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

### **Minutes of the Market Implementation Group 5 Held on 14 November 2019 at Davy's Offices, 49 Dawson St, Dublin 2, Ireland**

#### Members Present:

Chairman: Brian Healy  
Issuer representative: Ronan Deasy, Kerry Group  
International banks representative: Peter Stewart, Citi (by conference call)  
Broker representative: Aidan O'Carroll, Davy  
Registrar representative: Joe Molony, Computershare  
CCP representative: Bradley Arrowsmith, EuroCCP  
ETF Issuer representative: Paul Young, Vanguard (by conference call)  
Euroclear representative: Sandra Aboutboul, Euroclear

#### Apologies:

Legal community representative: Paul Egan, Mason Hayes & Curran  
Stock exchange representative: Eric Bey, Euronext

#### In attendance:

Euronext Project Manager: David Fitzgerald  
Euroclear: An Mestdagh  
Euroclear: Christopher Twemlow  
Euroclear: Kathleen Seurinck

The Chairman opened the meeting at 13:00 and welcomed the members to the fifth meeting of the Market Implementation Group (MIG).

#### **APPROVAL OF MINUTES**

The MIG approved the minutes of 25 September 2019 as presented.

#### **UPDATE ACTION POINTS**

The MIG took note of the open and completed actions. Those ongoing were the engagement with clients on tariff (AC 108) which would remain ongoing for some time and the documentation of the full end-to-end process for Issuers (AC 189). Actions AC 193 (voting concerns) and AC 194 (corporate actions update) will be covered during this meeting.

Summarising project status, the Chairman highlighted that considerable progress had been achieved since the previous MIG.

- A substantial amount of work had been done which involved a multitude of meetings in the form of briefing sessions/bilateral discussions/workshops, a.o.:
  - very productive Registrar workshops on 31 October and 13 November. There were still some open items to sign off on and a further workshop was scheduled to take place on 27 November;



- AFME sessions on Dividend Withholding Tax (DWT), Stamp Duty and Shareholder Rights Directive (SRD) II;
  - an Irish User Committee (23 October) and UK User Committee (5 November) discussion of progress on the project;
  - an Issuer briefing session organised by Euronext which had been well attended;
  - a workshop of the Legal task force to translate migration legislation into standard text and templates for resolutions and circulars; and
  - a panel discussion on post-trade and Irish CSD migration at the Financial Centres Summit conference in Dublin on 16 October.
- In terms of written communications, the Service Description for Investors had been published, Euronext had issued its first Monthly Bulletin and a second draft of the Migration Bill was underway and would soon be circulating.

Notwithstanding the important progress made since the last MIG meeting, the Chairman underlined the need to keep the momentum as there were still some open issues to address in a very challenging timetable.

The Chairman then invited Ms. Mestdagh to give an overall project update.

#### **PART I: OVERALL PROGRAMME UPDATE**

Ms. Mestdagh took the MIG through the presentation and added to it with the most recent developments from the past few days. The key points of the MIG discussion and the input they gave centered on the following:

- The Service Description for Investors had been published on 9 October. Discussions were ongoing for some sections (Stamp Duty and Corporate Actions) and most of these missing parts were expected to be published by year-end. This meant, however, that the detailed requirements need to be finalised by end November. It was important to understand that going beyond this timing would most definitely impact the go-live date and therefore it was paramount that every effort should be made to meet the November deadline.
- A myriad of meetings had taken place, many of which involved the Registrars. To limit the investment on their part, the Minimum Viable Product (MVP) had been discussed intensively at the Registrar workshop the preceding day. Many points had been agreed upon between the Registrars and EB, while some other points had been taken away by EB for further consideration. At this point in time there was no reason to believe that those would be a blocking factor.
- The Service Description for Registrars was being released section by section and sign-off had been secured on EB's service offering for New Issues and Settlement. The section on Corporate Actions was linked to the MVP discussion and needed further reflection. The MIG noted that it was still the aim to issue a stable Registrar's Service Description by early January, recognising that certain topics could be subject to further changes or clarification.
- The end-to-end process for physical securities would have to be mutually agreed upon by Registrars and Brokers and it was pointed out that this process also needed to be included in the document describing the full end-to-end process for Issuers (**Action point**).
- Positive news had been received from the Authorities concerning the second iteration of the migration legislation which was due to be shared in the course of the following week, with enactment still on track for year-end. The MIG heard that the proposed legislative changes only cover those strictly needed to facilitate the actual migration but do not deal with any secondary legislation, this would be addressed at a later stage. Euroclear highlighted that the scope of the secondary legislation would deal with legislative changes

needed for day-to-day activity in Euroclear Bank and they would align with the Department of Business, Enterprise and Innovation (DBEI) in this respect.

