



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

Minutes of the Market Implementation Group, Meeting 10 Held on 8 July 2020 via Webex

Members Present:

Chairman: Brian Healy
Issuer representative: Ronan Deasy, Kerry Group
International banks representative: Peter Stewart, Citi
Broker representative: Stephen Dwyer, Goodbody Stockbrokers
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: Charles Pugh
Euroclear: Christopher Twemlow
Euroclear: Raymond Mallon
Euroclear: Olivier Lefranc
Euroclear: Niels Watzeels
Euroclear: Sebastien Deprez
Euroclear: Florence Marly-Quenette
Euroclear: Kathleen Seurinck

Apologies:

Broker representative: Aidan O'Carroll, Davy

The Chairman opened the meeting at 13:00 and welcomed the members to the tenth meeting of the Market Implementation Group (MIG). He noted that the following milestones had been achieved in the programme:

- the publication of the Migration Guide;
- the communication of information required from Euronext as Listing Authority;
- an Issuer webinar on 7 July; and
- clear progression on the technical side.

The formation of the new government was also a positive step for the programme for policy continuity reasons.

Notwithstanding the good progress made, there continue to be some key issues, a critical one persisting being the potential US securities law issue. The informal Legal Drafting Group's concerns in this respect have been outlined in a letter from Mr. McKenna (Mason Hayes & Curran) which was addressed to Euroclear, Euronext and the MIG Chairman. The letter has been shared with the MIG for their consideration and will be one of the main items for discussion at today's meeting.

APPROVAL OF MINUTES

The MIG approved the minutes of 13 May 2020, as presented.

UPDATE ON ACTION POINTS

The MIG discussed the open action points:

- Mr. Egan, the Legal community representative, commented on the action regarding the possibility for ETF Issuers to have virtual court hearings (AC 267), and referred to the Notice from the President of the High Court of 8 May that he had shared with the MIG members following the previous MIG meeting. A new normal was developing, albeit with a high degree of inconvenience but no impediments had surfaced. This action point could therefore be closed.

Issuer representative Mr. Deasy asked to receive an update on the legislative changes needed to allow companies to hold AGMs virtually and Mr. Egan responded that a meeting had taken place on 7 July with the Minister and other officials to stress-test the proposals made. Some finetuning was needed though before the law could be passed. While this may not be done in time for most AGMs, the legislation should be in place for the EGMs. The MIG will be kept informed **(action point)**.

- As far as AC 271 was concerned, Mr. Fitzgerald highlighted that certain areas of market practice changes have been identified (e.g. certificate of shareholdings) and these will be documented fully in the coming weeks. Euronext is exploring how to achieve this in a comprehensive way, with input from relevant stakeholders, in an agnostic way, and would ensure to make the information available publicly in due course.

The open actions regarding CSDR Settlement discipline (AC 272) and potential tax considerations (AC 273) will be discussed as part of the "Overall Programme update" in Part 1 and the "Euronext update" in Part 3 respectively.

PART I: OVERALL PROGRAMME UPDATE

The Chairman asked Ms. Mestdagh to share the main programme developments with the MIG since the previous meeting and she presented the following points.

- A key milestone had been reached with the publication on 19 June of the Migration Guide describing the actions to be taken by each stakeholder prior, during and after the migration weekend. A few elements need some further detail to be agreed upon with the Registrars and these are expected to be signed off shortly. This publication has clearly made the preparatory work for the migration more concrete and has triggered some urgency for stakeholders to act, as demonstrated by a vast number of questions received at EB.
- Progress with and within the Registrar constituency had been made in the following areas.
 - An updated version of the legal contract had been shared with Registrars the previous week and comments will be reviewed on a bilateral basis.
 - The Due Diligence Questionnaire had been received from all Registrars.

