



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

Minutes of the Market Implementation Group, Meeting 9 Held on 13 May 2020 via Webex

Members Present:

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

In attendance:

Euronext Project Manager: David Fitzgerald
Mason Hayes & Curran: Justin McKenna
Euroclear: An Mestdagh
Euroclear: Christopher Twemlow
Euroclear: Raymond Mallon
Euroclear: Olivier Lefranc
Euroclear: Kathleen Seurinck

The Chairman opened the meeting at 12:00 and welcomed the members to the ninth meeting of the Market Implementation Group (MIG). He noted that the Irish CSD project had progressed well, even with the continuing COVID-19 restrictions, with main achievements since the previous MIG being:

- the setting of the pricing for Ireland which was a deliverable that was key for the market and was disclosed in a first instance to the Irish and UK User Committees on 29 April and 6 May respectively; and
- the issuance of a joint Euronext/Euroclear letter to the Issuers on 24 April, upon request of the Steering Board, the outline of which had been communicated during the previous MIG.

The primary purpose of this meeting the Chairman said was to take stock of the project's advancement, to assess issues of concern and to identify the focus over coming months.

APPROVAL OF MINUTES

The MIG approved the minutes of 22 April 2020, as presented.



UPDATE ON ACTION POINTS

The MIG took note of the three open action points:

- the action on pricing (AC 108) will be covered during this meeting (see Part II), after which this point will be closed;
- the workshop for Issuers (AC 262) will be discussed as part of the Euronext update in Part III; and
- the action regarding the possibility for ETF Issuers to effect their Schemes of Arrangement by virtual court hearings (AC 267) was ongoing and options were being explored.

PART I: OVERALL PROGRAMME UPDATE

The Chairman asked Ms. Mestdagh to take the MIG through the overall project update and she presented the following points.

- Work was actively progressing on drafting the migration document and its publication was expected over the next few weeks.
- Good progress was being made with and within the Registrar constituency:
 - Euroclear Bank (EB) had provided a draft of the legal contract to the Registrars and their comments were due by 25 May;
 - Discussions regarding the remaining comments on the Service Description for Registrars (the main ones are related to voting, reconciliation and CDI register) are progressing well. Discussions around business continuity procedures had also been initiated, the outcome of which will be included in the Service Description once agreed;
 - Workshops with Registrars had taken place around testing and some further discussion was required to finalise the testing plan, including timeline and scenarios; and
 - Following feedback received from two Registrars, the due diligence analysis had started, the remaining two Registrar questionnaires are expected to be received shortly.
- A joint Euronext/Euroclear letter had been sent to listed companies, re-iterating the fixed March 2021 deadline, highlighting the status of open issues and emphasising the need for continued focus by all parties to ensure readiness.
- Three Issuers have already advised that they would not migrate to Euroclear Bank and discussions with their Registrars were ongoing regarding their plans going forward. All three are unlisted Issuers.
- The open dialogue between the SEC and four US law firms, with input as appropriate by Euroclear, was continuing in order to seek clarity on one aspect of US securities law which may potentially impact Issuers with a significant number of US beneficial owners.
- All remaining ETF/ETP Issuers have now confirmed the date on which they will migrate their securities into iETFs or iETPs.

The Chairman noted the strong progress made and invited comment from members of the MIG. Mr. Molony then provided the MIG with his view on the ongoing Registrar-related discussions which revolved around:

- the test scenarios, noting that the end-to-end testing with Registrars (phase D of the testing) only starts in December thus limiting the time for end-to-end testing. Upon

request of the Registrars, Euroclear is looking to see if the testing can be more frontloaded with additional test scenarios in phase C - the integration validation.

