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**FESE response to fostering an appropriate regime for shareholders' rights –
second consultation by the Services of the Internal Market Directorate General**

FESE is the representative organisation of Europe's Regulated Markets offering trading in securities and derivatives and has incorporated EACH, the European Association of Central Counterparty Clearing Houses. Our Membership comprises all Member States of the EU as well as the countries of the EFTA.

We welcome that the Commission has published an extensive second consultation paper on fostering an appropriate regime for shareholders' rights. Indeed, shareholders should be able to exercise their rights easily and receive appropriate information, no matter where in the EU they are based. If there are undue obstacles in the Single Market, they should be removed, inter alia, by making full use of new technologies to reduce distances and improve communication. This would help to ensure that companies are well run which is of a great benefit to the European Union.

The Members of the Federation have consistently been supportive of efforts to create and improve the European integrated capital market; their efforts relating to legislative and policy measures at the EU level have focused on the creation of a level playing field on which competition could have its beneficial effects. We appreciate the opportunity to submit comments.

We are aware that several of our Members have made individual comments. We expressly refer to these submissions; they do in certain cases focus on particularities in these Members' environment and may therefore provide additional specific insight to the Commission.

Detailed responses to the consultation's questions may be found in the [annex](#). Nevertheless, we would like to underline the following:

- The initiative should not unduly burden Europe's issuers and hence hamper the development of Europe's capital markets.
- The Commission should conduct a thorough impact analysis to minimise unnecessary costs to issuers.
- The Commission should accommodate existing national practices where these do not conflict with the objectives of the legislative proposal and to avoid mandating specific mechanisms that would require wholesale changes to national company law.

Yours sincerely,

Judith Hardt
Secretary General
Federation of European Securities Exchanges

II Facilitating the Exercise of Shareholders' Rights in Listed Companies

1. Scope

FESE and its Members agree to the proposed by the Commission scope for the future measures at the EU level. However, shareholders' rights regime has to be carefully designed and particular attention has to be given not to discourage issuers to list on regulated markets. The European Commission should not impose excessive requirements in order to enable new entrants to access regulated markets easily and at reasonable costs. It is of particular important that the benefits of the various provisions are assessed against the generated costs.

2. The "Ultimate Investor" or "Ultimate Accountholder"

We agree with the Commission point of view that work on the definition of the 'ultimate investor' should rather be pursued in a longer term perspective, in close connection with the concurrent work in the field of clearing and settlement.

3. Stock Lending and Depositary Receipts

3.1. Stock Lending

FESE and its Members would like to draw the Commission's attention to the following issues.

The term "relevant parties" that is used in relation to the first minimum standard is not precise enough. Similarly, the term "duly inform", which is used in the second minimum standard would need further clarification. We would very much appreciate it if these terms could be explained.

3.2. Depositary Receipts

While we agree with the standard in principle, we are not sure how it can be implemented in all cases since there is not always a 1:1 relationship between depositary receipts and the underlying share. In addition, it needs to be discussed whether other types of securities such as index-linked securities or covered warrants need to be included in the process as well.

4. Pre General Meeting Communications

- Notice Periods for Convening a General Meeting

In principle, FESE and its Members agree with the Commission's proposal. However, we would advocate a non-differentiation between minimum requirements for AGMs and extraordinary board meeting. 10 days may seem too short a time to prepare a general meeting from both an issuer's and an investor's perspective.

- Content of the Notice

In principle, FESE agrees with the first minimum standard. Nevertheless, we are of the opinion that in such cases when a notice convening a General Meeting does not indicate precisely the place, time and agenda of the meeting and does not give a clear and precise description of participation and voting procedures and requirements for voting at the General Meeting but instead it indicates where such information may be obtained, such an indication should point directly to the information required. For example an Internet link of the website containing such information in our view would fulfill the criteria of such “an indication”.

FESE, in principle, also agrees to the second minimum standard. We would however reiterate our standpoint on the meaning of “an indication”. We would favor the possibility of obtaining all relevant materials in relation to a General Meeting by electronic means.