- An updated version of the Registrars' Service Description Baseline had been issued on 26 June, and now includes the testing timeline and the remaining aspects for reconciliation and voting (discussions with Euroclear UK & Ireland (EUI) regarding CDI register are ongoing). Registrars' questions keep arising though and some previously agreed processes are being re-questioned which forestalls a.o. the focus on business continuity, while these discussions cannot be deferred much longer considering the tight timeline. Registrar representative Mr. Molony felt that this statement should be nuanced and acknowledged that Registrars continue to have questions as there are still certain gaps to be bottomed out, but equally that Registrars have remained available to respond to Euroclear's questions. Ms. Mestdagh responded that a few points are indeed outstanding but those should be resolved by the end of the following week.

Mr. Stewart (International banks representative) sought to understand if any of these points would affect the Service Description for Investors, and the MIG noted that this was not the case, impacts are on the services as between Registrars and EB and will impact Issuers to a certain extent. Nonetheless, some changes to the Service Description for Investors are expected in the area of tax (such as Stamp Duty reclaims and market claims). These points have been raised with the Revenue Commissioners (RC) as highlighted during previous MIG meetings, and discussions in this respect were progressing well. Conclusive feedback from their side was expected shortly and it was hoped that some of these points would be addressed in the next few weeks.

- With regard to migration, an important message to bear in mind is that it is imperative that corporate action events over the migration weekend are avoided as this would entail a significant risk. Clearly, some corporate action events cannot be planned (such as takeovers) and a process to deal with those unavoidable exceptional cases is being explored with the Registrars.
- Referring to the Registrar Dashboard, Mr. Molony remarked that the largely green status on Registrar readiness was arguable and did not reflect the Registrars' sentiments. The remaining outstanding points (meeting services still requiring sign-off, some corporate actions business rules to be confirmed and the pending US security law requirement clarification) were in his opinion clear concerns, even to the point that the timely build of their systems could be compromised.

The Chairman pointed out that the concerns of Registrars are known. They are reflected in the Issues/Risks as outlined in annex 2 of the presentation, which is also shared with the Steering Board, including the Irish Authorities, in a fully transparent manner. But equally a huge amount of work has already been accomplished between EB and Registrars and momentum is there to finalise the few remaining outstanding points, including those from a regulatory perspective (CSDR Settlement Discipline, Shareholder Rights Directive II).

The MIG noted and agreed that in a programme of such a magnitude, it is not unusual that some elements are beyond the programme's span of control. This needed to be accepted and managed, adjusting plans as clarity unfolds with time. While acknowledging this, Mr. Molony re-iterated that the developments for Registrars needed to be stripped back to the minimum viable product (MVP) in order for them to be able to deliver in time. This MVP was what had been extensively discussed with Registrars and reflected in the Service Description for Registrars Baseline, Ms. Mestdagh said.

- As far as clients are concerned, Euroclear is continuing to support them in their journey towards migration. Upcoming is an informative webinar explaining how the voting and shareholder disclosure will work in EB after the migration of Irish corporate securities. A session for Investors on the meeting and voting process has been scheduled on 23 July. All EUI and EB clients with an interest in Ireland will receive an invitation to attend this webinar from their Sales & Relationship Manager. The invitation will also be sent to AFME who may extend it to their members. For Issuers and their legal advisors, a similar session (meeting and voting process as well as the shareholder disclosure process) has been organised by Euroclear on 30 July, and Euronext have invited their contacts in listed companies to attend.

