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

5 May 2011, München, hosted by München Re

### Draft Minutes

#### 1. Participants

- Belgium : Patrick Drogné, Febelfin
- Denmark : Viggo Rosenquist, Peter Michael Jensen
- Estonia: Reet Porila, Swedbank
- Finland: Antti Turunen, Euroclear Finland, Reijo Alvari Jokelainen, Sampo Pankki
- France: Pierre Colladon, Société Générale
- Germany: Mathias Papenfuss, Clearstream, Wilfried Blaschke, Commerzbank
- Italy: Loretta Milani, Luca Silano, Monte Titoli
- Netherlands : Henk van Vliet, ABN Amro, Henk Bruggeman, DACSI
- Norway : Grethe Pedersen, DNB Nor
- Poland : Leszek Kowalowski, KDPW
- Portugal : Jyrki Lepänen, Interbolsa
- Spain : Teresa del Campo, Iberclear, Barbara Jean-Mairet, Abertis / EuropeanIssuers, Ramon Hernandez Peñasco, Banesto / EuropeanIssuers
- Sweden : Christine Strandberg, SEB
- Switzerland : Florentin Soliva, UBS
- UK : Andy Callow, Computershare, Peter Swabey, Equiniti
  
- AFME : Werner Frey, AFME, James Cunningham, BNY Mellon, Stephen Burton, AFME
- EACH: Anne Mairesse, LCH.Clearnet
- EBF: Ruud Sleenhoff, RBS, Christophe Bonte, EBF
- ECSDA: Edwin De Pauw, Euroclear
- Susannah Haan, EuropeanIssuers
  
- Chair: Markus Kaum, München Re

## **2. Introduction and Objectives**

Markus Kaum welcomed everybody to the first workshop on implementation of the market standards on general meetings, which had been agreed in autumn 2010 after 4 years of debate.

The purpose of the workshop is to understand where the Member States stand in relation to the market standards, and what barriers may exist to prevent their implementation across Europe.

It was agreed that the aim should be to ensure that foreign shareholders are able to vote their shares along the investment chain, in the same way that domestic shareholders are currently able to. It would not be the responsibility of the national groups to find solutions to all the obstacles, but rather just to identify them at this stage.

The workshops would not revisit the content of the standards themselves, although any major difficulties could be referred to the JWGGM for consideration.

The Chair thanked EBF for having prepared templates to assist the MIGs in their task and for having consolidated the information received to facilitate the discussion at the workshop.

Several participants reminded that the elaboration of the standards was a long and difficult process, which was ultimately completed by FAQs which says that a fact finding exercise is part of the gap analysis. This all showed that further work was needed and that the workshop is part of this work.

## **3. Consolidated overview of progress reports submitted by national MIGs**

(see separate presentation)

## **4. Tour de table - discussion on major issues and obstacles in implementing the standards in individual markets**

- Representatives from different national implementation groups explained what they had done so far and the main areas of difference.
- Individual country responses showed how national systems work. JC noted that this is absolutely necessary to start the discussion at European level and decide how to move forward. In this respect, the focus of the workshop should be on exchanging ideas.
- The Chair reminded that we are all committed to conduct a fact finding exercise in parallel to the gap analysis.
- There was some discussion as to the meaning of the different colours – green, amber, red, white – as there appeared to have been some

inconsistent use among the different national groups. It was agreed that the Broad Stakeholder Group should circulate some additional guidance to clarify how the responses should be made.

