



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

Minutes of the Market Implementation Group, Meeting 12 Held on 22 October 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
CCP representative: Bradley Arrowsmith, EuroCCP
Euroclear representative: Sandra Aboutboul, Euroclear

In attendance:

Mason Hayes & Curran/Legal Drafting Group: 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

Apologies:

Stock exchange representative: Eric Bey, Euronext

The Chairman opened the meeting at 13:00 and welcomed the members to the twelfth 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.

Before proceeding to the points on the agenda of today, the Chairman stated that migration is approaching fast, with less than five months to go. Reflecting on the five weeks period between the September MIG meeting and today, the project had made headway and important goals had been reached, the main ones being:

- the resolution of the SEC issue;
- the clear progress made by Registrars; and
- the publication of an update to the Migration Guide and to the Service Description for Investors.

The Chairman commented that today's publication of the 2020 Finance Bill, and shortly of the Brexit Omnibus Bill as well, should give market stakeholders the clarity and certainty about some of the long-outstanding matters they wanted to see confirmed in legislation and hopefully this will spur their own progress. In the same spirit, Minister Fleming's speech at the Irish Funds Annual

Conference on 21 October, where he had spoken about the CSD migration to be completed by the end of March next year and about the forthcoming legislative changes to make the migration a success, should provide more assurance to the market, but a further published Ministerial Statement was expected, which should a.o. bring clarity on the EUI equivalence decision.

While acknowledging the recent achievements, the Chairman underlined that important matters still needed to be resolved. A key issue for the MIG to discuss at this meeting was the revised template circular which had yet to be made available to Issuers and this needed to happen as a matter of urgency.

APPROVAL OF MINUTES

The MIG approved the minutes of 16 September 2020, with one change.

UPDATE ON ACTION POINTS

The MIG reviewed the open action points and noted that:

- an update on the progress of documenting changes in market practices as regards corporate action timelines and the process for certificated shareholders (AC 271) will be provided as part of the Euronext update in Part II;
- legislative amendments on numerous tax matters (AC 273) have been addressed in the 2020 Finance Bill, albeit more were to follow concerning Stamp Duty; and
- legislative amendments reflecting the Record Date change (AC 289 and AC 290) are in the process of being drafted.

The MIG also noted that several actions had been closed, as outlined in the presentation.

PART I: OVERALL PROGRAMME UPDATE

The Chairman asked Ms. Mestdagh to provide an update on the main programme developments since the mid-September meeting and the MIG considered and discussed the following points:

- The SEC issue had been successfully resolved, i.e. US counsel are comfortable that Issuers with a US beneficial ownership of >10% do not have to comply with specific US law requirements and no additional representation is needed in the Issuer circular.
- Further legislative certainty had been obtained with the publication on 22 October of the Finance Bill 2020 which includes some (but not all) of the provisions relating to the migration from CREST to Euroclear Bank, as well as provisions related to Capital Gain Tax, Capital Acquisitions Tax and Close Companies provisions of Corporation Tax. The amendments relating to Stamp Duty will be included later in the Parliamentary Committee stage of the enactment process, which should happen in mid-November. It was also expected that the Brexit Omnibus Bill would be published very shortly.
- Nonetheless, some Irish legal advisors have indicated that they will not advise companies to proceed with the EGMs until all legislative changes have been published or even enacted. Ms. Mestdagh informed the MIG that the Authorities had strongly re-iterated, at the Steering Board of 14 October, that migration will happen in March 2021 and companies are urged to get prepared for this date. This view had been shared by Minister Fleming at the Irish Funds Annual Conference on 21 October as highlighted by the Chairman at the start of the meeting.
- A substantial effort has gone into the revision of the template circular and it was expected that it will soon be shared with Issuers. A more detailed status will be given by Mr. Fitzgerald as part of the Exchanges update.

