



EUROCLEAR BANK (EB) AS LONG TERM CSD FOR IRELAND POST BREXIT

Minutes of the Market Implementation Group, Meeting 11 Held on 16 September 2020 via Webex

Members Present:

Chairman: Brian Healy
Issuer representative: Ronan Deasy, Kerry Group
International banks representative: Peter Stewart, Citi
Broker representative: Aidan O'Carroll, Davy
ETF Issuer representative: Paul Young, Vanguard
Registrar representative: Joe Molony, Computershare
Registrar representative: Pat O'Donoghue, Link
Legal community representative: Paul Egan, Mason Hayes & Curran
Stock exchange representative: Eric Bey, Euronext
CCP representative: Bradley Arrowsmith, EuroCCP
Euroclear representative: Sandra Aboutboul, Euroclear

In attendance:

Mason Hayes & Curran: Justin McKenna
Euronext Project Manager: David Fitzgerald
Euronext: Gillian Leeson
Euroclear: An Mestdagh
Euroclear: Olivier Lefranc
Euroclear: Niels Watzeels
Euroclear: Sebastien Deprez
Euroclear: Kathleen Seurinck

The Chairman opened the meeting at 13:30 and welcomed the members to the eleventh meeting of the Market Implementation Group (MIG). He also welcomed Mr. McKenna (Mason Hayes & Curran) and Ms. Leeson (Euronext) who he had invited to attend the meeting.

He noted that the migration is now only six months away and he commented on the substantial progress made in various areas since the July MIG, a.o.:

- with the Registrar community on the contract, fine-tuning of the Service Description, business contingency measures and testing;
- with the CCPs on settlement flows around migration date;
- with the Legal Drafting Group on the SEC submission; and
- on Corporate Action timelines.

The recent publication of the Heads of Bill for the Brexit Omnibus Bill, on Companies Act '14 and other related amendments, was another significant step forward for the CSD migration.

However he also commented that there were a number of important issues to resolve in the coming days and weeks. The letter that the Steering Board members had received from some large Issuers, formally outlining their concerns and requesting an extension to the migration timeline of three months had been extensively discussed at the Steering Board earlier in the day.

It was noted that the Issuer letter had been included in the supporting material for this MIG meeting and would be discussed in the course of the meeting.

APPROVAL OF MINUTES

The MIG approved the minutes of 8 July 2020, as presented.

UPDATE ON ACTION POINTS

The MIG noted that the open action points would be further discussed as part of the overall project update (AC 271 regarding market practice changes, AC 273 regarding tax matters and AC 281 regarding the engagement with the SEC) and as part of the Euronext/Exchanges update (AC 279 regarding virtual general meetings).

Several actions had been closed, as outlined in the presentation.

PART I: OVERALL PROGRAMME UPDATE

The Chairman asked Ms. Mestdagh to outline the main programme developments since mid-July and the MIG noted and discussed the following points.

- Significant progress had been made on the SEC issue (to obtain clarity on the US securities law requirements – see AC 281) resulting in a new submission made by US Counsel to the SEC over the previous weekend. From discussions with US Counsel since then, it was understood that they consider the engagement with the SEC to be concluded (no further questions from the SEC were anticipated) and that the matter is successfully resolved subject to finalisation by individual Issuers of their shareholder circulars. A written confirmation regarding the SEC clarification had been requested from US Counsel by Euroclear.

The Chairman remarked that it had taken considerable time and effort to resolve this particular issue and it was now a matter of ensuring that impacted Issuers were comfortable with the conclusion from US Counsels' SEC engagement and that they proceed with the finalisation of the circular and with the planning of EGMs/AGMs. He asked Mr. Deasy, the Issuer representative, to confirm that his company had been informed accordingly by US Counsel – Mr Deasy confirmed that this was the case and that the matter indeed seemed to be positively resolved. To further strengthen the case that Issuers are now in a position to finalise the circular, in response to a query from the Chairman, Mr. Fitzgerald of Euronext noted that it would be happy to brief and engage directly with any Issuer for whom this matter is relevant, such an approach was endorsed by the MIG (and had been earlier by the SB).

Mr. McKenna advised that impacted Issuers that had not reached out yet to a US lawyer firm should be informed of which US Counsel had been involved in the SEC discussions, so as to leverage the work already done by them. Responding to a question from Ms. Mestdagh, Mr. Mc Kenna pointed out that the Legal Taskforce would also revert to their own clients on the positive outcome to the SEC interaction. The Registrar representative Mr. Molony added that he would do the same for his firm's Issuer clients.