- Discussions regarding the new process, the tariff and account structure with EUI clients continued. To stimulate and accelerate the migration process, as from February 2020, EB will waive the minimum fees until end January 2021 for current EUI clients opening an account in EB (only for the purpose of holding their Irish corporate securities) early on.
- Since some individuals/entities believe or advocate that migration to EB would not be required for the issuance of Depositary Interests (DIs) on the books of Registrars, it was pressing to address this misconception. Euroclear had sought legal advice in this respect and it is Euroclear's firm understanding that this is not a valid option under CSDR, hence EUI would not be accepting these DIs in CREST. A legal opinion, being used by the LSE, had not been shared with Euroclear so far. To avoid that relevant Issuers waste precious time in the already tight migration timespan and fail to undertake timely action based on ill advice, Euroclear will engage with LSE in order to clarify the opposing views related to DIs on European securities issued in CREST. The Chairman underlined that this issue should be addressed by the next Issuer briefing session in December **(Action point)**.
- Regarding the consultation on DWT issued by the IRC in October, Ms. Mestdagh invited each of the constituencies to respond to this consultation as it could have a material impact on the Irish CSD migration by March 2021, considering the similar timing for the implementation of IRC's proposed changes by January 2021 **(Action point)**. The MIG fully concurred with this view and noted also the major impact that Qualifying Intermediaries would suffer by the proposed changes, a.o. in terms of the high number of segregated accounts to be opened. The MIG agreed that each individual constituency would review and respond to the consultation bearing in mind that the responses were due very shortly, on 9 December.
- A number of sessions had been held with Irish Funds and clearly, the ETF community's engagement was high. The vast majority of ETF Issuers are actively working to convert their ETFs into iETFs prior to CSD migration from EUI to EB (one would move to CBL). Three ETF Issuers have not yet decided on whether they would migrate to the iETF structure and discussions were continuing.
- Engagement from the two largest Registrars and from Kerry Group, as its own registrar, (together covering the vast majority of the market) was high and substantive discussions had taken place a.o. to advance on the Service Description and to ascertain progress towards readiness. The on-boarding of the three non-engaged Registrars (two of which have confirmed commitment) is being managed jointly by Euroclear and Euronext.

The MIG discussed whether Issuers fully grasped the impact on underlying participants and whether more needed to be done in this area in addition to what had been covered off at the issuers Company Secretaries Group. The MIG agreed that the next Issuer briefing session should address this particular point. This session would also be a good opportunity to address the Issuers' main concern on meeting services and how it will impact them, as well as the disclosure service and to rectify the misconception around Depositary Interest (DI) **(Action point)**. In parallel, direct contact with Issuers individually to assess their level of engagement, their actual preparedness towards migration and whether they appreciate what is ongoing at Registrar level, needed to continue and coverage to be expanded (so far two thirds of the Issuers base had been reached) **(Action point)**. In addition, for some Issuers, a one-to-one session for each Issuer would be beneficial. Mr. Fitzgerald took this recommendation on board however pointed out that it might prove difficult to reach the entire Issuers base considering the challenge to identify adequate contacts or even phone numbers.

Although significant progress has been made, the SWIFT dependency with the registrars remains.

- It was useful to continue discussions similar to those at the meeting with Registrars, Brokers and Euroclear in order to advance on the documentation of the full end-to-end-process, which Issuers were seeking. The MIG noted that the Broker representative would ensure the drafting of the document, with input to be received from other constituencies.

The Chairman added that it was the intention to stick as close as possible to the CREST process and the aim was to finalise the document by the next Issuer briefing session in December. Ms. Mestdagh highlighted that this end-to-end process should also include the communication to/from EB.

- From the 502 eligible Irish securities in EUI, 468 are already eligible in EB. For the remainder, the analysis has concluded that they can become eligible.
- There were no changes in the implementation timeline and the next upcoming milestones are to finalise the MVP and publish the Service Description for Registrars. The Chairman underlined that at this point in the project, every constituency should now need to know what to do.

## **PART II: EURONEXT/EXCHANGES' UPDATE**

The Chairman invited Mr. Fitzgerald to provide an update from the Euronext/Exchanges constituency. Mr. Fitzgerald referred to the presentation and highlighted the following points:

- Considerable work had been done since the last MIG update. A major event was the Issuer briefing session on 15 October which had been well attended, mainly by Corporates and their legal advisors but also by Registrars and some Brokers. Whereas the focus of this briefing session had been around awareness building and clarifying some messages circulating in the market, the next one (scheduled on 10 December) would provide a brief project update (with focus on changes to the model), an update on general legislation to facilitate the migration, and the next steps that Issuers should consider to allow them meet the deliverables in time for when the AGM season starts. The Department of Finance would be invited to the meeting to communicate on the Authorities expectations. The 16-step milestone plan had also been issued and work by the Legal taskforce was progressing well to translate the migration legislation into standard text/resolutions for the circular and this was on track to be ready by year-end.
- The MIG queried whether other Registrars had been communicating to Issuers on the cost aspect and the Registrar representative responded that they had not. He had also understood that this would not be shared before February 2020 as Registrars claim that they do not yet have all operational specifications to have the full view on cost. As repeatedly pointed out, Ms. Mestdagh re-emphasised that, although this may be the case considering the ongoing discussions about the MVP and some uncertainty that will persist for some time, Registrars should progress with the going-in assumptions as final specifications are not needed to make an estimation on the costs.
- The MIG reviewed the Issues/Risks as identified by Euronext and the corresponding mitigation actions. On the question whether this Issues/Risk log needed to be further completed with those that other constituencies had identified, the Chairman commented that Euronext's Issues/Risk log was a good representation of the main issues, however, the MIG was not a Project Board and therefore a risk register did not need to be created. He also noted the strong overall focus on project governance and on the management of all risks and issues in a timely and transparent manner. The MIG fully concurred with this view.

