



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

Minutes of the Market Implementation Group, Meeting 16 Held on Thursday 11 March 2021 at 11:00 IST via Webex

Members Present:

Chairman: Brian Healy, Independent
Issuer representative: Ronan Deasy, Kerry Group
International banks representative: Peter Stewart, Citi
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
Stock exchange representative: Eric Bey, Euronext

In attendance:

Mason Hayes & Curran/Legal Drafting Group: Justin McKenna
Euronext Project Manager: David Fitzgerald
Euroclear: An Mestdagh
Euroclear: Olivier Lefranc
Euroclear: Niels Watzeels
Euroclear: Sandra Aboutboul
Euroclear: Kathleen Seurinck

Apologies:

ETF Issuer representative: Paul Young, Vanguard

The Chairman opened the meeting at 11:00 and welcomed the members to the sixteenth meeting of the Market Implementation Group (MIG). He also welcomed Mr. McKenna (Mason Hayes & Curran) who he had invited to attend the meeting.

The Chairman remarked that, after 18 months of intense preparation to migrate Irish corporate securities from EUI to Euroclear Bank as Issuer CSD, the project is within days of launch. He noted that this alignment meeting, the day preceding the start of the migration, was to touch base with the MIG members to:

- discuss the latest developments and remaining actions to be taken before the migration commences; and
- debrief them on the discussion with the Steering Board that had taken place just prior to this meeting.

PROJECT STATUS

The Chairman invited Ms. Mestdagh to provide the status of the project and she highlighted that the final preparatory measures for the migration of tomorrow evening were in a good shape, albeit that some last points with the Authorities still needed to be closed. These included the following:

- The Brexit Omnibus Bill Commencement Order had been published, the Commencement Order with respect to the Finance Bill had been submitted for signature by the Minister, which is expected to be signed today or by tomorrow latest.

- The update to market participant documentation for the taxation changes was also outstanding. The Revenue Commissioners (RC) had sent their proposals, which were very generic, and a discussion was ongoing to include the process specificities for Euroclear Bank as agreed by the RC. Both the RC and the Department of Finance have indicated that completion was expected imminently. Euroclear Bank will then be able to finalise the relevant tax sections in the Service Description for Investors.
- Pending as well was a 'clean-up' of a few anomalies in the legislation and points that needed further clarification. At the Steering Board this morning, the Authorities confirmed that they will do this after the migration but could not provide a concrete timeline; hopefully this would be done sooner rather than later by means of a "Miscellaneous Provisions" Bill. Euroclear Bank had asked to be involved in this exercise, together with the Company Law Review Group (CLRG) and the Department of Enterprise, Trade and Employment (DETE). Responding to Mr. Stewart's question on the impact of these pending legislative points on the migration itself, the Chairman responded that these were not on the critical path, however, clarification was required as soon as possible, but it was likely that this would be in Q2 rather than Q1.

The Chairman remarked that it was very regrettable that these points have not been resolved yet, although repeatedly discussed with the Authorities. He then asked Mr. Egan, from a CLRG perspective, to assess where matters stood legislatively and what options were available to effect a full resolution of the issue. Mr. Egan responded that the key legislative points that were cause for concern were the definitions of 'relevant securities' and of the 'record date' (RD) which were not in line with the proposal previously made to the Authorities. With respect to the relevant securities, Mr. Egan noted that he had recently worked on a quick fix for the "relevant securities" definition point, using a draft Statutory Instrument, that he had shared with a few members of the CLRG and with Ms. O'Dea at the DETE, as amending primary legislation itself would take a significantly longer period. He was awaiting a reply on the Statutory Instrument proposal.

Mr. Deasy was highly concerned about the lack of clarity around the RD which was posing a real problem to those Issuers due to send out their notices of AGM imminently, and soon others will be in a similar position considering that the majority of Issuers will have their AGMs before the end of May. He sought clarification on the legal basis underpinning the RD and confirmation that the balance of securities voted upon prior to the RD will be blocked for trading until after RD. Ms. Mestdagh responded that the Brexit Omnibus Bill states that the RD shall be close of business on the day before a date not more than 72 hours before the General Meeting. If the legislation as outlined in the Brexit Omnibus Bill could not be applied, this would mean that Euroclear Bank's deadline for voting instructions would be prior to the RD and hence the securities voted upon will be blocked for settlement until RD.

The Chairman acknowledged that this was a serious issue to have unresolved at this point in time. Despite the multiple discussions with the Authorities, including discussion at the Steering Board, direct representations by the Legal constituency and other bilateral interactions, no substantive progress has yet been made on the matter, regrettably. In discussing next steps it was agreed that Mr. Egan would raise the matter again with Ms. O'Dea as soon as this meeting has ended.