- Following market push-back, the RC have postponed the introduction of the Dividend Withholding Tax real-time reporting changes that were originally planned to take effect as from January 2021. The MIG noted that no new date has been confirmed yet but extensive consultation with the market will precede the implementation.
- At the Steering Board earlier in the day, the Authorities have reconfirmed the very positive engagement from the TALC and RC on any necessary legislative clarifications in Finance Act, 2020 on other Capital Taxes (i.e. CGT, CAT), CT Close Company provisions. Confirmation had also been received from the Department of Business, Enterprise and Innovation (DBEI) that additional legislation needed for EB model to work efficiently will be part of the Brexit emergency legislation and will thus be in place before the UK leaves the EU.
- Responding to a question raised at the MIG meeting in May around whether there would be an alignment between EUI and EB in the area of CSDR Settlement Discipline (SD), the MIG noted that HM Treasury has published, on 23 June, that the UK will not implement SD as per CSDR. Mr. Pugh highlighted that a review was ongoing on the extent of the impacts of this decision as this could potentially lead to a short period of time (between 1 February 2021 when CSDR SD comes into effect and 15 March 2021 when Irish securities migrate from EUI to EB) of non-compliance with the CSDR SD regime. It should be noted however that discussions regarding a proposed one year delay to the entry into force of the CSDR SD regime seem to be in an advanced stage, although securing official confirmation of such a delay may take several months. The Chairman noted the importance of getting clarity on this and he further commented that EUI's well-established SD regime should remain in place for the UK market. Hopefully more clarity will be available to share with the User Committees in September.
- On another regulatory matter, namely the Shareholder Rights Directive II (SRD II), the MIG heard that the transposition into Irish law had been done, and it was understood from the DBEI that no further domestic legislative changes are expected in the foreseeable future. The High Level Forum on Capital Markets Union has pointed out that there is room for misalignment on the term 'Shareholder', which will be taken on board at European level by the European Commission; the timeline for this harmonisation is likely to be 2024.

Timeline

The MIG reviewed the timeline and noted that Registrar testing was the key next milestone.

PART II: SRD II AND SEC

The Chairman highlighted that the SEC issue has been known for quite some time now. The joint Euronext/Euroclear letter to Issuers of 24 April had already made reference to it, yet this still needed to be resolved. Discussions around this topic with the SEC even seem to be halted, as detailed in the 30 June letter of the informal Legal Drafting Group addressed to EB, ENX and the MIG Chairman, and which further outlined concerns of some Irish lawyers about migration. Responding to the addressees' request for more clarity regarding the arguments in the letter and whose standpoint it represents, Mr. McKenna pointed out that the Legal Drafting Group represented six Dublin law firms with a number of individual partners, three of which are involved with particular Issuers. A smaller 'informal' group was dealing with the SEC, and the larger group was dealing with the circular. Mr. McKenna clarified that some concerns had been raised by the SEC, following which US lawyers requested to have these sorted out first before continuing discussions. Mr. McKenna added that all questions have been outlined in the letter and stated that the informal Legal Drafting Group has not taken a position, nor is it posing a contrary view or fundamental disagreement but merely highlighting areas of potential uncertainty and seeking to engage with EB to resolve these matters on a timely basis.

The MIG then had an extensive discussion around the SRD II / SEC issue and the following views were expressed:

- In Euroclear's and Euronext's opinion, SRD II arguments have been used to halt the discussions with the SEC, but they firmly believe that the SEC issue and SRD II should not be linked as the impact of SRD II for the existing shareholders is on *how* rights can

be exercised and not *if* they can be exercised. This contention added additional pressure on the already tight project timeline. A formal response to the letter would be prepared and the full Legal Drafting Group will be reconvened on a regular basis to represent the market in a more coherent manner so that the SEC issue can be resolved quickly.

- Mr. McKenna was prepared to withdraw from the discussion at the Legal Drafting Group and the Chairman confirmed there was no need to recuse, the issue however needed to be carefully parameterised and the Legal Drafting Group, under the lead of Euronext, needed to be reconvened to craft an agreed solution on the issue.
- Mr. Molony suggested to also involve critical Issuers as well as the Registrars in these discussions. The MIG felt there was no need for yet another group next to the MIG and the Legal Drafting Group to deal with the matter. They underlined that the Legal Drafting Group, led by Euronext, had previously performed excellent work when drafting the template circular. It had involved Issuers and their legal advisors, Registrars, as well as other parties deemed necessary in the process and the review cycle before the template circular's issuance to the Issuers. There was no reason to believe that this would be any different for working through the outstanding issues and include the necessary detail in template circular. This view was shared by the full MIG and they agreed to mandate the Legal Drafting group to take these matters further.
- Mr. Deasy queried whether a substantial rework of the template circular was anticipated or whether it was a more of a "surgical" rewriting. The MIG was aligned that the substantial amount of work already done would be leveraged and that addressing the outstanding points would rather be a matter of inserting some further details. Mr. Deasy added that clearly the market had agreed that EB as CSD for Irish securities was the only solution and it was incumbent on all stakeholders to migrate in March, so working collaboratively was required.
- Ms. Leeson confirmed that formally reconvening the Legal Drafting Group in this respect made perfect sense. She suggested that she set up a call in the next few days to align on proposed amendments to be made, an initiative welcomed by the Chairman and endorsed by all MIG members **(action point)**.