- Information Relevant to the General Meeting

FESE does not see any necessity to distinguish between the deadlines at which General Meeting related documents should be made available. It cannot be excluded that a General Meeting could be called for to discuss a difficult issue requiring extensive preparations. For this reason we would advocate equalization of periods and support the 15-day deadline.

- Dissemination and Language of the Meeting Notice and Materials

We agree with the Commission’s proposal that any notice convening a General Meeting and any document intended to be submitted to the General Meeting shall be made available in a language customary in the sphere of international finance, unless the General Meeting decides to the contrary.

- Specific Section of the Issuer’s Website Dedicated to the General Meeting

FESE and its Members agree that Member States shall ensure that issuers post on their websites the information relevant to General Meetings at the same time as such notices are published and/or sent to the issuers’ shareholders. We also agree that such information shall include at least: the notice of the meeting, the full text of the resolutions intended to be submitted to the General Meeting and other documents relevant to the General Meeting, a precise description of the means given to shareholders to participate in the General Meeting and cast their vote and the forms to be used to vote by correspondence and/or by proxy.

5. Admission to the General Meeting - Share Blocking

We agree with the minimum standards proposed by the Commission. We would, however argue that “the prior date” should be set as close to the date of the General Meeting as possible in order to achieve the greatest possible degree of legal certainty. We realize, of course that there may be technical issues needed to be considered further.

FESE and its Members would also like to draw the Commission’s attention to the fact that there may be a necessity to link such alternative system (of record date) to a further groundbreaking discussion on a possible EU wide harmonization with regard to the transfer of ownership date.

6. Shareholders Rights in Relation to the General Meeting

6.1. Electronic Participation in General Meetings

FESE and its Members agree with the Commission point of view that Member States shall remove existing requirements, and shall not impose new requirements, that act or would act as a barrier to the development of the participation of shareholders to the general meeting via electronic means.

6.2. Right to Ask Questions

We agree with the Commission that shareholders shall have the right to ask questions at least in writing ahead of the General Meeting and obtain responses to their questions. The questions however should be linked to topics enumerated on the agenda for the General Meeting. The Commission should be prudent in advising that all the answers be published as such an obligation may overburden European companies and may prove difficult in practice.

6.3. Rights to Add Items to the Agenda and Table Resolutions

In principle, FESE and its Members agree with the Commission's point of view that shareholders, acting individually or collectively, shall have the right to add items on the agenda of General Meetings and table resolutions at General Meetings. Such rights may be subject to the condition precedent that the relevant shareholder or shareholders hold a minimum stake in the share capital of the issuer. We agree that such minimum stake shall not exceed 5% of the share capital of the issuer or a value of € 10 million, whichever is the lower, but would like to point out that a threshold expressed as a stake value could be difficult to enforce in a period of severe volatility of the prices of the shares of a given issuer. Moreover, there are concerns that these requirements will have complex repercussions on other rules of company law and thus should be left to the national legislators.

It is also of importance that the right to add items to the agenda and to table resolutions is exercised sufficiently in advance of the date of the General Meeting, to enable other shareholders to receive or have access to the revised agenda or the proposed resolutions ahead of the General Meeting.

6.4. Voting

- Voting by Correspondence

FESE and its Members are in agreement with the Commission that Member States shall ensure that shareholders of listed companies have the possibility to vote by correspondence. At this juncture, FESE would appeal to the Commission to encourage the use of electronic means of communication.

- Proxy Voting

Proxies collected by nominees of issuers constitute an important way of proxy voting that should not be entirely prohibited. There is no risk of abuse since the process is supervised by a notary and the proxy is obliged to follow the instructions of the shareholder.

7. Position of Intermediaries in the Cross-Border Voting Process

- Definition of intermediary
- Registration as nominees

- Being granted a power of attorney
- Voting upon instructions

In principle, FESE agree with the definitions and minimum standards proposed by the Commission under the above-mentioned headings. We would however, suggest taking back the statement of the document saying that the identity of clients should not be disclosed with regard to the sole voting process.

8. Communications Following the General Meeting

- Dissemination of the voting results

FESE agree with the minimum standards proposed by the Commission.