

4 June 2010

## **Custody Committee Task Force Shareholder Registration**

### **Proposal to harmonise and standardise shareholder registration processes**

- **Introduction, background**

As part of its Action Plan 2010 the AFME Custody Committee aims at developing a proposal to harmonise and standardise the operational processes of shareholder registration.

The Task Force set up for this purpose analysed as a first step the current situation in major European markets. This analysis (see Annex) revealed widely diverging operational processes and registration mechanisms that often do not meet their objectives. Registration processes often lack operational efficiency. In the context of T2S the elimination of these inefficiencies and diversities are crucially important to achieve the objective of lean and smooth cross border settlement.

Moreover, when developing its proposal the Task Force considered the role and duties of account providers<sup>1</sup> as provided in the Securities Law Directive as well as the Market Standards for Corporate Actions Processing and the Market Standards for General Meetings.

- **Objectives**

- **Asset servicing related objectives**

- Support the objectives contained in the Advice of the Legal Certainty Group<sup>2</sup>, the evolving Securities Law Directive<sup>3</sup> and the Shareholder Rights Directive<sup>4</sup> whereas Members States shall ensure that investors are able to receive and exercise the rights flowing from securities held regardless of holding patterns.
- Ensure the availability of securities held and the receipt and exercise of rights flowing from such securities at all times.

- **Settlement related objectives**

- Support increased settlement efficiency in general.
- Foster the possibility to shorten settlement cycles.
- Contribute to the harmonisation of settlement processes and to smooth cross CSD settlement in T2S in particular.

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<sup>1</sup> As defined in the evolving Securities Law Directive

<sup>2</sup> See [http://ec.europa.eu/internal\\_market/financial-markets/clearing/certainty\\_en.htm](http://ec.europa.eu/internal_market/financial-markets/clearing/certainty_en.htm)

<sup>3</sup> Consultation on this directive planned for 3<sup>rd</sup> quarter 2010

<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF>

- **Principles that any process of shareholder registration / shareholder identification needs to comply with**
  - Finality of settlement should occur at the point of settlement (so that there is no risk that finality of settlement is impaired by any separate or parallel registration or shareholder visibility process).
  - Entitlements from corporate actions on stock, including voting rights, should become effective at the point of settlement.
  - The ability to use omnibus and nominee accounts should be provided for.
  - There should be no discrimination between domestic investors and foreign investors and between domestic account providers and foreign account providers.
  - Efficiency in all processes should be ensured (account structure, account maintenance, instruction processing, settlement processing, registration and shareholder visibility processes).
  
- **Assessment of current shareholder registration processes**
  - Current shareholder registration processes are characterised by
    - non concurring with the above principles;
    - legacy procedures that do not take into account the role and duties of account providers in respect of dematerialised / immobilised securities;
    - not often achieving their objectives;
    - reflecting outdated market structures.
  
- **Proposal**
  - *In view of account providers' duties as per (i) the evolving Securities Law Directive and (ii) the Market Standards on Corporate Actions Processing and the Market Standards on General Meetings, shareholder registration processes for dematerialised / immobilised securities should be eliminated except for*
    - *the identification of shareholders requested by issuers where permitted by applicable law*
    - *the establishment of a direct relationship between the investor and the issuer at the request of the investor.*
  - *Such registration processes should comply with the above principles.*
  - *In order to avoid duplication of efforts, the conclusions of the T2S Task Force Shareholder Transparency should be awaited in regard of processes of shareholder identification at the request of issuers where law permits.*