- certain aspects regarding voting services, reconciliation and related process which needed to be clarified rapidly;
- some market practices which will change as a result of the move to Euroclear Bank as Issuer CSD and which will need to be documented and kept up to date. The MIG discussed and agreed that areas should be identified where further clarity for the market was required beyond what has been detailed in the Service Descriptions and other relevant publications, and these processes and deadlines should be documented accordingly. Mr. Fitzgerald sought to understand how and by whom this was managed for current market practice and which areas would be changing. The MIG heard that a CREST white book was available on the EUI website (and Ms. Mestdagh would forward it to Mr. Fitzgerald), noting however that this was not a market practice document but could serve as a starting point for a separate discussion on the topic. It was suggested and agreed that Euronext as the Irish Stock Exchange would take on that task (**Action point**).

Timeline

The MIG reviewed the timeline and noted the changes related to the delayed publication of the Migration Guide and the proposed MIG dates for the remainder of 2020, which were being reviewed to ensure a more balanced spread.

PART II: PRICING IRELAND

The Chairman noted that the work by Euroclear on the pricing model post migration had been completed, a key consideration on which the market had been waiting. Ms. Mestdagh then presented the pricing that had been set for Ireland, which had recently been communicated to both the Irish and UK User Committees and which is being further discussed with clients bilaterally.

She reminded the MIG members that the tariff is transparent and clear, reflecting both the established approach in EB (and EUI) while making specific accommodations for Irish securities and it is consistent with the broad pricing parameters indicated in the May 2019 white paper and elsewhere. The pricing model pertains to the Irish securities held for safekeeping and settlement through EB as well as the EUI tariff for the part that clients may wish to hold as CDIs through EUI. She highlighted that the main fee components are the safekeeping fees on the value of the assets held in the account and settlement fees based on number of transactions.

The MIG noted and discussed the details of the pricing rationale and tariff:

- **in EB** a sliding scale concept applies, i.e. the higher the depot or number of transactions, the lower the fees for safekeeping and settlement respectively. The tariff may vary according to the country (Ireland belongs to the "European Zone" countries referred to in EB's General Fees brochure).
 - EB *safekeeping* fees for Irish equities will have an 'Issuer CSD-like' price level and uses a sliding scale ranging between 0.60 and 0.10 basis points, taking into account Family depot and Business Unit depot. For debt, the existing EB tariff for debt instruments in "European Zone" countries will be charged and, depending on the aggregated depot for all domestic debt instruments across all European Zone countries, may vary between 1.35 and 0.21 basis points.
 - EB *settlement* fees include the standard internal settlement fees and, for equities a cost-recovery supplement. Depending on the aggregated number of settled instructions in the Business Unit, the internal settlement fee may vary between €1.50 and €0.33 per instruction. The cost-recovery supplement for a five year period amounts to €0.35 per instruction. The supplement is not applicable for markups/markdowns and settlement in domestic debt. Fees for external instructions (i.e. mark-up/mark-down) range between €7.00 and €0.35 per instruction.

- **For EUI**, Irish securities that remain in EUI will no longer be considered as domestic since they are moving to a CDI structure, hence the *safekeeping* fee for Irish CDIs (0.55 basis points) will be higher than for the current domestic service yet significantly lower than the current CDI tariff applicable in EUI (of 2 basis points). This reduced CDI tariff reflects the additional processing costs for EUI and recognises the importance of Ireland to Euroclear; it is only applicable to Irish equity CDIs held in EUI. For *settlement* in EUI, the standard EUI settlement sliding scale continues to apply for domestic deliveries. A fixed realignment fee (without surcharge) will be charged for moving Irish securities from EB to EUI.

Ms. Mestdagh highlighted that both the EB and EUI Tariff will be officially published at the end of May and it was agreed that the information in the presentation can meanwhile be used by the MIG members in their discussions with their stakeholder constituencies. Euroclear Commercial staff will reach out to clients and have bilateral discussions regarding the tariff based on certain assumptions made. Clients can make use of a fee simulation tool, available since 12 May and upon request to their Sales & Relationship Manager, to calculate the cost impact on their own firm of the new tariff, including when holding split positions of Irish securities in EB and as CDIs in EUI.

