E-MIG Workshop on the implementation of the Market Standards for General Meetings

9-10 November 2011, Brussels, hosted by Münich Re

Draft Minutes

In attendance:

- Austria : Robert Mauthner, UniCredit
- Belgium : Barbara de Boutselis, Febelfin
- Denmark : Viggo Rosenquist, Danske Bank, Lise Arnth-Jensen, Danish Bankers Association
- Finland: Antti Turunen, Euroclear Finland, Reijo Alvari Jokelainen, Sampo Pankki
- France: Pierre Colladon, Société Générale, Franck Michot, Thiebald Cremers, BNP Paribas
- Germany: Markus Kaum, Munich Re, Thomas Rockstroh, Clearstream, Wilfried Blaschke, Commerzbank, Iris Quade, Association of German Banks
- Italy: Loretta Milani, Monte Titoli, Paola Deantoni, Société Générale
- Netherlands : Henk van Vliet, ABN Amro, Henk Bruggeman, DACSI
- Norway : Grethe Pedersen, DNB Nor
- Poland : Leszek Kowalowski, KDPW
- Portugal : Jyrki Lepännen, Raquel Rocha, Interbolsa
- Spain : Teresa del Campo, Iberclear, Ramon Hernandez & Barbara Jean Mairet, Emisores Españoles
- Sweden : Christine Strandberg, SEB
- UK : Andy Callow, Computershare, John Clayton, EUI, Mike Collier, Deutsche Bank

- AFME : James Cunningham, BNY Mellon,
- EACH: Anne Mairesse, LCH.Clearnet
- EBF: Christophe Bonte
- ESBG: Julie Van Buylaere
- ECSDA: Edwin De Pauw, Euroclear
- EuropeanIssuers: Paulo Pina da Silva (9), Susannah Haan (10)
- SWIFT: Karin Deridder

- Chair: Markus Kaum, Münich Re

1. Opening

Markus Kaum (MK) welcomed the participants. He gave an overview of the program for the GM workshop.

2. Traffic colour system

Christoph Bonte (CB) clarified the traffic colours system:

- **Green:** market situation fully compliant with the standards – nothing needs to be done.
- **Amber:** something needs to be changed to implement the standards (market practice not aligned with the standards or no such market practice) – change to take place at industry level.
- **Red:** something needs to be changed to implement the standards – change to take place at public sector level (e.g. change in law or new law needed

The Belgian delegate explained that due to a misunderstanding of the colour system what was red in their report should be seen as yellow/amber.

3. Conclusions of the Workshop in May 2011

Pierre Colladon (PC) gave the following comments to the draft minutes:
a) His colleague at the meeting was Sylvie Vernet Gruot.
b) Page 3 should read "between record dates and meeting dates"
c) Page 4 should read: "will be sent to the CSD which is currently being set up/established"

4. Consolidated overview – fact finding

a) The question of involving CSDs into the message chain as foreseen by the standards was discussed, esp. whether this should be an obligation. Norway pointed out that this involvement is not necessarily foreseen by the rules of the local CSDs. Lithuania informed that not all issuers agree with such flow. An overview of the practice shows that the CSD may not always be involved. Some countries have established a legal requirement just to publish, not to send a meeting notice to shareholders, e.g. in the Netherlands the issuer publishes info on the website – there is no legal requirement to send it to the CSD. For further communication commercial parties are involved which do this. Also in Germany the transmission is not through the CSD but through a separate service provider.

   Participants expressed their expectations that CSDs in T2S will provide a basic service level and that the messages on general meetings should fall within it. Wilfried Blaschke (WB) proposed that the entitlement should be done by the CSD. The Danish representative referred to the Danish view that it is the register, not the holdings, that is in the CSD. This was linked to the Danish legislation which leads to the CSD also

providing the shareholder register. After discussion it was agreed that entitlement and proof of entitlement are different topics and that standard 2.4 on entitlement should be clarified.

b) The question of Record Date was discussed and the concept was explained. AFME expressed their views that the minimum record date period should be 5 days across Europe. There was agreement that the standards should ensure that the voter is the owner of a security. The issue may have different aspects for bearer shares where the legal owner is entitled to vote and this information needs to reach the issuer, and for registered shares where the owner should be evidenced by an entry into the share register. For both and in all cases, the record date should be explicitly mentioned in all meeting notices so as to put all shareholders and parties involved in a position to properly process all meeting notices, certificates of entitlement and notification of attendance.

c) The topic of Share blocking was discussed. E.g. the Swiss response says that share blocking is only used between record date and the general meeting. Denmark: expects to identify a shareholder in a nominee account as from the record date and then send the votes. The problem of nominee accounts in the custody chain was discussed and the possible issue of share blocking somewhere in the chain in order to both exercise voting rights only for real shareholders but also settling trades in the same nominee account. The aspects of "share blocking" and "earmarking" and the correctness of a share register where discussed with a view to Denmark and Norway. There the practice of segregated accounts avoids any and all share blocking. It was suggested and agreed by the audience that the FAQs should be extended after the fact finding exercise.