Considering the upcoming holiday season, the Chairman emphasised the need to progress quickly on the SEC issue by reconvening the Legal Drafting Group in the next few days, resuming the discussions with the SEC and completing the template circular with further detail as appropriate **(action point)**. He also underlined that in the current political context re Brexit the MIG would appreciate that there will be some open issues and that laws may not be drafted exactly as the MIG may anticipate, yet working towards migration in March 2021 was paramount. The Chairman thanked the MIG members for the constructive dialogue and asked that the MIG would be kept abreast of progress.

PART III: EURONEXT/EXCHANGES' UPDATE

The Chairman invited Mr. Fitzgerald to provide the Euronext update who then elaborated on the following points not already covered as part of the above discussion.

- The Issuer webinar of the previous day had been well attended with over 120 registrants representing 40 different companies, legal advisors, Registrars, etc. Focus had been on steps for Issuers to take to be ready for migration, legal readiness and practicalities, with a special attention to avoid having corporate actions around the migration weekend. Response had been very good and questions that had not been addressed during the meeting would be dealt with bilaterally and included in the monthly bulletin where relevant to the wider audience. A follow-up event will be scheduled to provide more practical advice for the migration. The frequency of virtually gathering the Issuers could be ramped up if need be as it has proven to be an easier format, and fit for purpose.
- Euronext Dublin's new web page was now live, publishing key information required of the Listing Authority under MPS legislation including:

- the intended live date and time of the migration (which has changed from 22:00 on 12 March 2021 to 00:01 on 15 March);
 - the latest date by which Issuers must notify that the migration resolutions have passed (24 February 2021); and
 - the list of Issuers that have passed the migration resolutions and will be migrating. This information will be populated on a weekly basis.
- Issuers that have held their AGMs had not integrated the migration resolutions and a large number of H2 AGM/EGM dates still needed to be confirmed. Mr. Deasy queried if Euronext had engaged with large companies and the MIG noted that they had not but that the response to the informal Legal Drafting Group letter on the US legal issue would be a good start.

Mr. Fitzgerald also outlined the next steps for Euronext to enable companies to be sufficiently comfortable to submit the migration resolutions to their shareholders soonest. He also referred to the webinar that will be hosted by Euronext to provide advice for companies on managing through virtual meetings and engagement with shareholders, in the context of getting migration resolutions passed.

The MIG was also updated on the end-to-end process with regards to a markdown/mark up which had finally been agreed between Registrars, Irish Brokers and Euroclear Bank. On a question from Mr. Molony as to whether UK brokers would be involved in the process and sign off, Mr. Dwyer as Broker representative clarified that the process would be shared with the UK Brokers however no sign off was requested from them. Mr. Fitzgerald responded that he was conscious that information needed to be shared with the UK Brokers but was reluctant to build in sign-off dependencies. Euroclear would engage by updating the Service Description for Investors with the agreed process and have bilateral discussions with clients if requested, while AFME would also be notified.