The MIG asked for further clarification on a few points and noted the following:

- the fees incurred in EUI will be charged in Pound Sterling, in EB it is in Euro;
- there will be no separate fee charged for shareholder identification requests, this is included in EB's safekeeping fee;
- fees for other services beyond safekeeping and settlement (e.g. withholding tax services), will be charged as per the current EB tariff; and
- on whether EUI and Euroclear Bank would be aligned in the implementation of CSDR Settlement Discipline, especially the implementation of penalty fees, Ms. Mestdagh would check and revert **(Action point)**.

The Chairman added that on average the pricing for Ireland will be doubling, however, depending on the depot and activity levels, this may vary appreciably by client and he also noted that the overall level of pricing remained competitive internationally. It was further noted that the fee simulator can help clients to establish a more precise impact of the new tariff in line with their actual or planned business activity.

PART III: EURONEXT/EXCHANGES' UPDATE

The Chairman invited Mr. Fitzgerald to provide the Euronext update who then elaborated on the following points:

- The joint letter to Issuers referred to earlier acknowledged the very challenging circumstances that businesses are facing as a result of the COVID-19 pandemic and outlined the forthcoming key milestones towards migration. It also included commentary on certain points which seemed to hold back Issuers from submitting the migration resolutions at their AGM, namely on:
 - the possible tax considerations for which the Irish Authorities had reconfirmed that should legislative change be required in this respect, this would be addressed as part of the Finance Bill or associated tax legislation; and
 - the potential US securities law issue.

The MIG noted that no particular feedback had been received on this letter during the various discussions that had taken place following its issuance.

- Meanwhile 10 companies have held their AGM without submitting the migration resolution and a few companies have postponed the AGM and new dates still needed to be confirmed. Some other companies have confirmed to proceed with their May AGMs without inclusion

of the migration resolution and shareholder approval of the migration resolutions will thus need to be sought at specially convened EGMs which are likely to be held late in 2020 or possibly early in 2021.

- Euronext Dublin will create a webpage, in line with legislative requirements for the Listing Authority, where companies can access the intended live date (i.e. migration date), the deadline for notification of resolutions being passed, and the list of participating Issuers. The deadline date for resolutions will be in February 2021 and a notice that will contain the required information will be issued shortly to the companies impacted.

A discussion ensued on a number of topics on which some legal advisors to the Issuer community are seeking further clarification in order to be comfortable with finalising the circular and migration resolutions and to organise their AGM/EGM. Mr. McKenna provided an update on the relevant points:

- Regarding the US securities law issue, the MIG sought to understand whether US counsel were still confident about their expectation of a positive and timely response from the SEC and that it was rather a matter of time to receive such confirmation. Mr. McKenna highlighted that discussions with the SEC and the US legal counsel were progressing well, there was however no timetable available by when confirmation from the SEC could be expected but it should at least take several more weeks.
- As far as the potential Capital Gain Tax, Capital Acquisitions Tax and the Close Companies provisions of Corporation Tax matters were concerned, Mr. McKenna expressed the view that legislative change would be needed. Ms. Mestdagh commented that she would organise a separate call with Mr. McKenna after the meeting as it was still unclear what the substance of these potential issues actually was, as such this still raised a concern considering:
 - the Authorities earlier feedback (to the Steering Board and MIG, and included in the 24 April letter to Issuers) that the intention and application of taxes and the related taxation policies do not change as a result of EB becoming Issuer CSD; and
 - that no further details had been shared with the Authorities, with Euroclear nor the Legal Taskforce substantiating the need for legislative changes in this respect.

The Chairman requested that any revised legal views available be shared and he underlined the urgency of getting resolution of this matter. In addition he noted that the issue, preferably with suitable additional detail on the actual legal concerns, would be raised at the Steering Board of 18 May with the Department of Finance for further follow up **(Action point)**.