The MIG then discussed whether the lack of clarity in the legislation was significant enough to potentially warrant deferral of the migration. In this context various questions were raised and perspectives considered:

- Is there a prospect of having a solution in the coming weeks and would that be an acceptable timeframe for the market to bridge?
- Is there a possibility to circumvent the inconsistency between the 48 hours stated in the Companies Act and the 72 hours in the Brexit Omnibus Bill?
- Is it sufficient to rely on the spirit of the legislation or is an amending legal act in some form required?
- Mr. Egan highlighted that having settlement blocked would have an impact on the liquidity of the issues and hence a legal act will be required to enable the RD to be prior to Euroclear Bank's deadline. The proposed quick fix will adequately address the issue but considering that it is an innovative solution, it may encounter some inertia or resistance. It would not

address the issue that the RD is expressed in hours prior to meeting date and so does not differentiate weekends and bank holidays.

- Ms. Mestdagh noted that there is a way to avoid being blocked for settlement, however, the process is cumbersome and risk prone. Concretely, it means that the Investor will have to cancel the voting instruction, enter a settlement instruction for the portion of securities he wants to sell and then enter a new voting instruction for the remaining balance of the securities, and all of this has to be done in a timely fashion.
- Mr. Deasy highlighted that shareholders will likely hold off voting for as long as possible which in turn has a ripple effect on other parties in the chain, leaving Issuers only a tight timeframe to ensure they obtain a quorum for the votes and to seek to ensure the desired outcome of such votes.
- Mr. O'Carroll was also of the opinion that preventing settlement was a problem, and Mr. O'Donoghue added that this was particularly true for major shareholders.
- Mr. Stewart highlighted that AFME members were not sufficiently aware of the issue and noted that he would highlight it to them. He also indicated that if the legislation cannot be changed imminently, the market should be made fully aware of the issue, the risk it entails and how they should proceed. To this point, Ms. Mestdagh remarked that the change in RD and what Investors should do to avoid that the securities are blocked have been documented in the Service Description for Investors.
- Mr. O'Donoghue remarked that he was less in favor of a quick fix addressing only part of the overall issue but would rather a definitive legislative resolution addressing both points ("relevant securities" definition and RD being expressed in business days).

The Chairman in summarising the discussion and agreeing next steps noted that this had been a known and documented issue but unfortunately a resolution was still outstanding. Postponing the migration on the back of it however would have far-reaching adverse consequences. He also remarked that, although the time left to seek a resolution on the matter is very short, it was opportune to re-engage on this matter with the Department of Finance and the DETE, and suggested that this be done directly after the end of this meeting. The Chairman proposed to update the MIG on the discussions with the Authorities as soon as possible thereafter, to then discuss and align the MIG's view on whether or not the migration can proceed as planned. The MIG agreed with this approach and it was agreed to reconvene the meeting at 12:30pm. The Steering Board would also need to be consulted at this point, while recognised as significant for the market, had not been assessed as being on the critical path for the migration.

COMMUNICATION STRATEGY

Ms. Mestdagh then briefly updated the MIG on the communications strategy that had been agreed upon between Euronext and Euroclear, and the MIG noted that extensive market communication is foreseen around the migration:

- a joint press statement from Euronext and Euroclear Bank will be released, on Thursday, 18 March;
- press releases from the Department of Finance and the Central Bank of Ireland will be issued around the same time; and
- regular updates will be provided throughout the weekend, announcing the start of the migration and reporting on the progress.

The Chairman suspended the meeting at 11:45am to allow some time to Mr. Egan, Ms. Mestdagh and himself to take this point away to discuss with the Authorities and noted that the MIG would reconvene at 12:30pm to report on these discussions.

As discussions with the Authorities were still ongoing at 12:30pm, the MIG agreed to reconvene at 15:30pm.

Minutes of the Market Implementation Group, Meeting 16 (continued)
Held on Thursday 11 March 2021 at 15:30 IST via Webex

Members Present:

Chairman: Brian Healy, Independent
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
Stock Exchanges Representative: David Fitzgerald

In attendance:

Mason Hayes & Curran/Legal Drafting Group: Justin McKenna
Euroclear: An Mestdagh
Euroclear: Niels Watzeels
Euroclear: Sebastien Deprez
Euroclear: Kathleen Seurinck

Apologies:

ETF Issuer representative: Paul Young, Vanguard
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Euroclear: Sandra Aboutboul
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Following extensive conversations held with the Authorities since 11:45pm after the first part of today's MIG, the Chairman re-opened the meeting at 15:30pm and welcomed the members to the reconvened second part of today's MIG. Referring to his e-mail sent earlier this afternoon, the Chairman apologised for not being able to reconvene the MIG at 12:30pm as initially planned, explaining that the discussions with the Authorities were still ongoing at that point.

The Chairman debriefed the MIG members on the various discussions that Ms. Mestdagh and himself had held with the Department of Finance and the Central Bank of Ireland. He noted that the Authorities were fully aware of the issue and there was acceptance that the issue must and will be resolved, even if primary legislation will have to be amended. The Department of Finance had now confirmed that a Letter of Comfort, which clearly states both the original intent of the legislation and that the legislation will be clarified, will be provided by the Department of Enterprise, Trade and Employment (DETE) to the market today or early tomorrow morning.