Annex: Analysis of registration processes in major European markets

## Annex

Task Force Shareholder Registration of AFME / ESSF Custody Committee

### Shareholder Registration – Operational issues

Analysis of current situation in major European markets, 22 March 2010

<b>Market</b>	<b>Detailed description of current process</b>	<b>Issues associated with current process</b>
<p><b>Belgium</b> (BNY Mellon)</p>	<p>Settlement at the CSD is possible only for securities in bearer or in dematerialised form. For many equities, a shareholder can choose to convert a position from bearer or dematerialised form into registered form, but after conversion settlement at the CSD can no longer take place (so that securities have to be converted back in the event of a sale). The conversion process typically takes between one and three weeks.</p> <p>There are two listed equities that exist only in registered form (Solvac and Cofinimmo).</p> <p>These two securities have specific settlement procedures which require the signature of physical stock powers both by the buyer and by the seller for the transfer of ownership to occur.</p> <p>In general, Belgian banks do not offer custody and settlement services for these two securities.</p>	<p>The settlement and custody process for Solvac and Cofinimmo is complex, manual and risky, and very largely takes place outside of the CSD directly between the investors and the issuer/registrar.</p>
<p><b>France</b> (BNY Mellon)</p>	<p><b>Equities</b></p> <p>All French equity securities are dematerialized. Around 95% of French equities have the legal form of bearer securities; around 5% of French equities have the legal form of registered securities.</p> <p>For registered securities, the shareholder is known to the issuer and - depending on the issuer and on the time period for which the position has been held in registered form - may benefit from some additional advantages such as double voting rights and bonus dividends, as well as receiving shareholder information directly from the company.</p> <p><b>I. Types of registered equities</b></p> <p>There are two fundamentally different registered equities:</p> <p><b>A- Compulsory registered equities</b></p> <p>Some issuers impose compulsory registration in their Articles of Association (e.g. Michelin). Stocks purchased or sold on the market have to be in registered form and no conversion is allowed into bearer form.</p>	<p>Registration is not automatic with settlement. The BRN process is a separate, partially, or completely, manual, registration process with associated risks that takes place after settlement. There is no registration name associated with an account at the CSD, so that CSD participants have to supply the relevant registration name separately.</p> <p>This issue applies to all settlement for compulsorily registered securities.</p> <p>For occasionally registered securities, there are registration problems only for those positions that are registered. For such positions that are registered, and in the event of a sale, there may be failed settlements following delays in the process of converting registered positions into bearer positions.</p> <p>The use of the same ISIN for registered and bearer shares can be confusing; there is, for example, the risk that an investor doesn't realise that he holds one type of shares rather than the other.</p>

## **B- Occasionally registered equities**

Occasionally registered equities can be divided into two different categories

### **B.1 Standard occasionally registered shares**

- These shares are normally held in bearer form. Upon request, positions can be converted from bearer to registered form. It takes at least 48 hours for a conversion from one form to the other. These shares have to be converted back into bearer form to be bought or sold.

### **B.2 Loyalty bonus shares**

- Since July 12, 1994, French companies have been authorized to distribute bonus dividends on registered equities. Shares have to be registered in the name of the final beneficiary or of an intermediary for at least two years in order to qualify for a loyalty bonus dividend.
- These shares cannot be sold unless converted back to bearer form.
- Loyalty bonus shares bear a different ISIN. The change of ISIN is managed and advised by Euroclear France. There is one different ISIN created per year of registration. After two years, the holdings under the registered shares ISIN are automatically converted by Euroclear France back to bearer shares and to the standard bearer shares ISIN.

#### **Summary Table**

<b>Types of registered equities</b>	<b>Settlement</b>	<b>ISIN</b>
Compulsory registered	No conversion needed	Single ISIN
Standard occasionally registered	Registered have to be converted into bearer	Same ISIN for bearer and registered
Loyalty bonus shares	Registered have to be converted into bearer	Different ISIN for bearer and registered

## II. Registration mechanism

- Registration occurs through the intermediary of the central securities depository, Euroclear France. Upon receipt of a computerized transfer deed called BRN (Bordereau de Référence Nominative) from the two CSD participants
- Euroclear France matches the two BRNs, checks that the time delay has been respected and transmits the BRNs to the issuer or to a designated agent who will complete the transfer of ownership.
- Upon receipt of the registration instruction by Euroclear France, the registration process takes from 2 to 20 business days to be completed depending of the issuer.