- Discussions had been ongoing for some time with the Revenue Commissioners (RC) on the operational process to be followed by clients when approaching the RC directly for a refund for Stamp Duty or tax on a market claim. The RC recognises that there is work to be done in this area and they have indicated that this, once the Stamp Duty provisions of the Finance Bill are published, is a priority for them to update the documentation for market participants accordingly in the next few weeks.
- EUI was continuing discussions to obtain Third Country CSD recognition in order to continue to provide Irish securities settlement from 1 January 2021 until the migration date in March 2021. At the Steering Board last week, the Authorities had re-stated that there was no reason to believe that equivalence would not be obtained and were hopeful this would be confirmed publicly in the coming weeks.

A discussion ensued on the plans for the worst case scenario that equivalence would not be granted and the MIG considered and noted that:

- this prospect of this happening is bleak and would represent a completely unacceptable scenario for participants in the Irish market as EUI will then no longer be able to settle any of the EU27 securities;
 - if confirmation is not forthcoming in the short term, contingency measures would need to be issued;
 - clearly these political decisions are at the very top of the agenda of market participants, other stakeholders and the Authorities fully understand and accept this. Feedback received from the different EU and national Authorities indicates that equivalence will be granted, however it remains a political decision and as such EUI cannot guarantee this;
 - the level of concern among Investors and other market participants has been firmly and formally highlighted and the message on the importance of bringing timely resolution to this issue has been raised on several occasions at the Steering Board and directly with the Authorities in various meetings and in bilateral interactions;
 - it was recognised that the Irish Authorities can only issue a positive statement in this regard when the European Commission publishes its Implementing Act (only then can EUI formally apply to ESMA for Third Country recognition);
 - there is an intent by some stakeholders to go directly to ESMA to express concerns, it was agreed that this was welcome and that such representations should be made across various fronts;
 - as the Chairman indicated, the Authorities high level of confidence on this matter being resolved appropriately has not changed and no adverse comments have been received in this respect however receiving a formal decision was now of the utmost importance to the overall migration. While a positive public statement is expected in November the timeline is not within Euroclear's or the market's control;
 - this topic had also been a key issue on the agenda of the recent Irish, UK and Euroclear Bank User Committees.
- The update Migration Guide was published on 14 October and an update of the Service Description for Investors reflecting a.o. clarifications regarding Stamp Duty, mark up/mark down and voting was published on 21 October. The latter may not be the final version, this will be dependent on the RC discussions on operational processes.
 - Testing was progressing according to plan.

Issuer progress

The MIG was then appraised of Issuer constituency progress and the following points were briefly highlighted by Ms. Mestdagh:

- an increasing number of Issuers/legal advisors are forging ahead with individual preparations for their EGMs;
- the Letter from Issuers asking EB to make their securities eligible in EB for migration had been updated to reflect the latest changes agreed upon with the Registrars in the Service Description. It was worthwhile noting that Issuers which have already sent the letter to EB do not need to resend it. The updated letter will be shared with the MIG members after the meeting;
- ETF migration into iETFs/iETPs is progressing well, only four migrations remain to be completed as per the agreed landing slots and one fund will be closed (in January). Mr. Young as ETF Issuer representative confirmed that the situation had been fairly stable throughout the process, awareness on the steps to take had been high and no significant obstacles had been encountered.

The Issuer representative Mr. Deasy had a number of questions which were then discussed by the MIG, namely:

- *How can Issuers progress preparations for their EGMs given that the template circular is incomplete, several points being still outstanding, including the equivalence decision?* Ms. Mestdagh clarified that certain Issuers prefer to convene their EGM before year end and given the significant amount of work needed to customise the template circular to their own company's requirements and shareholders' needs, Issuers with their legal advisors should, and had already, started preparations based on the most recent version of the template circular. Nonetheless, all agreed that the revised template circular must be released as a matter of urgency in order for all Issuers to meet the desired December 2020 and January 2021 timeline. Ms. Mestdagh also remarked that the revised template circular is significantly different than the one published in March and has significantly grown in size. Mr. McKenna remarked that he would have a clearer view by the end of the day on whether further comments were needed and it would take another few days to have a stable version available to circulate more widely. Ms. Mestdagh emphasised that Issuers had no time to waste and they should start working on their individual circulars. Waiting to take action until all the outstanding points are finalised, or even enacted in the case of the Finance Act, may lead to missing the 24 February 2021 deadline for notifying shareholder approvals to Euronext, and running the risk of having to materialise their securities.
- *What will the circular include regarding the outstanding tax matters?* Mr. McKenna pointed out that the version of the circular to be released in the coming days would not include wording on the outstanding points, that would have to be included by each Issuer's own legal advisor;
- *If the majority of Issuers hold their EGMs in January how can this be supported?* Mr. Egan commented that the law that allows for holding virtual General Meetings expires at the end of December. There is an unanimous recommendation from the Company Law Review Group (CLRG) to extend virtual meetings which requires the Authorities' decision (no feedback received as yet). He added that convening 'hurried' EGMs is adding nuisance and cost so close to the AGMs and, in his opinion, it would be sensible to delay the migration to 30 June 2021. Ms. Mestdagh responded that the overall expectation was that any equivalence granted would be time-limited to end of March so delaying migration was off the table, this was agreed by other members of the MIG.

The Chairman reminded the MIG members that, back in September, a request for a delay of the migration had been formally put to the Steering Board by the CoSec Group of Issuers and that the response of the Steering Board had been very definitive that the migration deadline will not change. This had been highlighted in Minister Fleming's speech yesterday as well. Messaging in this respect has been very clear and consistent all along so market stakeholders need to work towards the March migration date. He added that at this juncture, every single day matters for getting the revised template circular out, which hopefully will be no later than early next week. Issuing the template circular any later will

lead to a further shortening of the already very tight timeline. The ultimate date by which the circular needs to be available is circa the 2nd week of November. By that point, the equivalence decision would hopefully be received and the necessary legislative changes published. The Chairman remarked that the timeline is tighter than everyone would like it to be, but it remains the reality and all stakeholders need to work accordingly with it.

Mr. Molony queried whether it would be feasible to move the 24 February deadline for notification to Euronext that shareholder approvals have been secured by one or two weeks and Euronext responded that this would need to be discussed with Euroclear as this deadline had been set so as to securely deliver the technical environment for the migration. The Chairman agreed this was a path worth exploring in due course but should not be relied upon at this point **(Action Point)**.

Registrar progress

Ms. Mestdagh then presented the progress made with the Registrar constituency and she highlighted that the bilateral contract sign off by all Registrars represented a significant step forward. The Service Description for Registrars was being updated and would be sent for Registrar sign off this week.

Focus now shifted to the testing and business contingency measures. Registrar-EB SWIFT connectivity testing was foreseen to be concluded by the end of the week. Testing phase B was now ongoing with all four Registrars and no material issues had been encountered so far. Preparation for phases C & D was on track. More testing scenarios had been mutually agreed, addressing Registrars' concerns they had expressed at the previous MIG. They were now fully comfortable with the test approach.

As far as business contingency measures are concerned further discussions are needed to consider and agree on the minimum requirements in this respect for both Registrars and Euroclear Bank.

First due diligence conclusions anticipated for the end of October.

Next, Ms. Mestdagh took the MIG through the Registrar Dashboard, presented in Annex 3, highlighting that significant progress had been made by all four Registrars and that there is general acceptance of the requirements for a successful March 2021 migration among them. Most amber ratings were at the level of testing, were generally trending towards green and there are no red workstreams.

