



ASSOCIAÇÃO DE EMPRESAS EMITENTES DE VALORES COTADOS EM MERCADO

AEM - Associação de Empresas Emitentes de Valores Cotados em Mercado

Largo do Carmo, n.º 4, 1.º Dto., 1200-092 Lisboa, Portugal

Interest Representative Register ID number: 61515936038-82

**ESMA's
CALL FOR EVIDENCE ON
EMPTY VOTING**

NOVEMBER 2011

European Securities and Markets Authority
For the attn. of Verena Ross, Executive Director
103, Rue de Grenelle
75007 Paris, France

info@esma.europa.eu

25 November 2011

Dear Madam,

A. AEM - Associação de Empresas Emitentes de Valores Cotados em Mercado (*a.k.a.* the Portuguese Issuers Association), is a not-for-profit membership organization that represents the Portuguese exchange-listed stock corporations and other companies issuers of securities that are traded on a regulated market based or operating in Portugal.

More specifically, AEM is the voice of the issuing corporations and company groups listed on the Lisbon Stock Exchange Index PSI 20, as well as a number of other issuing companies, thus, representing the near totality of the Portuguese market capitalization.

Among its main priorities, AEM is specially engaged in supporting the development of an adequate institutional and legal framework for the Portuguese capital market and, also, in enhancing corporate financing in Portugal and promoting a transparent and efficient environment for investors and companies.

A Board comprising six Directors of listed companies' heads the Association; the President of AEM is Luis Palha da Silva and Abel Sequeira Ferreira is the Executive Director.

It is also important to refer that, as a way to participate and contribute, in a more effective way, to the development of a harmonized European capital market, AEM is also a member of European Issuers, the leading European association promoting the interests of companies listed on stock exchanges.

B. AEM welcomes the opportunity to respond to this Call for evidence on empty-voting practices and regulatory framework.

As referred on ESMA's paper, Portugal has some specific rules in place relating to empty voting; namely, in Portugal, anyone who has declared the intention to participate in a general meeting, but has passed the ownership of the shares to a different holder between the record date and the end of the general meeting, is required to notify immediately the fact to the General Meeting and the CMVM (the national regulator).

However, because the current Portuguese legal regime, which encapsulates the transposed Transparency Directive (2004/109/EC), Takeover Bids Directive (2004/25/EC) and Company Law Directives, *e.g.* the Directive on Shareholders' Rights (2007/36/EC), is still relatively new, it is not possible, yet, to determine if steps taken to address empty voting through these specific disclosure requirements regarding empty voting are useful and effective.

Also, data is not available on whether this practice is being used to inappropriately influence corporate voting results or to analyze how damaging empty voting, if existing, can be.

Nonetheless, reports from AEM's Members seem to show that there have been no real changes, or any positive impact regarding a possible increase of participation at general meetings, particularly in the case of small shareholders, as an added value of the current legal regime.

We also gathered some information on increased difficulties to access the general meetings by a number of shareholders, due to the excessive bureaucracy associated with the current regime's mechanisms, but, again, the lack of available data does not allow us to identify a specific trend here.

This said, it is important to add that we, at the Portuguese Issuers Association, consider that the matter of empty voting (as the related issue of the impact of hedge funds on corporate governance) deserves special attention in order to safeguard the integrity of the governance of European – especially listed – companies and the markets on which their shares are traded and that further investigation and discussion is needed (and the same is true to its reverse situation “hidden ownership”).

And, although such further investigation may not point to the need of regulatory action (or show its justification in terms of cost-benefit analysis), we consider of crucial importance that any potential regulatory responses to the matter are the result of an European harmonized procedures, standards or rules, in order to

ensure that asymmetry situations, between different jurisdictions supporting similar markets or frameworks, are avoided.

Yours faithfully,

Abel Sequeira Ferreira
Executive Director