- WB noted that Commerzbank had tried to vote the shares of 10 Eurostoxx50 non-German companies cross-border this year and is talking to the companies bilaterally in order to resolve any issues. Expenses are not an issue. If both sides want to achieve this, it will be done, although there are still some legal barriers. But if both the issuers and the shareholders instruct their custodians that they want it to happen, it will happen.
- JC noted that international custodians did not want to deal with many different processes per issuer / per custodian / per country etc and so the standards were welcomed as an excellent start. Voting should not be impossible, although there would be some issues around costs, efficiency, ease, burdens, etc, which would need to be worked out.
- AFME thought that the lack of a harmonised record date across the EU would be a barrier to implementation and suggested that this should be set preferably 21 days before the AGM; the issuers disagreed with AFME's analysis that intermediaries are required to block shares, since they felt that the entitlement to vote and the registration process need not be the same, but were prepared to discuss the operational issues in order to come to a better understanding of the problems on both sides. It was agreed that this would be best done outside the implementation workshop, which should concentrate on the existing standards as agreed.
- PC disagreed that a harmonisation was needed; the information flow need not be connected to the record date.
- PD thought that one of the main obstacles was likely to be not only legal and operational, but also cultural; in Belgium, there has been a culture of anonymity due to the existence of the physical bearer shares. However, there is now a move to dematerialisation and the use of registered shares only by 2013. The Shareholder Rights Directive has only just been implemented in Belgium and the disclosure obligations are new and will take some time to settle down.
- BJM noted that Spanish issuers are required to publish notice of general meetings in the official gazette and on their website, but do not currently send the notice to the CSD. RHP noted that there is no obligation on shareholders to notify their attendance to the issuer – they can just turn up. There is a record date 5 days before the AGM in Spain – those registered at that point are entitled to vote. For bearer shares, the banks identify the shareholders entitled to vote.
- JC noted that the standards only require those in the investment chain to pass along the notice of the meeting; they do not require the end investor

to use the chain but rather give him the option to do so. This may be more important in a cross-border context, where there may not be direct links between the investor and the issuer.

- PC stated that in France, the meeting notice is not sent to the CSD but rather to a central system for general meetings with an electronic platform for vote access. This is currently only open to domestic votes, although the intention is to open this to foreign shareholders later.
- The reason for using the CSD is to simplify the process for the intermediaries so that there is one central point of contact rather than lots of different service providers. The CSD also has a role in reconciliation.
- MP stated that the German group had not yet agreed on a joint view and had therefore not yet submitted a report to the EMIG.
- The Netherlands experience similar problems to those of Belgium. These are generally technical rather than legal issues. They are trying to prioritise those activities which impact on issuers with an international shareholder base. There is a great need for an education process.
- In Poland, the information provided is not as extensive as that in the standards. The law in Poland is very detailed and the issuer has many obligations.
- In the UK, there are only registered shares; no bearer shares. The issuer need only recognise the legal owner on the share register. Both domestic and foreign shareholders are treated equally, but there will need to be some minor changes to CSD procedures in order to bring the UK into line.
- There is no requirement in UK law for the intermediaries to pass the information on to the end investor, although this is usually stated in the contract. Others felt that the lack of a legal requirement should not be a barrier to implementation of the standards, if the equivalent standard existed in market practice.
- In the UK, the record date is no more than 48 hours before the general meeting, which is after the date for the issuer to receive the proxies, but in practice this is not a problem. Voting instructions once lodged can be changed up until the last minute, up to and including at the meeting.

## 5. Conclusions

Issues raised which should be dealt with following the workshop:

- No (legal) standard for involvement of CSD – is this necessary?
- Record Date: Concept (Issuer, CSD, Banks records ?) and different moments in time

- Share blocking (for instructions sent before the record date)
- Notification of participation: definition and scope
  - attendance only ?
  - proxy only ?
  - votes in writing before the meeting ?
  - no need to register for attendance before the AGM
- *Entitlement: Registration process / Available*
  - *to non-domestic investors from their own home bank ?*
  - *accepted by domestic issuers ?*
- Standards: ISO, DEX or others or all ?
- Standards for how to use the colour system (red, yellow, green, white / same standards as for CAJWG work)
- Gap analysis for
  - a) domestic GM to cover
    - domestic investors
    - non domestic investors
  - b) non domestic issuers
    - domestic investors

accompanied by fact finding
- Informing issuers, investors and other market participants about the standards – to be done once the group has clarified any outstanding questions as to what the standards mean.

## 6. Way forward

- Issues raised (incl. from the fact finding exercises done by the MIGs) should be discussed in the JWGGM, a smaller working group of custodians, CSDs and issuers, and the BSG as appropriate.
- The next E-MIG workshop on Market Standards for General Meetings will take place in October 2011 (one day and a half), combined again with the E-MIG workshop on Corporate Actions (one day), date and venue tbd.