

**To the Chair of the
Corporate Actions Joint Working Group**
Mr. Werner FREY
ESSF - SIFMA
LONDON

Per e-mail to wfrey@sifma.org

Brussels, 17 July 2009

Dear Sir,
dear Werner,

Re: Market Standards for Corporate Actions Processing - version 8 May 2009

Reference is made to the document entitled “Market Standards for Corporate Actions Processing”, dated 8 May 2009, version subject to endorsement (hereinafter the “MSCAs”).

EuropeanIssuers congratulates the Corporate Actions Joint Working Group (hereinafter the “CAJWG”) and its chair for its efforts to harmonise the processing of corporate actions (hereinafter “CAs”) in the European Union (hereinafter “EU”) by means of private sector standards aiming at a significant reduction of costs and risks.

We are of course well familiar with the MSCAs for having actively participated in the standard setting process in the CAJWG from the very outset until the delivery of the present version. As a consequence, even if they do not always reflect what issuers consider to be the best practice from their own and sole perspective, we respect the consensus and endorse the objectives and the substance of the MSCAs in their current form.

Having said that, we appreciate that the effective implementation and application of the MSCAs in the field will clearly depend on the goodwill of all concerned parties: issuers, infrastructures and financial intermediaries. This because, by their very nature, the MSCAs cannot be enforced upon the said parties. Hence the need to explain to the practitioners in all sectors what the *rationale* is of the MSCAs and show them clearly where the benefits lie.

Speaking for our own constituency, companies need good and tangible (commercial and other) arguments to justify a change of procedures of which they may fail to see the immediate advantages. We wish to share with you the reservations expressed by our members while presenting at the same time ways to overcome them and make the implementation of the

MSCAs a success.

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The role of issuers in the MSCAs

The thousands of listed companies in the EU, being commercial enterprises, will want to understand the true and concrete benefits of complying with the MSCAs. The paradox is that whereas the processing of CAs is per definition a commercial service rendered by the securities industry to the issuers, the MSCAs include clear “to do obligations” for issuers in view of making the rendering of the services to them more efficient and less costly for their service providers. The role of listed companies is all the more important as they are in “pole position”: the processing of every corporate action starts with the information to be provided by the issuer.

Issuers do indeed face specific obligations in all the processing aspects covered by the MSCAs, namely

- **the information flow, throughout the chain of relevant parties, starting with the “golden source” the issuer (i)**
- **the key dates and their sequence (ii)**
- **the operational processing including the issuance of an interim security, payments etc. (iii)**

- i) As regards the information, the MSCAs require special efforts and investments from issuing companies in terms of formatting and language. Every CA starts with the issuer informing its CSD in formatted electronic form, according to standards defined by the securities industry (banks and infrastructures). This means that issuers (or their agents) will have to be equipped to convert narrative text into ISO type formatted messages and send them over to the issuer’s CSD using a communication channel that can transport this message. It has to be noted that it will entirely depend on the communication products developed by the securities industry whether specific information can be converted into electronic formatted messages or whether it will have to stay narrative. If the latter scenario applies, issuers with an international shareholder base will have to give the information at least in English.
- ii) Issuers will also have to adapt their practices and procedures in order to respect the minimum and maximum time periods and the exact sequence of key dates as laid out in the MSCAs. The announcement by the issuer, the record date that will determine which shareholder will benefit from the CA, the last date of trading with the CA benefit included and even the last trading date itself will all have to be set in accordance with the MSCAs.
- iii) For distributions with options, the issuer will have to issue an interim security with a proper ISIN code, which is likely not without cost. The MSCAs also prescribe when and how the issuer should pay out the benefits.