The Chairman highlighted that the lacuna in the legislation was now agreed by all to be a serious issue requiring timely resolution however he did not regard this as a decisive enough reason to delay the migration now that comfort has been obtained that the Authorities will provide the legislative clarifications as soon as possible, the Letter of Comfort was a first step in that direction, and operational mitigations were ultimately available. He then proceeded to a 'tour de table' to seek the opinion of the representatives of each constituency (with the exception of the International banks, in the absence of Mr. Stewart who could not attend this second part of the meeting) in this respect:

- For Euroclear, the migration can go ahead as planned, Ms. Mestdagh said, considering that:
 - assurance has been received during the discussion with the Central Bank of Ireland and the Department of Finance that the issue will be remedied as soon as possible; and
 - Investors can still sell securities after the voting instruction has been sent and before RD, provided that they cancel the existing voting instruction, enter a sale instruction

for the portion they want to sell, and enter a new voting instruction for the remaining portion of the securities.

- Upon further reflection, Mr. Deasy doubted that the issue is of sufficient importance to hold up the migration, although it creates a significant challenge for the market. He added that voting will be impacted and that the Investor community should be aware that there is a period in which they cannot trade. As Ms. Mestdagh sought to understand if the notice needs to stipulate the exact RD, Mr. Deasy wondered whether displaying the RD on the website rather than including it in the actual notice could be a viable option. Mr. Egan and Mr. McKenna gave their opinion that disclosure of the RD in the notice could not be replaced by disclosing it elsewhere.
- Mr. McKenna added that there is an actual requirement that shares are freely tradeable but there will be a blockage of two days, to which the Chairman commented that a workaround for this is in place. Mr. Arrowsmith highlighted that the blockage could also potentially trigger settlement discipline penalties, and this too should be included in the communication to the market, however, this is not a matter to impede the migration.
- The Chairman reiterated that it is important to obtain clarity before the migration and to make the necessary disclosure to ensure that each constituency is fully aware of the issue and how they can proceed to avoid blocking of securities. He added that it was also important to balance the voting impact, liquidity of the shares and other risk factors with taking into account the short timeline to resolution of the issue agreed by the Authorities. He suggested that in the interim there should be a collaborative view on the way to proceed among Issuers and their legal advisors but fully acknowledged the pressure on the Issuers that are impacted first. Mr. Deasy fully supported this view of having a common approach, and added the intent to pursue the spirit of the law. Mr. Molony commented that the new legislation still provides flexibility as to the setting of the RD but concurred that there needs to be clarity of what the desired outcome is and then work towards that future position. He also highlighted that an important consideration was whether the risk incurred by the securities blocking is higher than the risk of deferring migration. In response to a query from the Chairman he agreed that the latter risk was greater.
- Ms. Mestdagh referred to earlier discussions at the MIG about the risk of delaying migration in the context of the Euro access. She reminded that if a delay were to be considered, the migration still has to be done before 30 June 2021. The MIG needed to be mindful that a further real and significant challenge, from a systems point of view, would be to find a new migration date that is suitable for all involved.
- Considering the above, both Mr. Deasy, Mr. Molony and the other members of the MIG opted for the migration to proceed as planned tomorrow.

In summarising the discussion, the Chairman noted that it had been very clear at this morning's MIG meeting that the lack of legislative clarity was a significant issue and all members were aligned on the nature of the problem and that a timely solution is needed. During the discussions with the Authorities after the first part of the MIG meeting, there was an acceptance of the problem and of its significance and the Authorities have given assurances that there will be a statement by DETE today or latest tomorrow morning in the form of a Letter of Comfort to the market. The Chairman concluded from the above views shared by the MIG members, that this issue ultimately is manageable (there is a fix and workaround) and does not warrant any deferral of migration. The issue now had to be mitigated to the maximum extent possible and short term, a common approach between the Issuers and their legal advisors should be sought for the RD on the notices to be sent out imminently, whether to consider it to be no later than 48 hours or if it can be moved to 72 hours.

The Chairman asked the MIG members whether they agreed that the migration progresses as planned and the MIG unanimously decided in favour for the migration to commence tomorrow evening but equally to push for a quick resolution, including the possibility of using a Statutory Instrument as a vehicle to do so. He highlighted that a catch up call with the Steering Board has been organised later today at 17:00 to inform them of the recent discussions with the Authorities and the discussions and decision of the MIG members in this respect. An update around the Letter of Comfort would be provided to the MIG members after the Steering Board discussion.

Ms. Mestdagh wished the MIG members good luck for the migration and agreed to keep the MIG posted on progress over the weekend.

There being no further business, the Chairman concluded the meeting at 16:15.

Note: Events Subsequent to the Meeting

The Letter of Comfort was finalised and issued by DETE and the Chairman provided it to MIG members by e-mail on the evening of 11 March.

After internal consultation among the Authorities a draft Statutory Instrument was agreed and the Statutory Instrument was signed by the Minister for Enterprise, Trade and Employment on 12 March. This brought full clarity that the definition of "relevant securities" included securities held by both the CSD and its nominee. The Chairman provided the Statutory Instrument to members of the MIG by e-mail on the evening of 12 March.