

Submission to European Central Bank from Representatives of European Issuers and Issuer Agents regarding Shareholder Transparency under Target-2 Securities

Purpose

To propose a resolution to concerns raised by Issuers and Issuer Agents regarding the transparency of shareholders under T2S. It is acknowledged that T2S of itself does not create the problem of lack of transparency that exists in many EU jurisdictions today. However, Issuers and Issuer Agents have expressed a strong concern that T2S, which is intended and expected to remove barriers in the current post-trade securities environment, will materially reduce the high level of transparency currently available to Issuers in certain markets (e.g. France, Germany (for registered shares), Ireland and the UK), and exacerbate the current problem with enforcing existing disclosure rights cross-border. In addition, the Issuers have also raised the question to what extent T2S could help to increase transparency for those markets which do not currently have a (properly functioning) transparency system in place.

Background

In many jurisdictions throughout Europe, Issuers have a legal right to know who their shareholders are. Even if this right is not yet harmonised across Europe, there is a very practical need for a platform to exchange this shareholder information on a cross-border basis throughout Europe. Shareholdings and transactions are increasingly cross-border. T2S will only increase this trend. The costs of non-standardised solutions for the fulfillment of shareholder identification could be reduced – for the benefit of all market participants – using a common platform for this information exchange. T2S potentially offers a unique solution, as it covers all relevant markets and all major market participants.

More specifically, various European Issuers and Issuer Agents have made submissions to the ECB T2S project team regarding concerns with visibility of shareholders in Europe, including the GC100/ICSA group in the UK and European Issuers. The European Central Bank and the European Commission need to address this as a critical part of the harmonisation of European capital markets and the implementation of T2S.

In March 2009, the ECB held the first Information Session focused on the impact of T2S on Issuers and Issuer Agents. On October 14th 2009, the ECB hosted a second meeting of Issuers and Issuer Agents in Frankfurt to specifically address the topic of transparency. At that meeting, it was agreed that representatives of the Issuer and Issuer-Agent community would prepare this paper to propose ideas for a solution to the concerns regarding transparency under T2S. This paper would be presented to the ECB Advisory Group on T2S at their December meeting.

Proposed Approach/Solution

This paper sets out a proposal for a potential solution, detailed below, which would deliver transparency of Issuer and Investor CSD participant-level balances and also underlying beneficial holder information to the Issuer. This would be achieved by use of the T2S network to route ownership data between participants and the Issuer, acting directly or through their agent, hereafter the “Issuer”¹, supported by a harmonised right of transparency of beneficial holders of securities. This proposal is based on our current knowledge of the currently known

¹ The term Issuer hereafter in the paper means either the Issuer acting directly or through their Agent.

functionalities of T2S and should be seen as a basis for further discussion. For the avoidance of doubt, the notion of “beneficial holder” in this paper indicates the last account holder in the chain, i.e. the person who bears the economic risk.²

1. Routing of Holding Data via T2S

A. T2S provision of top level participant account balances to Issuers

- We propose that T2S incorporate an ‘opt-out’ reporting facility for participant transaction and balance data to Issuers.
 - This participant-level data will be held in T2S and accordingly it should be relatively simple technically for T2S to provide this to the Issuers.
- Issuers to be able to collect, or be sent, reporting of transaction data on a real time basis, including account holder IDs, purchaser and seller designations and settled amount³.
 - This level of data will be appropriate for markets such as the UK and Ireland, which currently receive a high level of real time transactional data from the CSD.
 - Whether this level of data is also appropriate for ALL other markets needs to be further examined.
 - Where the Issuer opts out of provision of this real time per-transaction data, T2S to send holding balances of all Issuer and Investor CSD participants, held in T2S, to the Issuer on an end of day basis, including end of day balances and net changes per security account. This will enable T2S and the Issuer to be reconciled on the end of day balances and net changes per security on a daily basis⁴.
- As these data will be provided on a daily basis, it will be available automatically on any record date and will facilitate corporate governance and corporate action activity.

B. On-demand disclosure of underlying holder data by participants, routed through T2S as messaging hub

- Issuers to use T2S as a network hub for transmission of messages to participants of Issuer and Investor CSDs.
- Issuers to send message to selected participants at the T2S-participating Issuer or Investor CSDs, requiring provision of the underlying account holder information, including name, address and holding balance. T2S will route the message to each identified participant either directly to the participant (if the participant interfaces directly to T2S) or via the relevant CSD otherwise⁵. When the underlying account holder is not the beneficial holder, and if so required by the Issuer, the

² This excludes Investors who are holders of (a) part(s) in a UCITS or other fund.