These are just a few examples of what issuers might perceive as the efforts they will have to go through in order to allow for a smooth communication and a smooth processing by their service providers. **Hence the need for intermediaries to ease the issuers' concerns, to engage in a constructive and direct dialogue with them and to show the companies, in a tangible manner, the benefits which their efforts will help to produce.**

General Meetings Market Standards

The MSCAs are the industry's proposed solution to deal with the Giovannini Barrier 3 on CAs. Barrier 3 is considered to be one of the most important technical barriers that stand in the way of efficient and integrated post-trading services in Europe. However the MSCAs only deal with one part of Barrier 3, namely what is being referred to as "*corporate actions stricto sensu*" in the Cesame Report of 28 November 2008.¹ The other part of the problem is identified in the Report as "*general meetings*" (hereinafter "GMs"): "*Initially, there was some discussion on whether or not general meetings also form a part of corporate actions as described in Barrier 3. However, general meetings are a core part and in fact the source of almost any following corporate actions processing, therefore they had to be part of the solution finding.*"²

As you know, at the end of 2005, a working group (hereinafter the "JWGGM") was set up with representatives of all relevant market players to work on an industry solution for GMs. The JWGGM has worked very hard ever since to produce market standards against the background of the Directive 2007/36/EC of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (hereinafter the "SRD"). However the draft standards the JWGGM proposed to the market in December 2008 received very strong criticism from the banking sector³. The revised version of standards that is lying on the table today required the issuers and investors to make many concessions. It is not easy to align all parties on what should be best practices in the area of cross border voting. The objective is however clear: to facilitate the participation, including voting, of shareholders in a cross border and intermediated shareholding environment.

Infrastructures and intermediaries should be well aware of the crucial role they have in this process. They should make their best efforts to produce the same ambitious standards for GMs as for CAs. Both the MSCAs and the market standards on GMs are built on the same concepts like deadlines, timelines and information flows. They both rely on the same communication channels. They both require procedural changes and efforts from all parties concerned. Finally they both are part of one and the same Giovannini barrier 3. **Therefore listed companies need to be assured that the market standards for GMs will be satisfactory and that they will become a reality too in the very near future, both on paper as in the field.**

¹ P. 35 of the Cesame Report of 28 November 2008 available at http://ec.europa.eu/internal_market/financial-markets/docs/cesame/cesame_report_en.pdf.

² See p 34 of the Cesame Report.

³ For the draft market standards and the replies to the consultations, see <http://www.europeanissuers.eu/en/?inc=page&pageid=topic&id=3>.

Cost and cost savings transparency

The immediate consequence of the MSCAs is that listed companies will be confronted upfront with new practices, new procedures, new investments and thus new costs.

Sure the issuers' efforts will all be justified when the goals of risk reduction and cost savings will have been reached to the benefit of all, in particular the end users meaning the issuers and their investors.

Given the global investment environment we agree that the application of standardised processes throughout the EU, coupled with clear and strong guidelines to practitioners across borders, will lead to more efficient processing that is less prone to errors, contradicting procedures, etc. **As a consequence, we are confident that the goal of risk reduction will eventually be reached.**

The same should also be true for the reduction of costs. According to the Introduction to the MSCAs, the *“European securities market and its users will benefit from cost savings resulting from harmonising the processes cross border”*⁴. As a matter of fact, the harmonisation of CAs processing has been said to result in enormous cost savings for the industry: figures of multiple millions of Euros have been quoted. The reasons for such cost savings are clear: in addition to the manifest cost benefits flowing from simplified, streamlined and harmonised procedures, the infrastructures and intermediaries will be able to process corporate actions in a “straight-through” fashion. Indeed all requested relevant information being delivered by the “golden source”, *i.e.* the issuer, it will not be necessary anymore to double-check information. Moreover as these data will be delivered in formatted electronic messages, the industry does not have to enter the data manually into the IT systems again. Such should lead to much less costs and much more efficiency.

As a general principle, the end users, *i.e.* the issuers and investors, should be the ultimate beneficiaries of the removal of the Giovannini barriers, in particular in terms of efficiency and cost benefits. In a competitive environment, the achieved cost savings should bring down the fees throughout the entire value chain: CSDs, CCPs, stock exchanges, banks and custodians should be able to reduce fees for services rendered to issuers as well as to investors. At this stage, however, there is no indication as to where in the value chain the cost savings will materialize or how they will flow back to the end users.