## **PART III: LEGAL UPDATE**

The Chairman invited Mr. Twemlow to present the legal update. The MIG then noted the following:

- Euroclear was in the process of responding to questions received from the Department of Finance, the Takeover Panel and the Company Law Review Group (CLRG), a meeting with the Takeover Panel was scheduled next week.
- Some questions had been raised on the obligations of an Issuer CSD and Issuers administering their security to an Issuer CSD. The legal taskforce needed to take forward the fact that some of the practical procedures between Issuers, their legal advisor and

Registrars might need to be adapted and Issuers might need to change their Articles of Association.

- As political uncertainty around Brexit remains, the message may need to be re-emphasised that this project is agnostic to Brexit outcome. This had been discussed earlier in the day with the Department of Finance who reconfirmed this position.

#### **PART IV: UPDATE ON STAMP DUTY**

Ms. Mestdagh highlighted that the Stamp Duty proposal initially signed-off and approved by the Irish Revenue Commissioners (IRC) had raised significant concerns by AFME as it would cause important changes to market practice and it was expected that it would lead to a significant increase of Stamp Duty reclaim volumes. A revised, leaner proposal had been established by Euroclear and had been approved earlier in the day by the IRC.

The MIG discussed how Stamp Duty through EB and EUI would work and noted the following:

- the process for EUI remains as is, with the clarification that Stamp Duty would also be due on CDIs;
- as far as the EB process is concerned, the collection of Stamp Duty being client driven means that EB will use the stamp flag provided by the clients to calculate the Stamp Duty. If no stamp flag is entered by either buyer or seller, buyer will be debited;
- EB will not collect Stamp Duty on transactions with a CCP as counterparty (EB will ignore the stamp flag if included in the instruction) this would be up to the EB participant receiving securities from the CCP to enter either an own transaction or a transaction to another account with the correct stamp flag to ensure stamp is collected correctly.

To avoid double payment of Stamp Duty on transactions on Irish securities settling in CREST, Euroclear will confirm with the UK Revenue Commissioners that UK Stamp Duty Reserve Tax will not be payable on such Irish CDI transactions.

The revised proposal will be resubmitted to AFME but it is expected they will endorse the proposal as it responds to their remarks made and it is ultimately replicating what CREST is doing today. The MIG agreed that a separate meeting was needed for the Irish Brokers as this represented a significant change for them (**Action point**).

#### **PART V: UPDATE ON CORPORATE ACTIONS**

The Chairman highlighted that this topic had been largely dealt with throughout the meeting and Ms. Mestdagh added to the earlier discussion that there will be a tax service on choice dividends conditionally upon the account being structured appropriately. Contrary to what was mentioned in a previous meeting, EB will now be able to offer a tax service and to pay gross or at tax rate if the account is set up correctly. Further updates will follow in due course.

#### **PART VI: ANY OTHER BUSINESS**

There was no other business raised by the MIG.

The Chairman sought feedback from the MIG on whether an intermediate MIG was required in December prior to the next scheduled one on 15 January 2020 and the MIG deemed an additional meeting not necessary.

The Chairman thanked the members for their active participation and closed the meeting at 15:15.  
*Summary of new/outstanding actions:*

Action item ID	Description of action items	Date of Analysis/ Discussion	Assigned to	Planned Closure Date	Status
AC108	Euroclear to confirm clients have started to be approached about tariffs	25/06/2019	Euroclear	05/07/2019	Ongoing
AC189	Document the full end-to-end process for Issuers	25/06/2019	All	10/12/2019	Ongoing
AC 220	Integrate process for physical securities in the document describing the full end-to-end process for Issuers	14/11/2019	Registrars/ Brokers	10/12/2019	New
AC 221	Euroclear to engage with LSE in order to clarify the opposing views related to DIs on European securities issued in CREST	14/11/2019	Euroclear	10/12/2019	New
AC 222	Each constituency to respond to the consultation on DWT issued by the IRC	14/11/2019	All	09/12/2019	New
AC 223	Next Issuer briefing session to include the impact on underlying participants, address the Issuers' main concern on meeting services, the disclosure service, rectification on the misconception around DI	14/11/2019	Euronext	10/12/2019	New
AC 224	Coverage of direct contact with Issuers individually to be expanded to full Issuer base	14/11/2019	Euronext	10/12/2019	New
AC 225	Meeting to be set up for the Irish Brokers regarding Stamp Duty	14/11/2019	Euroclear	15/01/2020	New