



European Commission

Submitted online at: www.ec.europa.eu

12 May 2015

Dear Sir/Madam,

GC100 Response to the European Commission public consultation – Green Paper on Building a Capital Markets Union

GC100

This response to the European Commission public consultation on Building a Capital Markets Union is provided on behalf of the Association of General Counsel and Company Secretaries of the FTSE 100, generally known as the GC100. The GC100 was officially launched on 9 March 2005 and brings together the senior legal officers of more than 80 FTSE 100 companies. The main objectives of the GC100 are to:

- provide a forum for practical and business-focused input on key areas of legislative and policy reform common to UK listed companies; and
- enable members to share best practice in relation to law, risk management, compliance and other areas of common interest.

Please note that the views expressed in this response do not necessarily reflect those of each and every individual member of the GC100 or the companies they work for.

Overall comments

We welcome the policy intent underpinning the European Commission's green paper on Building a Capital Markets Union and its review of the Prospectus Directive. The EU's debt and equity capital markets need to provide both large and small entities seeking finance with deep pools of accessible liquidity. Facilitating the development of readily accessible and appropriately regulated markets and establishing more usable private placement markets represents a real opportunity for the EU to develop vibrant and functioning capital markets.

We have observed over the last decade that many well-intentioned pieces of EU legislation and regulation have not always had the desired policy effect. The European Commission will only be able to deliver the ambitious Lisbon 2020 agenda if it

GC100 Group

The Association of General Counsel and Company Secretaries of the FTSE 100

The GC100 Group is an unincorporated members' association administered by Thomson Reuters.

Secretary: Mary Mullally - GC100 c/o Thomson Reuters Legal UK & Ireland, Friars House, 160 Blackfriars Road, London SE1 8EZ - T: 44 (0)20 7542 7194
E: mary.mullally@thomsonreuters.com

promulgates practical policies which facilitate access to capital markets. At present, as identified in the green paper, many companies are reluctant to access capital markets due to the associated complexities, costs and risks. This has led to many of the larger issuers preferring to retain surplus cash on their balance sheets and only accessing capital markets when strictly expedient and necessary. Although not our direct constituents, we would highlight that many smaller issuers might well feel forced to rely on expensive bank debt to fund their operations and growth. If strides can be made to make the process of accessing capital markets cheaper, easier and less burdensome, this would provide SMEs with a real alternative.

The balance between investor protection and access for issuers to markets needs to be appropriate. We would strongly encourage the Commission to take this opportunity to evaluate whether this balance has been found. In this regard, we would observe that a number of directives and regulations, in part seeking to deliver on the Lisbon 2010 agenda, sought to provide broad access to EU Capital Markets but also introduced a number of unnecessary or unduly bureaucratic processes or information requirements, many of which have been duplicative. For example, we would question whether the Prospectus Directive, Transparency Directive and Market Abuse Directive, as they affect issuers, have been additive to the EU capital markets or improved in a material way on the Consolidated Admissions and Reporting Directive

Increasingly the obligations on issuers admitted to trading on EU markets have become prescriptive, costly and onerous. This does not seem to have benefitted investors (who ultimately bear the costs of these compliance obligations) or the markets in a meaningful way. For example, we do not consider that the increasingly prescriptive rules around insider lists and continuous disclosure obligations for issuers diminish the potential for market abuse but they do add layers of regulatory burden. The new Market Abuse Regulation (MAR) will impose even more detailed and challenging compliance requirements on issuers and members struggle to see any real benefit for the increased bureaucracy.

As a related point, there is a real sense among members that EU listed issuers have been subject to “regulatory creep” as regulators increasingly seem to require corporate issuers to implement the same or similar systems and controls as financial institutions (such as the new MAR requirements around market soundings). This approach can result in unworkable requirements for issuers, increasing the costs of capital and deterring issuers from accessing the markets, with little apparent benefit to investors.

We would welcome engaging with the Commission as it seeks to formulate its action plan to deliver a functioning capital markets union.

Market infrastructure and securities law

We note the comments in the Green Paper on harmonising the rules relating to securities and in particular a single EU definition of “securities”. We would urge caution here. The definition of “shareholder” and the rights attaching to “shareholder” varies widely across member states. Any harmonisation in this area is unlikely to comply with local company law in each member state. This would necessitate widespread amendments to the company laws in each member state, which could take many years.

Yours faithfully



Mary Mullally
Secretary, GC100
+44 (0)20 7542 7194