The industry ought to create transparency on the expected cost savings and fee reductions. **Issuers will want to see how the fees they pay to process the corporate actions will be reduced to reflect both the issuers' investments and efforts and the anticipated enormous cost savings projected by the industry.** Unfortunately there is currently no transparency whatsoever on the price setting for issuers nor for investors. We understand that in some member states both the issuer and the investor pay the securities industry for their role in corporate actions' processing. Clearly more transparency should allow to avoid such in the future. It is absolutely **necessary to bring transparency in the costs exposed and the savings**

⁴ P. 3 of the MSCAs.

made at the various levels of the chain of infrastructures and intermediaries.

With the Code of Conduct in the area of clearing and settlement the industry succeeded in making huge progress on the transparency of pricing between infrastructures and professional users (intermediaries). Now it is time to bring transparency in post trading services also for the end users at either end of the chain, namely the issuers and the investors. You will have seen the results of the study Oxera carried out for the European Commission on the costs of trading and post-trading services. This is a first step, but it is not bringing us the transparency we are looking for. The methodology applied by Oxera focuses on identifying trends and does not allow comparability of costs and prices across markets.

To conclude, we cannot think of a better way to ensure the success of the MSCAs than by **setting up a monitoring tool or an observatory to a) create transparency in the current pricing and payment structures, b) show where the cost savings are and c) show how these will be reflected in fee reductions for issuers who comply with the MSCAs as well as for investors.** It is a principle of basic commerce that if a client has to change his own procedures in view of making the services rendered to him less costly, he should see such efforts and cost savings reflected in the invoice.

Legal certainty

The MSCAs still have to be subject to a gap analysis at the level of Member States which process may reveal legal obstacles to their application. **It is important that such obstacles be removed and that legal certainty can be given to the parties covered by the MSCAs scope of application *ratione personae*, so as to avoid any violation of law or liability claim.**

The end investor - Custody and service level agreements

Timely and cost efficient communication with the end investor is especially crucial for elective CAs where the investor has a right to choose. The MSCAs rightly provide for such communication with the end investor as the standard “rule”. We wish to underline that this means that the communication flow should be continued until the end investor without such investor having to take special steps to that effect (which would be opting in). Any opt-out of the default scenario should be on a well-informed basis and should not be inspired by cost motives.

Moreover it is important that every intermediary in the chain is committed to continue the communication and any opt-out should therefore be strictly reserved to the end investor only. It should be made clear that SLAs among intermediaries and/or infrastructures must not adversely affect the effectiveness of the MSCAs, they could only increase the minimum service level covered by them, not reduce it.

In order to ensure the above, we believe that **infrastructures and intermediaries should explicitly commit themselves to the application of the MSCAs in the custody and service level**

agreements they enter into with their clients, each at their respective level, including the last tier level meaning with the end investor.

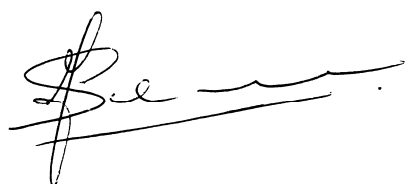
Market Implementation Groups

We understand that the work of the CAJWG is finished with the setting of the standards. The CAJWG is not in charge of the implementation at national level. In most member states of the EU market implementation groups (hereinafter “MIGs”) have been set up by the banking sector. The composition of these MIGs is not homogenous and not representative of the parties concerned by the MSCAs or so it seems. Little information is available, but we do know that in most markets the MIGs do not include issuers. The representation of the infrastructures is also most unclear. Moreover the MIGs do not appear to have clear instructions.

As experience in the CAJWG has shown, the MSCAs are highly technical and they have to be explained to the various parties in order to clarify the objectives, the rationale, the vocabulary used, and last but not least the benefits the application of the standards will bring. This has to be done at national practitioner level. Only then will the MSCAs have a chance to be effectively implemented and complied with. **Hence the importance to have representative, well functioning and balanced MIGs in place.**

We trust that the recommendations outlined above may help to smoothen the path to the implementation of the MSCAs.

Yours sincerely,



Jacques SCHRAVEN
Chairman



Dorien FRANSENS
Secretary General

CC:

- Mr Jörgen HOLMQUIST, Director General of DG Internal Market and Services, European Commission
- Mr Emil PAULIS, Director of Directorate G Financial Services Policy and Financial Markets, European Commission
- Mr Mario NAVA, Head of Unit G2 Financial Markets Infrastructure, European Commission.

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