³ It should be further discussed with T2S and the CSDs whether this could be incorporated with data required by markets such as Ireland to update the register following each settlement transaction.

⁴ Individual countries should be eligible to opt-out of the daily provision of information if that market determines that the data is not required by issuers on a daily basis. This may be the case, at least initially, as markets adjust to increased transparency.

⁵ Or potentially another generally agreed network provider such as SWIFT, or some combination.

former should in turn require provision of his underlying account holder information and so on until disclosure of the beneficial holder can be achieved.

- Participant, and underlying holders if so required, to provide the data back to the Issuer in the agreed standard messaging format routed via T2S (and the appropriate CSD(s)), within an agreed timeframe (e.g. two business days).
- Where the domestic (Issuer) CSD structure already provides a high level of transparency of domestic beneficial owners, this T2S routing mechanism would only be used to obtain disclosure from participants that is not already available via the domestic (Issuer) CSD, and would continue to utilise the domestic CSD solution otherwise.
 - For example, the German CASCADE-RS system already provides German issuers of registered shares with details of most beneficial holder positions managed by domestic German banks, as the level of directly registered shareholders in such Issuers is very high. Accordingly, a German Issuer would only utilise T2S as a hub to facilitate disclosure by participants of CSDs other than Clearstream, or for any remaining nominee holdings in CASCADE-RS.
- At any time, (but particularly useful on record dates), the Issuer should be entitled to send a broadcast message to all participants with a balance in the Issuer's securities requiring disclosure of underlying beneficial holders within the standard 2 business day timescale.
 - For Meetings, this broadcast request for disclosure could be automatically triggered on record date;
 - For other corporate actions, the Issuer should optionally be able to send the broadcast disclosure request.

2. Harmonised European legal changes to support disclosure of beneficial owner data

Although legal harmonisation does not fall under the ECB mandate, the Issuers highlight hereunder the key elements of legal changes deemed necessary to achieve an acceptable level of transparency, in order to provide the ECB with a holistic view of the subject.

The effective implementation of this operational transparency mechanism is likely to necessitate appropriate legislative and contractual support, including consideration of the following:

- Introduction of a harmonised European legal right for Issuers to receive information identifying any investor with a legal or economic interest in the Issuer's shares, including the Beneficial Holder, and encompasses entities with either economic interest or voting rights over shares. For those jurisdictions where issuers already enjoy a high level of transparency and right of disclosure, it is critical that the harmonised right does not result in any reduction in the current standard of transparency – the rights held in such jurisdictions should be considered the minimum standard for the new harmonised rules.
 - Existing disclosure rights generally work well at the domestic level but are less effective in the cross-border context. European-wide enforcement of current rules could be a starting point for harmonisation. (Note: The future legal instrument on the harmonisation of the law applicable to securities kept by book-entry, that is currently being prepared by the European Commission and which will include a section on the duties of intermediaries, offers a good opportunity to provide for such enforcement).
- This right of disclosure should:

- Permit Issuers to require any intermediary to disclose the identity of underlying account holders on whose behalf it is holding the Issuer's securities;
 - Entitle the Eurosystem to disclose CSD participants' securities accounts balances to the Issuer;
 - Recognise the use of T2S (or potentially another generally agreed network) as one possible, non exclusive routing mechanism for passing such disclosure requests between participants of T2S-participating CSDs and the Issuer in an agreed standard messaging format (using ISO standards); and
 - Include appropriate consequences for non-compliance by any intermediary with a disclosure demand from the Issuer.
- This process should be embedded in the contractual structure for T2S, with T2S including appropriate terms in its contract with participating CSDs to facilitate the routing of messages between the Issuers and CSD participants via T2S.
 - Such contractual arrangements would relate to the mechanism for routing the data to and from participants. Where the data is routed through the CSDs' systems in message format, the CSDs should not retain the account holder information or otherwise use it;
 - The harmonised right of disclosure will act as the backdrop, authorising the disclosure of the underlying investor information. Appropriate rules of confidentiality should be incorporated into the contractual framework.