EFAMA

European Fund and Asset Management Association

POSITION PAPER

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EFAMA'S HIGH-LEVEL COMMENTS ON THE MULTIPLE VOTING SHARES DIRECTIVE

On 07 December 2022, the European Commission published a package of measures to increase the attractiveness of EU public markets and facilitate access to capital for small-medium enterprises (SMEs). This package includes a new Directive on multiple-vote share structures (MVS) for SME growth markets that aims to achieve a minimum harmonisation of national laws on multiple-vote share structures for companies listing on SME growth markets while leaving sufficient flexibility to Member States for its implementation.

EFAMA KEY POLICY MESSAGES

EFAMA appreciates the European Commission's efforts to bolster the Capital Markets Union and increase the appeal and competitiveness of public capital markets. However, the investment industry wishes to highlight some concerns concerning this Directive. Against this backdrop, it is important to note that the European Union has recently enhanced its corporate governance and shareholders' engagement practices to fortify financial market stability, uphold capital market integrity and safeguard investors' interests. Therefore, it is of the utmost importance to consider the following aspects when regulating multiple-vote share structures.

#1 Importance of the 'One-share One-Vote' principle for investors

"One share, one vote" is a fundamental principle that is essentially based on two premises:

- Voting rights should reflect the economic exposure of the investment in a company
- Shareholders, as creditors of last resort for a company, have the greatest interest in maximising the value of the company.

Increasingly, corporate governance rules require shareholders to act more and more as active stewards, i.e. to monitor companies and challenge (if necessary) their management or boards and hold them accountable, either through ongoing engagements or strategic voting at annual general meetings. Indeed, active shareholder participation at AGMs is one of the key measures used to assess the functioning of capital markets and it is aligned with the aim of the Shareholders Rights Directive II.

EFAMA acknowledges the current diversity of approaches to MVS in EU Member States' regulations. That being said, any consideration of multiple-vote share structures should, first and foremost, prioritise investors' interests. In case multiple voting structures are permitted, they need to be accompanied by essential safeguards for investors.

We, therefore, are seriously concerned about favouring specific types of exchanges, such as listing venues, at the expense of shareholders' rights through the implementation of an EU-wide requirement for multiple-vote share structures for listed companies.

#2 Introduction of adequate safeguards and proportionality in the scope

Against this background, and mindful of the existence of different approaches across EU Member States, EFAMA would like to point out that the misuse of controlling rights by majority shareholders may jeopardise the existing safeguards provided to minority shareholders, thereby undermining the important equilibrium between maintaining positive relationships among stakeholders and fostering confidence in the financial markets. **Any attempt to enhance multiple-vote rights necessitates certain minimum standards to safeguard these rights**. These should ensure that there is only one method for sustaining control to be accessible to the issuer, while also imposing reasonable constraints on the utilisation of multiple-vote structures. Thus, we recommend the following adequate safeguards to be put in place:

- **Appropriate boundaries on multipliers should be established**, taking into consideration the requirements of the owner or majority shareholder, without excessively diminishing the rights of other shareholders. Our preference is a maximum weighted voting rights ratio of 5:1.

- **The inclusion of expiration (i.e. sunset) clauses should be obligatory**. Multiple voting rights should expire, at a maximum, either after five (as suggested by ICGN) or seven years.

- **It is necessary to restrict the types of decisions during general meetings where these supplementary voting rights can be exercised**. For example, the enhanced voting rights may only be used (i) for a shareholders' meeting resolution regarding the removal of the holder of the enhanced voting rights as a board director and (ii) in hostile take-over bid situations, on any matter. Multiple voting rights should not apply on matters related to executive remuneration and dividend policy as well as for the approval of related party transactions. Furthermore, it is important to guarantee an adequate number of independent directors.

- **Mandatory provision of "whitewash" mechanisms[1]should be provided for relevant resolutions,** for example, the ones to be adopted by a qualified majority.

- **It should be prohibited to transfer enhanced voting rights to third parties** and enhanced voting shares to revert to one share, one vote upon transfer.

Lastly, we would like to reiterate that if MVS are allowed, it is important that the initial scope proposed by the European Commission under Recital 9, is maintained. This means MVS are to be standardised only for listings on SME growth markets.

In order to ensure the success of the Commission's proposal, EFAMA believes that any new rules must ensure a proper balance between issuers' and investors' interests. We, therefore, strongly support the introduction of clear and harmonised safeguards at the European level for the use of multiple-vote share structures.

[1] A white-wash vote involves seeking shareholders' approval for transactions that may present conflicts of interest or raise concerns about fairness, with the goal of ensuring transparency and safeguarding the interests of all shareholders.

ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages about 28.5 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors.

Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the EFAMA Fact Book.

More information is available at www.efama.org

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