All types of registered shares can be held in one of these two ways:

- a) **‘Nominatif Pur’ (pure registered)** where securities are registered in the name of the final beneficiary. These securities are deposited directly with the registrar of the issuer or with an agent designated by the issuer, and accordingly are not deposited in the custody accounts of a custodian bank. Custody and taxes services are delivered directly by the issuer or by its agent. Settlement instructions have to be instructed to the issuer or its agent that will process the instructions.
- b) **‘Nominatif administré’ (administered registered)** where securities are registered in the name either of the beneficial owner or of a financial intermediary (who will not be recognized as the final beneficiary but will be expected to provide the name and address of the final beneficiary upon request). The securities remain deposited on the Euroclear France account of the custodian bank. Custody, settlement and tax services are delivered by the custodian bank.

### Summary Table

Type of registration	Settlement, custody, tax
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	<b>mechanism</b>	<b>services</b>	
	‘Nominatif Pur’ (pure registered)	Through the issuer or his appointed agent	
	‘Nominatif administré’ (administered registered)	Through a French custodian bank	
<b>Germany</b> (Morgan Stanley)	<p>In Germany the registration is done on Agent level. Since the German Risk limitation Act has been introduced settlement agent required to register on either nominee, beneficial owner or legal owner basis. This depends on the Issuer. Example: If the issuer decides that only beneficial owner registration is allowed than the registration has to be performed on this basis only. All un-registered shares don't have voting rights.</p> <p>Another aspect we've in Germany is the German Aviation Act where i.e.: Lufthansa (ISIN: DE0008232125) and Air Berlin (ISIN: GB00B128C026) are subject to foreign ownership restriction and are therefore required to monitor beneficial ownership and control of their shares. All registrations in this stock have to be performed on beneficial owner basis.</p>		<p>Protection of Voting Rights in correspondence with § 67 AktG.</p> <p>Since the implementation of §67 AktG the issuers have the possibility to include the following in their articles and statute: - Threshold value for Nominee registration. - Above the threshold it is required to Register in the name of the beneficial owner otherwise voting rights cannot be executed.</p>
<b>Italy</b> (Citi)	<p>All Italian listed securities and some unlisted Italian securities are dematerialised and centralised at Monte Titoli, the CSD and registration upon settlement is not necessary. Securities are held in a third party account (omnibus or segregated) held by the Custodian Bank with Monte Titoli. Custodian banks must notify the issuing company of the shareholders' identity any time on of the following takes place:</p> <ol style="list-style-type: none"> <li>1. Payment of dividends</li> <li>2. AGMs</li> <li>3. Any corporate events</li> </ol> <p>In the above cases, upon notification of the custodian bank, the issuing company must update the shareholders book/register.</p>		<p>No apparent issues experienced from the contacts who were providing me with the above information.</p>
<b>Netherlands</b> (BNY Mellon)	<p>All securities held at the Dutch CSD are in bearer form. It is possible for shareholders of many companies to convert shares held in bearer form into registered form; this, however, means the positions have to be withdrawn from the CSD. Typically, Dutch banks do not offer custody services for positions held in registered form.</p>		<p>The conversion and registration process is manual and lengthy (typically taking between one and three weeks); the wholesale market will typically hold positions in bearer form at the CSD. If a shareholder of a registered position wishes to sell, it should in advance arrange for a conversion into bearer form, and deposit the position at the</p>