5. The use of ISO(20022 and/or 15022)

The group discussed the use of ISO, and if so, ISO 15022 or 20022. It was common understanding that ISO 15022 allows the giving of information on GMs but contains a lot of narrative text, making it difficult to use it for the notification under the standards, where ISO 20022 works better. The group encouraged all markets that do not yet use ISOs to adopt ISO 20022.

The situation in the UK was given special attention. Some reported that a considerable amount of priority messaging works still with ISO 15022 and it is regarded as costly to upgrade to 20022. Christine Strandberg pointed out that this switch could also mean a change between SWIFT platforms. Someone remarked that with T2S there will a strong trend to move to ISO 20022, but not all member states would necessarily have T2S.
The group agreed on a strong encouragement for ISO 20022 and that this issue is to be discussed further, preferably by a working group led by Swift.

6. Domestic vs. Foreign GM

The group discussed the topic of domestic v foreign CSDs and between domestic and foreign GMs. The slide is attached to the minutes. It was agreed that it works for the notification part of the standards but probably not for entitlement.

7. Report from Spain

Before the joint discussion of all reports on compliance with the standards the Spanish delegation reported the Spanish results. Legislation and practices and also compliance with the standards have improved. Record date was and is 5 days before the general meeting. For registered shares the issuer has the obligation to keep the registry. Notification of participation is not mandatory in Spain and not yet a market practice. Shareholders may attend the meeting in any case, so the requirement as set out in the standards is a legal instrument in Spain only in case a shareholder wants to give proxy for their votes and chooses someone else to participate as proxy. The implementation of the shareholder rights directive in August 2011 gives the right to intermediaries to vote on behalf of shareholders. The necessary check on the entitlement is done via the CSD which keeps the file of the relevant shareholders as of the record date. But there can be an inconsistency with the by-laws of most Spanish companies which give the shareholder 7 days to notify such intent against the 5 business days record date.

Compliance with the standards for cross border situations is not on the same level, and some difficulties can be observed relating to market practices and cost issues. The CSD is not necessarily involved in the notification chain in Spain. But if so, Iberclear is already using ISOs for meeting notice.

II. Detailed discussion standards by standard / country by country

1. Market Standard 1

1.1

The standard was discussed and several points were made:

- Most countries oblige issuers to publish the meeting notice in an official gazette which can be costly. Adding another obligation to publish via another channel should not increase cost significantly (e.g. Austria)
- In Sweden the CSD performs the function of a temporary share register, providing services to issuers as a separate commercial entity.
- Finland reported that maybe stock exchange rules could be improved in order to simplify the process for issuers
- It was pointed out that not all member states may have such rules on information in their Companies Acts. It was proposed that all MIGs state what would work in their market and then issuers could be involved via EuropeanIssuers to promote awareness of the standards even more.
- It was reported that Euroclear seems to be working with Broadridge to develop a solution but currently no infrastructure is in place for this. Cooperation with issuers can be started once such solution is realised.
- It was suggested that all MIGs look into the option to include a procedure to comply with standard 1.1 in the rulers of their CSDs.

1.2 ISO standards

See above I.5. It was added that e.g. a press release is not so formatted and thus cannot be used as is to comply with the standard...

1.3 Narrative text

No MIG reported significant problems with the standard. It was common opinion that an additional (English) text would not interfere with any member state laws and thus be treated as an operational issue.

1.4 Forwarding of meeting notice by CSDs

The question of the links to and from the CSDs was discussed. The rationale of the standard is that all market participants offering trading and settlement services would have a link to the CSDs which can be used to forward the meeting notice in the custody chain to reach the end investor. Some participants pointed out that in some markets the notification chain could be set up differently. The chair asked the national MIGs to address and report the issue when preparing for the next meeting of the EMIG.

