodians will know exactly how many shares can be voted on. Moreover, this will refrain subcustodians from blocking the shares as long as the issue is unsolved, which appeared to be the case in the Netherlands where some subcustodians still blocked the shares when the registration date was set at five days in advance of the meeting and with no earlier record date. It is for this reason that other EU member states chose to set the record date more in advance of the general meeting; e.g. the new German legislation imposes a record date of 21 days in advance of the meeting, combined with a registration of the shares set at 5 days before the general meeting. This in practice works very well as an inventory of the shareholders is made 21 days in advance to the meeting, then shareholders often have up to 12 days before the meeting to vote on their settled position at the record date, so that intermediaries have the time to reach to the agent of the issuer and require the registration in due time.

Based on the above comments the second change we suggest is to move back the publication deadline for meeting agendas from currently 24 days to an earlier date, for example 30 days. By doing so, shareholders will get more time to make an informed opinion on agenda proposals up for voting, be it based on own research or on the advise of proxy voting firms. Currently, investors are squeezed by time pressure, which leads them in some cases to follow proxy voting firms' policies; more time would allow investors to allocate more time to in-house research and to analyze more proposals on a case-by-case basis.

It should also be noted that as the EU directive imposes that the record date shall not lie before 30 days in advance of the meeting and that the convocation be published at the latest eight days before the record date. So if the legal record date is set at 21 days before the meeting, then the convocation date could not be set later than 29 days before the meeting.

We very much appreciate the possibility to contribute to the consultation. We support the proposed transposition as a whole, while drawing your attention to the importance of amending these issues. We hope the proposed suggestions are helpful and contribute to promote the protection of shareholder rights in Belgium. We remain at your disposal for any further clarification and would of course be happy to participate to a round table discussion between the different stakeholders in the process, if one was to be organised.

Yours sincerely,

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