Client progress

In terms of the Client update, the MIG noted the following:

- A webinar focusing on Stamp Duty, mark up/mark down, Nationality Declaration and settlement flows that Euroclear had hosted on 30 September was very well attended by both clients of Euroclear Bank and EUI, totalling 326 attendees.
- Many clients are well advanced in their preparations as witnessed by the various detailed questions that had been received during the webinar, but this is not the case across the board. An intensified communication campaign is being envisaged for those clients that need to increase the pace.
- The online training modules, that will be made available towards end Q4, will allow clients to check their understanding of these topics.
- The updated Service Description for Investors was published on 21 October (containing further clarifications and operational detail), with a further final update to follow pending conclusion of discussions on procedural matters with the Revenue Commissioners.
- Clients can, but do not have to, test. There will be some specific functionality scenarios available for those who wish to test (such as mark up/mark down, Nationality Declaration, Stamp Duty). Responding to a question from Mr. Fitzgerald on whether Euroclear Bank had an indication of the take up of client testing, Ms. Mestdagh highlighted that an EB client account is needed for testing purposes. The MIG noted that most of the

AFME members already have a Euroclear Bank account and are already familiar with Euroclear Bank, but many clients have yet to decide on how exactly they will proceed (with an account in Euroclear Bank or not). The Chairman added that client testing is optional but desirable. To support their decision making process, the Chairman encouraged the MIG members to re-circulate the Service Description within their constituencies.

Timeline

The MIG took note of the project timeline included in the presentation. The next major milestones being to distribute the revised template circular to Issuers and Registrar testing phase C.

PART II: EURONEXT/EXCHANGES' UPDATE

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

- A limited number of Issuers have instructed US Counsel to clarify the SEC issue and have meanwhile received a positive response from their US Counsel indicating that the migration event will not lead to filing with the SEC. Other impacted Issuers that wish to seek their own legal advice on the matter are recommended to use one of the same firms of US Counsel that have been involved in the SEC discussions, for efficiency and timeliness reasons.
- Euronext's engagement with Issuers continues. Some Issuers remain focused on convening an EGM before year-end.
- An Issuer 'Readiness Pack' is being prepared, bringing together a variety of documents that will guide Issuers through the steps required to pass migration resolutions and to be eligible for the migration to Euroclear Bank. Mr. Deasy suggested that Euronext should share this 'Readiness Pack' now instead of waiting for an updated version of the template circular, this view was endorsed by the Chairman and by other members of the MIG.
- An open point for several months now is documenting the changes to the Corporate Action timelines, bringing these deadlines more in line with European standards. Mr. Fitzgerald explained that a two-phased approach is being taken. The basic timelines (phase 1) have been sent to Brokers and Registrars for any concerns to be raised by 28 October after which Euronext would publish them on their website. The more complex ones where there may be some divergence with LSE (phase 2) are still being discussed between Euronext and LSE. LSE's feedback on these timelines is expected in the next few weeks and Mr. Fitzgerald said he would try to expedite this process. Once finalised, the timelines will be shared with a broader audience and published on Euronext's website. Ms. Mestdagh highlighted that there may potentially be some differences when trading on LSE or on Euronext so it is important to ensure appropriate communication towards all stakeholders. She added that the timelines, once finalised, will also be added to the Service Descriptions as an annex.
- The Chairman highlighted that the process for handling certificates between Brokers and Registrars still needs to be fully documented and he asked the Broker and Registrar representatives to provide an update. Mr. O'Carroll highlighted that the process has been largely agreed and the current estimate is that up to two weeks would be needed to deliver the actual certificates. Mr. Molony added that some details still needed to be worked out with Euroclear regarding the courier services. The MIG discussed which info this end-to-end process document should contain, what level of detail is required and who would take this action forward. The MIG agreed that this market practice document should describe how the counter service will work. It can be brief, showing the process flow and providing clarity on some aspects where relevant. Mr. O'Carroll undertook to action this **(Action Point)**. Mr. McKenna added that he would include some wording around this in the template circular.