As a side note, Mr. McKenna highlighted that another piece of legal work was ongoing, i.e. with respect to certain beneficial owner rights which in the proposed EB model would mean that beneficial owners would need to hold as name on register in order to exercise the right. He pointed out that the Legal Drafting Group is working on an alternative proposal which they would like to see reflected in the DBEI legislative changes as well as in the operational set up of EB, noting that this will have to be addressed in light of dematerialisation by 2023 in any case. In Mr. McKenna's opinion this entails reasonably important company law changes to make the legal framework more robust, and to mitigate the possible risk of a shareholder led challenge which might endanger migration. He indicated that a draft of this legislative amendment would be made available later in the day. The Chairman thanked Mr. McKenna for flagging this, however he also noted that it

was important to bear in mind the very narrow timeframe remaining to finalise the legislative drafting process and the constraint which this imposed. He noted that the Authorities, at the Steering Board earlier in the day, had confirmed that the process was due to conclude by 25 September. Mr. Egan, the Legal constituency representative, reconfirmed this timing and informed the members of the MIG that he, as Chair of the CLRG, was currently working with DBEI on questions they had about some of the provisions in the new Bill.

- The Registrar constituency had made very good progress, however not all issues had as yet been resolved but proactive engagement with EB continued on these points.
 - A stable baseline Service Description had been signed off, it was acknowledged though that further changes would be possible by mutual agreement.
 - One Registrar had executed the bilateral contract with EB. For the other three contracts, no outstanding issues remained and sign-off was expected in the next few weeks.
 - Business contingency measures had been agreed in principle, as outlined in the presentation. These measures needed to be worked out in practice as the contingency approach in EUI is significantly different from that in Euroclear Bank and can therefore not be replicated post migration.
 - EB SWIFT connectivity testing had been successfully concluded with one Registrar and was well progressed with a second Registrar, the other two were due to start in the second half of September. Registrars had informed Euroclear that they would need further detailed and tailor-made scenarios to be tested. Discussions are ongoing to seek to understand what is missing in the view of Registrars. Ms. Mestdagh emphasised however that it would not be possible to test every eventuality within every scenario.
 - As a result of the extensive negotiations on the Service Description, the contract and business continuity, the analysis of the Due Diligence Questionnaire had suffered a delay. It was hoped to share the results by the end of September, if not, as soon as possible in October.
 - Following the discussion at the MIG meeting in July on the Registrars' readiness status that Euroclear reported in the Registrar Dashboard, Euroclear had reached out to each Registrar individually for them to make their own assessment of their readiness. The outcome has now been integrated in the dashboard, next to Euroclear's assessment, and will be reported going forward to the MIG and SB. Although none of the self-assessments are fully green, to date, Registrars indicate that progress is on track for migration in March 2021. No road-blockers have been flagged and the amber areas are being addressed and are largely as anticipated.

Registrar representative Mr. Molony queried whether Issuers should review the instruction letter to Euroclear Bank that they had been asked to sign, considering the updates made to it to reflect additions in the Service Description and similarly whether the Legal Taskforce should be involved. Ms. Mestdagh provided some further context to this question, referring to an email Mr. Molony had sent to Euroclear the previous day on behalf of all Registrars, including a.o. how EB will handle meeting notifications. She responded that this needed to be looked into in further detail. Mr. McKenna highlighted that the Legal Taskforce would like to be involved and Mr. Molony confirmed that he would forward the necessary information to him.

The MIG noted its satisfaction with the progress made by Registrars, as confirmed by the self-assessment on project status by the Registrars.

- ETF migration was noted to be going well. Over half of the ETFs Issuers had already migrated their ETFs and all dates for migration for the remaining ETF Issuers had been confirmed before year-end, except for two that will migrate in January. Positive assurance on ETF Issuer readiness was provided by Mr. Young as ETF Issuer representative in response to a question from the Chairman. The Chairman then requested that the ETF

dashboard be included again in the supporting materials for upcoming MIG meetings. **(Action Point)**.