1.5 Electronic form

It was discussed that there seems not to be a pan-European initiative (SWIFT, ECB, or other body) to implement ISOs across Europe. There was agreement that all proprietary standards are not ISO and may pose significant problems when analysing the situation, esp. compliance with the standards cross border. Proprietary standards could lead to a "green" for domestic but "amber" or even "red" for foreign issuers/cross border situations.

Some delegates expressed their views that the standards as mentioned in standard 1.5 are necessarily such as used across Europe and proprietary standards may meet the letter but not the substance of standard 1.5.

The Dutch delegates reported on their new Dutch system, which takes the same approach as for corporate actions and became effective as of 1 November. All information is to be filled in by the issuer or issuer agent and is thus fully compliant with the standards as to content but not yet in electronic form. The group saw this as a significant step forward. The Dutch delegates hinted to the intention to go fully electronic in the next phase of the project once all market participants would know the format. There will be a study into the use by issuers and also a review by the CSD. The chair asked the Dutch colleagues to share their format with the group so it could be attached to the minutes for consideration by other MIGs.

1.6, 1.7 and 1.8

The responses from several countries were discussed. Austria reported that there may not be systems in place for retail clients, but that for institutional clients such links should exist. The forwarding is not yet market practice.

Italy pointed out that one cannot send Swift to retail since retail clients may not have Swift capabilities.

In Denmark it is only required to inform clients electronically.

The option to use third party service providers to discharge oneself from the duties of the standards was discussed, e.g. to provide service via banks websites.

In the UK some brokers see such as a service differentiator.

It was concluded that it is a matter of doing to establish such electronic links, that third party service providers are a viable option to comply with the standards and that it is a matter of time but would not meet legal obstacles that the electronic forwarding will be realised. Are there any obstacles to use of online systems?

1.9

Registered shareholders should be informed directly by the issuer, because this direct communication with end investors is one core aspect of registered shares. The chair asked the MIGs to address the problem of nominee shareholders and the question whether such nominee shareholders will forward the meeting notice to the real shareholders / end investors.

1.10

a.

The element of "disclaimer" was discussed caused by a concern of Austria which has a system under which only listed companies would be required to publish the information and non listed companies are not required. It was noted that the standards mean to cover only listed companies. The chair asked whether the distinction could be "companies on regulated markets" vs. "exchange regulated".

It was recommended that the MIGs assess the situation looking at the FAQ – and deal with the question whether the current definition works in the resp. market. This should be reported back to the next EMIG.

b.

Sweden reported that a CSD deadline is applied for a temporary share register which is not the issuer deadline for the notice of attendance. The group discussed "foreign" meetings and domestic meeting with "foreign investors" and agreed that all investors shall enjoy benefit from the same rights.

Some experiences with "foreign meetings" or "foreign investors" where reported and the colours in some reports questioned from that perspective. It was agreed that the gap analysis could be difficult when trying to address all scenarios. Italy and France pointed to possible obstacles to the assessment where national markets would not necessarily perceive problems for/of foreign participants. It was also agreed that the input of investors should be sought for the next meeting of EMIG.

2. Market Standard 2

2.1

Norwegian investors may have experienced share blocking in Belgium, Italy and Portugal. It may be no legal requirement but local custodians may still apply the practice.

Sweden reported that sometimes people are registered as shareholders who no longer hold the shares but the MIG has specifically asked custodians locally who said that they would not block but there could be "foreign custodian blocking". Since the standards do not allow for share blocking this is not even allowed in situations where instructions are incorrect or invalid or there is a danger of voting on someone else's shares.

Italy reported that the MIG would again look into the issue and undertake another review in order to assess all the specifics of cases concerned. Finland reported a specific problem when the issuer deadline is prior to record date or if issuer deadline after record date but last intermediary deadline is before.

The group agreed on the request to all MIGs to ask all custodians in local market whether they or other custodians block for operational reasons even if that is no legal requirement. The responses should answer whether there is (a) no blocking between record date and meeting date or (b) blocking exists in other circumstance.

2.2
The Nordic countries reported their experience with the standard in the light of the Nordic system of direct holdings with a CSD and the temporary share register established for a GM. The system works well but requires nominees holding nominee accounts to do more than in other markets in order to comply with the standards.

The standards are based on the concept that there should be a chain of holdings and that all levels in the chain should have corresponding book entries, starting at the CSD level down to the level of the end investor´s bank. Discrepancies between the book entries on different levels in the chain may pose problems but are an operational issue that cannot be resolved by the standard.