- Next focus for Euronext was on getting the revised template circular out to Issuers. The 'Readiness Pack' will also be made available. A webinar will be targeted for the first half of November however, in order to have a productive discussion, this is dependent on the revised template circular being available.

The MIG was concerned about the timing to issue the 'Readiness Pack' being subject to the publication of the template circular as a number of Issuers had already inquired when the 'Readiness Pack' will be received. Considering that the 'Readiness Pack' was almost compiled, with the exception of the template circular, the MIG asked that Euronext distribute the materials already available, with the template circular to follow separately (**Action Point**). The MIG also asked that a date for the next Euronext webinar be blocked in Issuers diaries in order not to miss an opportunity to communicate a number of messages (e.g. on the Finance Bill, Brexit Omnibus Bill, EUI equivalence) (**Action Point**). Mr. Fitzgerald confirmed he would take this action.

PART III: LEGAL UPDATE

The Chairman then asked Ms. Mestdagh to update the MIG on the legal developments that had not been already covered and she highlighted that the voting process had been agreed with the Registrars. They wished to discuss this as well with the Legal Taskforce to ensure this process is fully in line with the Companies Act.

Registrar representative Mr. O'Donoghue highlighted that the individual Issuers notice may need to be specific on how proxies should attend. Ms. Mestdagh remarked that in case there is a standard approach, this could be included in the Service Description, but this is for the Issuers to decide. Mr. McKenna remarked that some wording could be foreseen in the template circular but that this was not critical at this stage.

PART IV: NEXT STEPS

Ms. Mestdagh referred the MIG to the next steps outlined in the presentation and remarked that, while a lot of progress has been made, focus should be maintained for the last concerted push towards the March deadline. Top priority for the coming days is to get the revised template circular to the Issuers as soon as possible so they can start preparing for their EGMs. The focus for the weeks ahead would also be on:

- closing all outstanding points with the RC and good progress had been made this morning toward finalising some of these;
- preparing the Registrar-EB functional testing and finalising business continuity discussions with Registrars;
- Euronext's publication of the changed corporate actions timelines and the organisation of the Issuer webinar shortly after distribution of the revised template circular;
- continue new client on-boarding, noting that most clients have not decided yet on whether to hold their Irish corporate securities as CDI in EUI or migrate to EB. Ms. Mestdagh added that CCPs will continue to send settlement flows to EUI until Tuesday 16 March 2021. If clients, active in cleared transactions, decide to transfer their positions to EB prior to the migration deadline, they need to be aware that there will be significant number of realignments as CCPs will continue to send cleared settlement flows to EUI until COB settlement day 16 March 2021. This would have an impact on clients' costs and might also impact their settlement efficiency; and
- formal decision on and publication to the market of the equivalence recognition for EUI for the January to March 2021 period.

ANY OTHER BUSINESS

There was no other business raised by the MIG.

The Chairman ended the meeting by summarising the main actions; i.e. distribute the revised template circular latest by the early next week, Euronext to publish the 'Readiness pack' tomorrow and schedule the next Issuer webinar in early November. He thanked the MIG members for their active contribution to the discussion, for their ongoing efforts and proactive engagement with the constituency they represent, and he closed the meeting at 15:40.

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 | End November | Ongoing |
| AC 290 | Engage with DBEI on proposed draft wording for the legislative amendments wrt Record Date | 16/09/2020 | Mr. Egan/ Euroclear | Enactment of Law | Ongoing |
| AC 295 | Check feasibility to move the 24 February deadline for notification to Euronext that shareholder approvals have been secured | 22/10/2020 | Euronext/ Euroclear | TBC | New |
| AC 296 | Document process for handling certificates between Brokers and Registrars | 22/10/2020 | Mr. O'Carroll | End November | New |
| AC 297 | Distribute 'Readiness Pack' to Issuers | 22/10/2020 | Euronext | 23/10/2020 | New |
| AC 298 | Schedule Issuer Webinar early November | 22/10/2020 | Euronext | 30/10/2020 | New |