- In order to further support clients with their preparation for the migration, two webinars had been hosted on 23 and 30 July to explain the meeting and voting process. It was also noted that another webinar will take place on 30 September to cover other aspects of the Service Description. Online training modules on particular subjects, a.o. on the Stamp Duty process, Nationality declaration, mark up/mark down process, will be made available in Q4. Furthermore bilateral discussions with clients will continue, with EUI Relationship Managers reaching out to relevant CREST members on their plans for migration. A further update to the Investor Service Description is expected to be published in early October following a few recent amendments as agreed with Registrars on some detailed aspects of the service offering. A final update, including tax matters for which the Revenue Commissioners feedback is expected to be received by end of September, will then be released.
- The review of the Corporate Action timelines (see AC 271) had progressed well and after several meetings between Euronext and Euroclear there is now a detailed understanding on how the timelines will change. Alignment with LSE is also being sought and, upon finalisation, Registrars will be contacted to run them through the changes. A new market practice document in this respect is being created by Euronext.
- The markup/markdown process had also been signed off between Registrars, Brokers and EB. The end-to-end process will now need to be described, a task Mr. Fitzgerald undertook to take forward **(Action Point)**, and will also be made available on Euronext Dublin's webpage gathering relevant documents for the migration. Euroclear will also include the end-to-end process in the Service Descriptions for both Registrars and Investors.
- August also featured the start of EB's internal testing. Ms. Mestdagh re-iterated that from this point on, any further service changes requested will be difficult to achieve considering that these changes would need to be retrofitted in the testing environment.
- Revenue Commissioners (RC) feedback is expected on suggestions made for the Dividend Withholding Tax refund process, market claims process and refunds of Stamp Duty. Some further alignment with the RC is needed on the service for market claims so this is being considered in more detail at their end. Once these points have been clarified, the Service Descriptions will be updated accordingly.
- The RC have provided visibility on tax matters to be clarified in the Finance Act, 2020. Mr. McKenna asked to receive the draft of the relevant sections and Ms. Mestdagh responded that the Department of Finance and the Department of Business, Enterprise and Innovation (DBEI) had been adamant during the Steering Board that the draft legislation had already seen a high degree of involvement and had been shared with all relevant stakeholders. Adding yet further parties, such as the Legal Taskforce, to the review of tax provisions was likely to slow down the process and instead the Tax Advisors Liaison Committee should be the avenue for such discussions. Mr. McKenna clarified that he and the Legal Drafting Group just wished to consult these amendments for the purpose of updating the revised Issuer circular rather than to make suggestions for further changes.
- EUI requires Third Country CSD recognition by year end to continue to offer Issuer CSD services for Irish securities from 31 December 2020 (when the transition period agreed between the EU and UK is scheduled to end). EUI continues to engage with the relevant EU and national authorities and it is understood from these discussions that this is moving in the right direction. It is anticipated that any recognition will be time-limited, i.e. only to bridge the gap between 31 December 2020 and the end of March 2021. Such recognition is yet to be received. At the Steering Board today, the Authorities had similarly given very positive indications in this regard. In the ensuing discussion the MIG noted that the considerations for CSD recognition were very different than those for CCPs, with a different time-scale for the extension.
- The ECB had been approached as regards the offering of Euro services by EUI beyond March 2021. Should the contract not be renewed by the ECB, a possibility in the prevailing

political climate, then EUI would have to cease that service which would have significant consequences. This is however a political decision, and options are being analysed in case a renewal should not be granted.

Timeline

The MIG took note of the project timeline included in the presentation.

PART II: EURONEXT/EXCHANGES' UPDATE

The Chairman then invited Euronext to give their update. Mr. Fitzgerald highlighted that over the summer, Euronext had engaged with over 40 Issuers on their readiness and two issues had been raised, namely the lack of clarity on the US securities law requirement and the outstanding tax matters. No other concerns of substance had been flagged during these discussions. All companies had indicated the preference for convening EGMs in Q4, except for two that have AGMs planned next January. Considering that a maximum timing of c. 60 calendar days is required from receiving the template circular to the EGM date, the template circular would need to be finalised by early October.

The Chairman remarked that there was a disconnect between the Issuer letter, received by the Steering Board on 9 September, on the one hand and Euronext's feedback and conclusions from its bilateral engagement with Issuers on the other. He then turned to Mr. Deasy, as representative of the Issuer consistency, to give the MIG some further insight on the Issuers' perspective. Mr. Deasy highlighted that the Issuers would indeed prefer to hold their EGM before the Christmas period, however, there is still a high degree of concern about various open matters as well as the challenges posed by changed COVID-19 circumstances for Issuers. Unless the open issues are resolved quickly and uncertainty is removed, EGMs will extend into next year. He also flagged that holding virtual General Meetings is a new way of working for Issuers and has not been tested yet (AC 279).

