

EUROPEAN CENTRAL BANKTo Mr. Marc BAYLE

Head of the T2S Division

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Per e-mail to Marc.bayle@ecb.int

Brussels, 15 May 2009

Dear Mr. Bayle,
dear Marc,

Re: Target2Securities – Shareholder Visibility

I am writing to you as a follow up to the Issuers Conference on Shareholder Visibility that the T2S team kindly organised on 11 March last in Brussels. As indicated before, we greatly appreciated the opportunity to exchange views with other stakeholders on the possible impact of T2S on shareholder visibility.

Issuers and their agents expressed their strong conviction that something has to be done to improve shareholder transparency. It was both very inspiring and encouraging that we could have such an interesting and open debate on this subject. It was also clear I believe that people did not want this to be a “one off” event. Many participants asked for an active follow up preferably in the form of the set-up of a specific sub-group “issuers”. Our association is very much in favor of establishing such a new working group within T2S to look at various issues from an issuer perspective.

It can not be denied that, for various reasons, issuers were not actively involved in the development of the T2S project so far. Understandably it is not the issuers’ core business to deal with clearing & settlement related matters. Hence, it may appear that issuers are less concerned by or less interested in the developments regarding T2S than professional capital markets players who, by their very profession, possess expert technical knowledge of the matter. However let’s bear in mind that issuers are at the very origin of the subject matter we are dealing with, namely securities. Looking at the basics, there are two essential parties to a security:

- a) the issuer or the entity that issues the security, as an essential source of funding and
- b) the investor who owns and trades the security, as a source of revenues.

From this point of view, the securities industry, with all due respect, has a secondary role, as it acts as a pure services provider to the two above mentioned parties. You were therefore very right to raise the question, at the Issuers conference, what benefits T2S would bring to issuers and investors. We believe that this question deserves a more prominent place in the debate about T2S.

In your presentation, you stated that issuers and investors would be “the final winners of a single European settlement framework”. For issuers, the benefit would lie in the access to a wider pool of investors as a way to greater liquidity. We acknowledge that liquidity was long considered of the greatest importance to listed companies. However, there is a growing awareness, exacerbated by the financial crisis, that other factors are equally, if not more important for the welfare of listed companies. Indeed, we need efficient, liquid and integrated financial markets, but this goal has to be balanced with good corporate governance and a responsible share ownership. This actually explains why issuers, as demonstrated at the conference, are so keen to have a good shareholder visibility. Companies should be enabled to know who their owners are in order to engage in a structural dialogue: what do long term investors expect from the company and what are the management’s long term plans to add sustainable value? We strongly believe that shareholders, especially long term ones, should be more actively involved and should be encouraged to assume their responsibility as owners. A better identification of shareholders and a more efficient voting architecture should help us to achieve our goals in this respect.

Identification of shareholders

Shareholders can be identified with a varying degree of difficulty depending on whether the shares are bearer, registered in the shareholder’s name or registered in a nominee’s name. Unless the shareholder is registered in his own name, the identification can only be done by going through the holding chain, the so-called chain of intermediaries. Whereas several EU member states have a legal framework that gives the issuer the positive right to an effective disclosure by those intervening in the holding chain, there is currently no EU wide legal obligation. In some member states, banking secrecy rules or contractual provisions even stand in the way of such disclosure. Still in many other member states, the law remains silent. As a consequence, even in the current legal environment, shareholder identification could effectively happen in most member states of the EU, provided that all concerned parties would be willing to co-operate.

We believe that a sub group should be set up within T2S to study the role T2S could play in the area of identification for all 3 of the above mentioned share categories. The biggest difference between the said categories is that, today, identification of registered shareholders happens on the basis of a share register that is constantly updated (as of its very creation) based on the transactions carried out in the securities. This approach is “flow or movement based”. For bearer shares, identification is so-called “stock based” giving a picture of the shareholder base on a given moment. Obviously the two methods lead to the same result namely knowledge of who the shareholders of a given company are at a given moment.

