Date

19 July 2005

Le Président

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Dr. Alexander Schaub
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European Commission
Internal Market DG
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cc: Mr. Pierre Delsaux
DG Markt F2

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Dear Dr. Schaub,

Re: EC Second Consultation Document "Fostering an Appropriate Regime for Shareholders' Rights"

1. FEE (Fédération des Experts Comptables Européens, European Federation of Accountants) welcomes the second consultation on shareholders' rights and underlines that improving the rights of shareholders of companies across the Member States is a priority as set in the 2003 Communication and we welcome the focus on modern technologies. We support a Framework Directive setting out the main principles in a form of minimum requirements, avoiding over regulation and leaving detailed regulation to Member States. We support the directions indicated, recognising the enhancement that such steps would bring to corporate governance.

   FEE recognises that the consultation paper poses some important questions relating to shareholders democracy and the implications for capital market transactions costs of the potential solutions. Others are better qualified than FEE to consider these issues. We have therefore restricted, like in our December 2004 submission, our comments to those issues that we believe have implications for the accountancy profession.

   We observe that the issue of questions to the auditor has not been addressed in the synthesis of the comments on the consultation document of April 2005. Therefore, we repeat our comment earlier raised with you. We suggest the minimum standards to make clear that questions are to be addressed to the Chairman of the company. We provide details in paragraph 4.

2. We agree that the proposed scope for any future measure at EU level should be listed companies, i.e. companies whose securities are admitted to trading on a regulated market in one or more Member States. The need for EC-wide rules is greater for listed companies whose shares tend to be more widely held by shareholders spread across the EC than is typically the case with non-listed companies. But non-listed companies should be encouraged to adopt provisions that are relevant to them on a voluntary basis. Certain provisions, such as the right to ask questions and to table resolutions could be considered to be extended to private companies.

   We are of the opinion that the proposed scope of the term "securities" should also cover convertible debt i.e. debt securities that may be converted into equity and grant shareholders' rights.

3. Section 4 addressed the pre-General Meeting communications. It sets out minimum standards for the notice periods for convening a General Meeting. Other shareholders' meetings shall be convened on a first call with no less than 10 business days notice. We are of the opinion that for an extraordinary shareholders meeting a maximum period should also be indicated i.e. the number of days that should not be exceeded, in order to have effective arrangements.

   As far as the contents of the notice are concerned the minimum standards require a precise indication of the place, time and agenda of the meeting. In our view this should not request a fully detailed version of the agenda to be published, the agenda should give the nature of business: items to be discussed and to be voted on in chronological order.

   At the top of page 11, grey box, it is indicated that the minimum standard would require the notice and material of the General Meeting shall be made available in a language customary in the sphere of international finance, unless the General Meeting decision is to the contrary. We are of the opinion as indicated in the last paragraph on page 10, that the documents at least should also be published in the issuer's local language. This needs to be clarified in the minimum standards.

4. Shareholder voting is one of the cornerstones of effective corporate governance. We agree that the right for shareholders to ask questions in advance of, or at, the General Meeting is a fundamental right as set out in Section 6.2. The consultation document recognises that care should be taken that General Meetings should be able to operate efficiently and come to decisions or resolutions including the introduction of reasonable safeguards and limitations with regard to the exercise of the right to ask questions, to avoid that shareholders meetings become unmanageable. We support these observations, not only for the meeting itself but also for the questions submitted in writing in order to keep the process orderly. The company should be required to provide the opportunity for shareholders to raise questions at, an in advance of, the General Meeting and to obtain a response.

   However, as in our response to the first consultation, we wish to underline that such a right differs from country to country. In some countries there is a right for shareholders to ask questions of the auditor; in others this is not permitted due to reasons of the auditor's obligation of confidentiality and professional secrecy and for the fact that the primary responsibility for the financial statements lies with management. Furthermore, in some countries an obligation for the auditor to provide information to any shareholder is excluded by law. As indicated in the proposed amendments to the Fourth and Seventh Directive, the board or management board (and supervisory board) are collectively responsible for the annual accounts and annual report and constitute the first line of defence. Therefore, it would not be appropriate for the auditor to respond to questions on the contents of the accounts. However, we acknowledge that the presence of the auditor at the general assembly may add in certain situations to the credibility of the financial statements and the confidence of the investors, by confirming the management position.

   The minimum standard proposed is very general and only sets out the right to ask questions and to obtain responses without putting general procedures in place how these questions are to be addressed.

   In situations where questions to the auditor are permitted FEE is of the opinion that the questions should initially be asked of the Chairman of the company. The Chairman, or in a two tier system the Chair of the supervisory board in coordination with the management, will then decide as to who - management or the auditor - should answer the question and to what extent the management wishes to waive the confidentiality to which the auditor is bound towards the company. It has to be ensured that the statutory audit requirements in respect of confidentiality and professional secrecy and the conditions of any waiver of such confidentiality remain unaffected. Auditor's confidentiality must be taken into account in order to guarantee that no conflicts are created as the auditor has to deal with issues on professional obligations and duties related to the client's confidentiality. Therefore, the auditor must not be obliged to answer questions unless the Chairman or management has specifically waived the auditor's duty of confidentiality. It is the responsibility of the Member States to stipulate which party shall have the authority to waive the auditor's duty of confidentiality. It is essential to

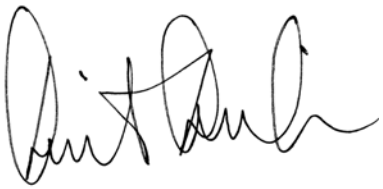
ensure that when the Chairman or management decides that the auditor has to answer the question, this procedure does not result in any change to the current liability regimes which – due to different legal systems and traditions – should be a national rather than a European issue. The proposed Eighth Directive also envisages that Member States shall ensure confidentiality and professional secrecy on all information and documents in relation to the audit.

Auditors should be alert to the need to maintain their professional opinion as expressed in their formal report and any response to a question should be carefully worded so as not to give a separate (and possibly different) opinion on any separate part of the financial statements or annual report which was not previously agreed to be part of their engagement.

In some Member States the auditor's right of communication with shareholders at the General Meeting is established. Within the respective legal circumstances of a Member State, it would be helpful to introduce such a right in the minimum standards in form of a Member State option that would constitute a legal right – not a duty – for the auditor to speak if he wishes to do so, ensuring that this right to speak does not affect the boundaries of the auditors´ obligation of confidentiality and professional secrecy as constituted above.

We would be pleased to discuss with you any aspect of this letter you may wish to raise with us.

Yours sincerely,



David Devlin
President