The Chairman referred the MIG to the letter addressed to the Steering Board included in the pack and highlighted that a major part of the discussion at the Steering Board had been around this point. The MIG considered and discussed the following points:

- The response of the Authorities as recently as this morning had not been different to that strongly expressed in the past, i.e. the agreed timeline for the CSD migration of March 2021 cannot be altered. This view after careful consideration was shared by the full Steering Board.
- The Steering Board had agreed to respond conclusively to this letter, re-confirming the March 2021 migration date and urging market participants to remain committed and to continue to work towards a successful migration in March 2021.
- It should be recognised that, since the drafting of the letter, the context had significantly evolved, with the SEC issue entering its final resolution phase (subject to the communication from US Counsel to their Issuers) and with a revised template circular due to be provided by the Legal Drafting Group by September month-end.
- Registrars had definitely witnessed improved engagement from many Issuers, however, this was not the case for all Issuers. To encourage the less engaged Issuers, it would be essential for the Authorities to issue a public statement that the March deadline must remain as is. The Chairman indicated, arising from an undertaking by the Authorities earlier during the Steering Board discussion, that it was intended for such a statement to be issued shortly. Registrars highlighted their concerns about managing the workload associated with many Issuer EGMs/AGMs if this were to happen within a compressed timeframe.

The Chairman underlined that it was key to communicate a cohesive, consistent and comprehensive message on the unaltered timeline and on the sustained commitment needed from all market stakeholders to successfully migrate in March, and all MIG representatives definitely had a role to play in this regard towards their respective constituencies. It was agreed that this

message should be disseminated by making best use of the various communication channels, including through webinars, monthly bulletins, direct relationship management interactions, commercial dealings, etc., and should be re-iterated as often as possible over the coming weeks. Having many EGMs in January is not desirable and in any case shareholder approvals need to be secured and notified to Euronext by 24 February 2021, a hard deadline that cannot be circumvented. The MIG agreed that gaining momentum was important and so was having a first mover Issuer to pass the migration resolution to encourage other Issuers to proceed likewise.

PART III: RECORD DATE

The Chairman then asked Ms. Mestdagh to review with the MIG the changes related to the Record Date (RD) for voting as some confusion and misalignment surfaced during recent meetings with the DBEI and Registrars. Ms. Mestdagh highlighted that this change has been documented in the Service Descriptions and had been made very clear during the July webinar but based on feedback received from Registrars, Issuers and Authorities, this appears still not to be fully understood.

She explained that today the RD for voting is on the same day as the proxy voting date. After migration, EB could accommodate a RD being any business day prior to the meeting date but it can only assess the entitlements of shareholders to vote at close of business in EB, i.e. once all transactions have settled.

While EB can handle a RD being on the same day as the proxy voting deadline, EB recommends that the RD is set sufficiently in advance of the proxy voting deadline to enable Euroclear Bank clients to vote based on their final position at the RD. If the RD is not sufficiently in advance of the proxy voting deadline, voting instructions received prior to the RD will mean that the securities voted upon in the account of the investors will have to be blocked until the end of the RD so as to ensure that the securities are still available in the investor account at the end of the RD.

To make the proposal of the recommended meeting timeline more concrete, the MIG considered a practical example with a General Meeting on a Friday at 09:00. The MIG noted that, in this example, the proxy appointment deadline would earliest be the preceding Wednesday at 09:00 and the recommended RD for Irish corporate securities held in an EB account would then be the preceding Tuesday at COB.

The MIG then discussed the potential advantages and disadvantages of setting a RD at least three business days, i.e. COB on the preceding Monday, before the General Meeting and which practice in terms of RD setting would be best suited and most advantageous for the market:

- potential advantages for Investors: securities will not be blocked and also, the longer the time between RD and proxy appointment date, the more time Investors have to send their voting instruction to EB based on the actual position of securities they hold in their EB account;
- potential disadvantage: the earlier the RD, the higher the chance that Investors receiving securities after RD but before the proxy voting deadline will not be able to vote as the securities are received too late.

International Banks' representative Mr. Stewart suggested that this proposal be shared with industry expert groups and discussed with custodians, and Mr. Egan queried whether the Irish Association of Investment Managers (IAIM) had been consulted. Ms. Mestdagh pointed out that this suggested proposal was not new and has been discussed on several occasions (at Issuer and AFME briefings, at the MIG and in other fora) and has been documented in the Service Descriptions. She also stressed that EB could accommodate either model.