- The ability to hold general meetings in the COVID-19 context was also an area of concern for Issuers that needed further legal work. The MIG noted that two options were being explored, i.e. 1) virtual meetings and 2) physical meetings that would facilitate members participation by electronic means, while ensuring the ability of shareholders to ask questions and deliberate on agenda items before taking a decision and voting. Mr. Egan noted that this area was a clear priority and as such was the focus of ongoing work by the CLRG and the DBEI.
- The transposition of the Shareholders Rights Directive II into Irish law was equally subject to legal discussions, however considering the legislative changes required to adapt to the COVID-19 context, this was not considered as a priority for the time being. Mr. Egan added that a notice had been received from the President of the High Court the preceding week regarding the type of cases that could be heard either via remote hearings or in courtrooms adapted in conformity with COVID-19 health requirements, as well as the priorities that will be applied. He agreed to revert to the MIG with more detail of the relevant Court notice **(Action point)**.

In Mr. McKenna's opinion, it is advisable and expected that Issuers only submit the migration resolutions to their shareholders once they and their legal advisors have gained sufficient comfort as to the robustness of the formulation of the resolutions, i.e. after SEC confirmation regarding

the US securities law requirement has been received and the potential tax considerations have been addressed in the Finance Bill and related tax legislation in Q4 2020. The Issuer representative Mr. Deasy concurred with this view and highlighted that the additional logistical complexity this year for companies to hold general meetings in the COVID-19 context required unusual measures in an already difficult situation, so holding general meetings towards the end of the year is a more plausible scenario to consider.

The Chairman added that formal negotiations are underway to form a new Irish government and, given the framework agreement put in place recently between the three parties concerned, it was reasonable to expect that the new government could be formed by end of June, with a fully constituted parliament to address primary legislative changes.

Considering the above points affecting the Issuers, the Chairman felt the time was right to organise another Issuer seminar. This sentiment was shared by Mr. Fitzgerald who highlighted that a virtual meeting would be envisaged before the summer as a follow up on the joint letter and the Service Descriptions that have been published. Mr. O'Donoghue also welcomed the idea, in particular given the limited feedback obtained on the Issuer letter and the challenging timeframe to prepare for the migration which requires continued focus, even if AGMs/EGM may only be convened later in the year. Ms. Mestdagh and Mr. Fitzgerald will agree on the topics to be covered during this seminar **(Action point)**.

Mr. Bey then updated the MIG members on Euronext's general project roadmap regarding its CCP plans and in particular that any change in this regard would only be effected after the migration of Issuer CSD. Referring to the press release issued last December in which Euronext announced it will sell its minority stake in EuroCCP, he highlighted that the deal is still subject to closing, pending regulatory approvals and the arrangement of a supporting liquidity facility at the EuroCCP clearing entity level. Hence, it was too soon to elaborate on its CCP arrangements for the Irish market. Mr. Arrowsmith, the CCP representative was fully aligned with that view.

ANY OTHER BUSINESS

The MIG noted and agreed with the proposed MIG dates for the remainder of 2020, which would be held on the following dates:

- 8 July;
- 16 September;
- 22 October; and
- 2 December.

As there was no further business, the Chairman thanked the members for their participation and closed the meeting at 13:30.

Summary of new/outstanding actions:

Action item ID	Description of action items	Date of Analysis/ Discussion	Assigned to	Planned Closure Date	Status
AC 267	Inform MIG on possibility for ETF Issuers to have virtual court hearings or some equivalent mechanism with respect to migration using an ISoA	22/04/2020	Mr. Egan		1 st update provided to MIG on 13/05 Ongoing
AC 271	Identify areas of market practices which will change as a result of the move to EB and document the (starting from CREST white book)	13/05/2020	Mr. Fitzgerald	TBC	New

AC 272	Ms. Mestdagh to check and revert whether EUI and Euroclear Bank would be aligned in the implementation of CSDR Settlement Discipline, especially the implementation of penalty fees	13/05/2020	Ms. Mestdagh	June 2020	New
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 274	Details on the notice received from the President of the High Court to be shared with the MIG	13/05/2020	Mr. Egan	May 2020	New
AC 275	Issuer seminar to be organised, content of which to be agreed upon (incl. updates on open legal points, details on changes for Issuers, upcoming key milestones)	13/05/2020	Euronext/ Euroclear	End June	New