Sweden expressed the view that shares in a temporary share register would not be regarded as "registered shares". She proposed that all Scandinavian markets should review the situation of nominee accounts, which would mostly be used by intermediaries for the shares of foreign investors. Denmark reported that the market is working on the issue and hopeful to find a solution in near future.

2.3
The sequence of dates was discussed, especially between last intermediary deadline and GM. Belgium expressed the view that this should be max 2 business days instead of 6.

2.4
France reported the French practice that the definition of "entitled positions" would be based on traded positions and thus be in the books of French banks, not in the books of the French CSD. This was not seen as a problem as long as the substance of the standard is the basis of the French practice and entitlements are then calculated on the basis of standard 2.2.

2.7
The Danish delegate made the proposal to consider whether compliance with standard 2.7 could be part of CSD regulations.

2.8
The chair expressed the view that the standard is of utmost importance for achieving the goals of the General Meeting Standards. Only end investors whose holdings in a company are evidenced by a proof of entitlement can participate in the GM.

The UK remarked that a late date for the last intermediary is in the economic interest of shareholders, and that the sequence of dates wording was specifically chosen to deal with position of countries such as the UK. The UK relies on a specific footnote to the standards. Given that the standards only apply to instructions passed along the investment chain, all countries can allow instructions outside the standards, where the instructions are not passed down the chain.

Market standard 3

General
The group discussed the standards and expressed the view that the proposed Securities Law Directive should address the issues properly.

3.1
The Spanish delegate reported the Spanish situation where no notification of participation is needed. The chair asked the Spanish MIG to review that aspect esp. with a view to cross border situations.

3.4
The chair pointed out that the standard provides for a real discussion between the last intermediary and the end investor about the implications of the information format and the effects, esp. as to cost, of such information, in order to qualify for "well informed basis". This would not be met by putting the topic in small print in a long account agreement.

3.6
The UK representative remarked that UK custody rules cover the standard already.

3.10
No.6 was discussed in detail, esp. with a view to some countries regulations which oblige to disclose the identity of the end investor when voting, e.g. German companies may have similar provision in their articles that nominee must disclose the identity of end investors when voting on their behalf. Norwegians are only allowed to hold securities in direct accounts but foreigners can hold via nominees. Such rules can serve as a shareholder identification mechanism available to companies.

It was discussed whether in practice the requirements could be met by using segregated accounts, which was the common view. It was also noted that the Shareholder Rights Directive would not hinder segregated or omnibus accounts but be neutral in this aspect.
The Greek delegate remarked that the Greek system provides for an account to be held in the name of an end investor. Sweden remarked that the cost of settlement for segregated accounts via a CSD could be 25 to 50 % higher than settlement within internal bank procedures.

It was also discussed how to respond and use the colour system for standard 3 and for foreign GMs. It was the common view that the MIGs should focus on local markets first and deal with domestic issuer first, then foreign issuers afterwards. The chapter

"domestic" should thus cover services to local and foreign shareholders of domestic issuers. Foreign GMs should thus cover 2.6 onwards

Conclusions

The chair resumed the discussion topics and drafted an overview of the results:

- Points underlined above to be followed up
- Documents from workshop to be circulated
- CSDs / ICSDs and Participants: links to be established/confirmed
- Formatting: ISO 20022 / Local standards: How to improve standardisation?
- Definition of "listed companies": real issue?
- Meeting notice: How to involve issuers to create the meeting notice as laid down in the standards?
- Share Blocking/Monitoring: MIGs to investigate the situation / typical settings and report issues to E-MIG
- Sequence of dates in some markets, esp. record date and intermediary deadline and issuer deadline
- 1. "Domestic" = Domestic issuer and a) domestic investor and b) non domestic investor 2. "non-domestic" = non-domestic issuer and a), domestic intermediaries and/or b) domestic investors

It was agreed to ask the MIGs to prioritise the issues as listed above and that the EMIG should focus on issues relevant in multiple markets. It was also concluded that the goal of the MIGs should be to investigate whether the standards can work in practice, but it was also agreed that a refinement of the standards is possible if experience or further reflection show that such refinement may be helpful.

It was the common view that SWIFT should take a lead re ISO. The focus for the time until the next EMIG meeting should be domestic GM; non domestic GM could be addressed in a second step.

The chair also reported the intention to have a joint next meeting with the Corporate Actions EMIG in Milan in June 2012.