Bringing this discussion to a conclusion, the Chairman noted that work needed to be done to propose draft wording to accommodate the end of Business Day concept, necessary for EB, and a RD of at least three days prior to General Meeting date for the DBEI to include in the Brexit Omnibus Bill by end of next week. The MIG members were asked to raise this matter with their relevant constituencies and if they had concerns, to revert with an alternative suggested wording by end of next week as the DBEI made it very clear that legislative drafting process is due for completion by 25 September **(Action Point)**. Mr. Egan offered to engage with DBEI immediately

after the MIG meeting to discuss further the proposed draft wording for the legislative amendments **(Action Point)** and to keep the MIG updated on the discussion.

PART IV: MIGRATION UPDATE

The Chairman invited Ms. Mestdagh to give a status update on the migration and she outlined how CCPs will handle the transactions around migration date. The MIG noted that uncleared transactions will continue to settle as indicated in the instructions by the participant and counterparty whereas for cleared transactions the trade date will determine the settlement location. For the latter, CCPs will:

- continue to send all cleared transactions in Irish corporate securities with trade date Thursday 11 March and Friday 12 March to EUI, regardless of whether traded on LSE or Euronext;
- send transactions with trade date Monday 15 March (settlement date Wednesday 17 March) and thereafter to:
 - EB if traded on Euronext and cleared by EuroCCP
 - EUI if traded on LSE and cleared by LCH, EuroCCP or SIX
 - EB if traded on Euronext line on MTF and cleared by EuroCCP, LCH or SIX
 - EUI if traded on LSE line on MTF and cleared by EuroCCP, LCH or SIX.

The MIG noted that clients who migrate their positions to EB on Monday 15 March will have to monitor the CCPs settlement flows as, cleared transactions will all attempt to be settled in EUI until Wednesday 17 March, so realignments might be needed. Mr. Arrowsmith noted that the Clearing Houses will also be highlighting this aspect to their counterparties and clients in the course of migration preparations.

This information will be included in the next update to the Migration Guide.

ANY OTHER BUSINESS

Registrar representative Mr. O'Donoghue highlighted that the Registrar constituency will be formally outlining their concerns on testing which they believe currently to be inadequate. Ms. Mestdagh responded that she will re-engage with Registrars to understand the perceived gaps versus what both EB and the Registrars had agreed upon previously. She re-stated the outcome of previous discussions in this context that not every individual single iteration of every scenario could be tested. The Chairman urged EB and the Registrars to proactively engage to come to an agreed common approach to testing as a priority, given the importance for all parties of gaining the necessary assurance on system functionality and robustness and on process flows being as anticipated **(Action Point)**.

The MIG further noted the next meeting dates (22 October and 2 December) as well as the proposed 2021 dates being on:

- Tuesday 19 January
- Wednesday 24 February
- Tuesday 23 March.

The Chairman concluded the meeting by highlighting that much is expected and needs to happen in the coming weeks. There being no further business, he thanked the MIG members for their contribution and closed the meeting at 15:35.

Summary of new/outstanding actions:

Action item ID	Description of action items	Date of Analysis/ Discussion	Assigned to	Planned Closure Date	Status
AC 271	Identify areas of market practices which will change as a result of the move to EB or need to be documented (incl. certificated shareholders process, some corporate action timetables etc.) and publish	13/05/2020	Mr. Fitzgerald	August	Ongoing
AC 273	Details regarding potential tax considerations (Capital Gain Tax, Capital Acquisitions Tax and the Close Companies provisions of Corporation Tax) to be addressed in the Finance Bill or similar legislation to be shared with the Legal Taskforce and with Euroclear	13/05/2020	Mr. McKenna	TBC	Ongoing
AC 279	Legal guidance on the ability to hold AGMs virtually	08/07/2020	Mr. Egan	September	Ongoing
AC 288	Re-inclusion of ETF dashboard in the supporting material for upcoming MIG meetings	16/09/2020	Euroclear	October	New
AC 289	MIG members to consult their constituencies on the Record Date changes and proposal to set the Record Date sufficiently in advance of the Proxy Voting deadline	16/09/2020	MIG representatives	End September	New
AC 290	Engage with DBEI on proposed draft wording for the legislative amendments wrt Record Date	16/09/2020	Mr. Egan/ Euroclear	End September	New
AC 291	EB and Registrars to come to an agreed common approach to testing	16/09/2020	Euroclear/ Registrars	End October	New