Mr. Egan noted that certain market participants are lobbying for a deferral of the migration to later in 2021. From his interaction with Issuers it appears that some Issuers would like to defer the migration resolutions to the AGM cycle in 2021, considering the substantial cost that convening an EGM represents for them, for a matter being merely of a “technical” nature. The Chairman highlighted that, as recently as this morning, Authorities have been absolutely resolute of what has been achieved to ensure CSD continuity for Irish corporate securities after Brexit, all of that is contingent on a migration foreseen in March 2021. At this stage of the project, pressure is mounting and having to migrate is inconvenient for Issuers, but the prospect of not being able to migrate in March 2021 could be a far bleaker and dangerous prospect for the Irish market. The MIG further noted that:

- deferring the migration date is not an EB decision to make, but is within the remit of the Irish Authorities, the European Commission (EC) and the European Central Bank (ECB). Should Issuers wish to delay the migration, a request needs to be made to the EC and ECB, not to Euroclear Bank nor the MIG;
- all constituencies are endeavouring to do what is needed to be able to migrate in March next year, and even if an extension of three month were contemplated, work must continue vigorously in the meantime; and
- EUI is applying for the third country recognition status after the transition period, however the Authorities have always been clear that this would be time-limited to bridge the period end 2020 - March 2021.

The Chairman re-iterated that there is an urgency to resolve the SEC issue quickly and to progress with the preparations for migration forcefully. A clear plan has been defined to implement the changes needed for the migration which is fully supported by the Irish Authorities. Admittedly, there may be risks on or beyond the horizon that are not in the programme’s control (a second wave of COVID-19 with an unforeseen impact for instance) which may impact the migration but until then, forward momentum should be kept. The situation will be reassessed in September, and hopefully testing will have started by then.

PART IV: MIGRATION

The Chairman invited Ms. Mestdagh to give a status update on the migration who outlined that:

- the CSD migration process had been designed following multiple market wide consultations and the resulting process as described in the Migration Guide was considered to be the least risky for the market as a whole;
- it had been clearly articulated (in the Migration Guide and re-enforced at the 7 July webinar with Issuers) that corporate action events close to the migration date should be avoided where ever possible as this would pose a significant risk on the migration. This includes setting corporate action events with a record date/instruction date prior to migration and a payment date after migration and also elective corporate events with an election period straddling the migration date.
- the process for votes for which the voting period straddles the migration weekend was also outlined: Registrars will disregard any voting instruction received prior to the market deadline by the EUI member or their agent on a position held in EUI and any vote will have to come from the legal shareholder in the register which is Euroclear Bank's Nominee which means that votes cast prior to the market deadline will have to be recast; and
- full details can be found in the Migration Guide and should the MIG have further questions these will be taken bilaterally.

PART V: EUI'S INTERNATIONAL SERVICE AND IRISH DWT

Ms. Mestdagh outlined for the MIG that EUI is planning on applying to become a Qualified Intermediary (QI) for Irish securities held in EUI's International service by March 2021. As QI, EUI would offer a DWT service for Irish securities for mandatory events and elective events. The tax service offered for Irish securities from March 2021 will not include a reclaim service. Further details will be published in a white book in the Autumn.

ANY OTHER BUSINESS

The MIG noted that Mr. Twemlow would be leaving Euroclear at the end of July. The Chairman, on behalf of MIG, expressed his gratitude and noted what a pleasure it was to have worked with such a consummate professional as Mr. Twemlow over the entirety of this project and indeed previously. He also thanked him for his always constructive and collaborative approach to the development of the Irish CSD project and the great work, advice and counsel he had given over the past few years. He, and the entire MIG, wished Mr Twemlow all the best in the next phase of his career with Allianz.

The Chairman also thanked the MIG members for the productive meeting and underlined the key action of progressing with the SEC issue resolution as discussed during the meeting. Further MIG meetings were planned on 16 September, 22 October and 2 December but the frequency of the MIG meetings toward year-end may increase to ensure momentum is kept and issues can be addressed swiftly.

As there was no further business, the Chairman closed the meeting at 15:10.

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	New
AC 279	Legal guidance on the ability of holding AGMs virtually	08/07/2020	Mr. Egan	September	New
AC 280	Set up a call in the next few days to align on proposed amendments to be made to progress the SEC issue	08/07/2020	Ms. Leeson	July	New
AC 281	Resolve the SEC issue by reconvening the Legal Drafting Group, so that the lawyers can resume the discussions with the SEC and complete the template circular with further detail as appropriate, and keep the MIG abreast of progress	08/07/2020	Euronext	Summer	New