Where identification is flow or movement based, the settlement of the transaction should normally trigger the change in the register and, consequently, the change in the identified shareholder base. As T2S will provide a common platform for settlement services to CSDs, the logical question is then how the concrete settlement mechanisms and account holdings in T2S will impact the identification of registered shares. For bearer shares, the identification may seem less settlement related and therefore less likely to be impacted by T2S. However even if identification is stock based, settlement mechanisms are an important element in the answer to the question which positions will actually be taken into account for the identification. In addition, the account holding models in T2S would also influence the ability to look “through the chain of intermediaries”. There is a real concern that, by adding extra holding layers and introducing more omnibus accounts, identification would be seriously encumbered.

We believe that the working group to be set up should study the issue and propose measures to ensure a) that T2S does not negatively affect currently existing identification practices (especially for registered shares) and b) that T2S effectively contributes to identification of the end holders of bearer shares.

Giovannini barriers on corporate actions

T2S is also said to be a strong harmonisation catalyst for dismantling Giovannini barriers. Since its creation end 2002, EuropeanIssuers (formerly EALIC) has been contributing most actively to the private sector initiatives to remove Giovannini Barrier 3 on corporate actions. As you know, the works here are twofold: there are the market standards on corporate actions on the one hand and the market standards on general meetings on the other hand. Our association, EuropeanIssuers, is most actively involved in the two working groups.

General meetings

The Joint Working Group on General Meetings, that was set up end 2005 includes representatives of issuers (EuropeanIssuers), CSDs (ECSDA), intermediaries (ESSF, EBF, EACB, ESBG), stock exchanges (FESE) and investors (Euroshareholders and the ABI). The JWGGM is working on an efficient communication model for passing crucial information about general meetings from the issuer to the shareholder and back up again, via the chain of intermediaries.

The proposed standards cover 3 processes:

- 1) the issuer's notice to convene the meeting,
- 2) the determination and communication of the entitlement on the record date including the creation of a unique proof of entitlement and
- 3) the shareholder's notification of attendance including his votes.

The standards are made against the background of the Shareholder Rights Directive of 11 July 2007. The ultimate goal of these market standards is to enhance shareholder participation to general meetings, especially in a cross border environment. The JWGGM is now revising its proposed standards taking into account the feedback received to its public

consultation launched on 2 December 2008. (To see the Consultation and Responses from market participants, please click [here](#).)

The standards are in fact introducing new communication models on general meetings for the EU and it is as such an important initiative in the area of post-trading. Therefore, it is most desirable that an in-depth study takes place on how T2S could facilitate the practical implementation of the standards. The standard setting is scheduled to be finished early July. We highly recommend including this in the mandate of the new sub-group that should be set up within T2S.

Corporate actions

As regards corporate actions, a sub-group on corporate actions has been set up within T2S, the CASG. So far the CASG has been focusing on the first part of its mandate, transaction management: the market standards here should ensure that the rights or proceeds in a corporate action on securities flows are distributed to the correct party. Whereas transaction management is relevant in particular for infrastructures and intermediaries, it is clear that corporate actions processing in general is most relevant for issuers as well, hence their active contribution to the standard setting in this area. As a consequence, should the CASG move to the second part of its mandate, namely corporate actions on stock, EuropeanIssuers would be most happy to appoint a few delegates to seat in the CASG since it doesn't include any issuers' representatives yet.

To summarise, EuropeanIssuers strongly encourages the T2S team to establish a T2S sub-group "Issuers" to look at shareholder visibility and cross-border voting and how these important areas could be accommodated for in T2S. We would be delighted to be part of such sub-group.

I thank you once again for the opportunity to express our views and remain at your disposal for any question with regard to the above.

Kind regards,



Dorien FRANSENS
Secretary General

EuropeanIssuers is a pan European organisation set up to promote the interests of issuing companies. Its members are national associations and companies from 14 European countries counting together some 9.200 listed companies with a combined market value of some € 4.500 billion. As such it represents the vast majority of publicly quoted companies in Europe. The members of EuropeanIssuers come from various sectors including automotive, nutrition, energy, health care, construction, financial services and many more. What brings them together in EuropeanIssuers is that they are all owned by the public, making them subject to an impressive set of complex and stringent rules and regulations. Through EuropeanIssuers listed companies can engage in direct discussions with the decision makers at European, trans-Atlantic and global level. Typical areas of interest include shareholder rights, corporate governance, transparency, clearing and settlement as well as financial reporting and auditing. Our ultimate goal is to achieve fully integrated, liquid and well functioning European financial markets. More information can be found on www.europeanissuers.eu.