<p><b>Spain</b> (Santander)</p>	<p>Since 1992, when the Spanish Central Securities Depository was created and the system was dematerialised, all shares of every company listed in the Stock Exchange are bearer shares and have book-entry form.</p> <p>The registered shares system only applies to non-listed entities (that should convert their shares into bearer ones if they want to go public) or de-listed companies. In these cases, an agent must keep a Share Registry (with proved capacity, the registrar). All changes in the Registry, including purchases and sales, must be reported to the registrar to keep track of them, with the mandatory intervention of a public notary or investment firm for that purpose.</p> <p>At the same time, some public companies must keep a so-called Registered Shares Registry Book, when required by Spanish Law. The latter rule applies namely to banks, insurance companies, railway operator, TV licenses or airlines, companies whose shares are treated as registered, while they are traded, cleared, settled and held under custody as any other bearer share represented in book-entry form.</p> <p>All Spanish shares have a particularity consisting in the “register reference” associated with every purchase of shares.</p> <p>The Spanish model provides stock-based information when a General Meeting is called, at the level of the registered owner (normally omnibus accounts of global custodians and brokers, for non-resident, and beneficial owners in the case of domestic investors), at the request of the issuer. The CSD compiles the information by asking the local custodians to provide the relevant data of the clients they hold under custody.</p> <p>Additionally, the custodian provides flow-based information of the same level as the rest, but it includes the domicile, for those issuers that are obliged by law to keep a Registry Book, which the information provided is updated on a daily basis by the CSD and the Stock Exchange on market transactions.</p>	<p>CSD.</p>
<p><b>Switzerland</b> (UBS)</p>	<p>Clients have the possibility to register Swiss registered shs by default (general authorisation for registration) or by single application for each company. If shareholders register by default, each buy or sell of Swiss registered</p>	<p>Since the Swiss share law was established in 1991 the position of "Dispo shares" increased permanently (up to 50%). Possible negative consequences:</p>

	<p>shs will automatically be registered or de-registered (Status: RE). If a shareholder does not want to register, the position will be held as "Dispo" i.e. not registered (Status: DI). In this case, the client has no voting rights at GM. Shareholders have to be registered by bookclosing date (given by the registrar) to participate at the GM (by proxy or presence). Major banks and registrars are connected electronically by a system called AREG-Data, which allows (de-)registration on a SWIFT based level on a real time basis.</p>	<ul style="list-style-type: none"> <li>- A significant position can be build anonymously</li> <li>- Major influence on the company with a small registered position of shs are possible</li> <li>- Quorum remains unreached</li> <li>- Company does not know the shareholders and thereby the owner of</li> </ul> <p>Since the Swiss share law was established in 1991 the position of "Dispo shares" increased permanently (up to 50%).</p> <p>Possible negative consequences:</p> <ul style="list-style-type: none"> <li>- A significant position can be build anonymously</li> <li>- Major influence on the company with a small registered position of shs are possible</li> <li>- Quorum remains unreached</li> <li>- Company does not know the shareholders and thereby the owner of the company</li> <li>- Un-registered shareholders can not be reached by the company</li> </ul> <p>Therefore a new Swiss Share Law is in discussion in the parliament to establish a 'Nominee Model' i.e. unregistered positions will be registered in the name of the intermediary (Swiss custodian) who will be mandated by the respective company to advise the unregistered shareholders. Shareholders may then vote anonymously up to 0.2% of the total amount of shares. Nominee registered shares will have the same rights as registered shares. An implementation seems to be uncertain at the moment due to political dispute in the parliament and we expect an implementation of the new law – if it will be enacted - not before 2012.</p>
<p><b>UK / Ireland</b> (Citi)</p>	<p>Title is transferred at the moment at which the units being transferred are debited from the register of the transferor and credited to the register of the transferee. The identity and the composition of the entries is determined by the relevant governing law.</p> <p>For UK, for securities which are admitted to the CREST system which are held in uncertified form, the register of such units is referred to in the UK regulations as the 'operator register of securities'. The purpose of this is to record title to securities held and transferred via the CREST system. This is known as the 'local record'. The receipt by the</p>	<p>There do not appear to be any real issues.</p>



	<p>local record of stock postings data, constitutes a transfer of title to the Units of the relevant securities. Simultaneously, with the receipt of these stock postings, the CREST system generates a 'Registrar Update Request' (RUR) for retrieval by the registrar. This constitutes a notification, in accordance with the UK Regulations, by EUI to the relevant issuer. The issuer is then obliged by the UK regulations to amend its issuer record in respect of the transfer.</p> <p>At the point of settlement the CREST system generates RUR's for the majority of transaction types. Exclusions include CDIs and EDS. For transaction types where there is no transfer into the name of a member (ie OAT, STW) the effect of the RUR is to notify the issuer of the amendment to the register.</p> <p>The CREST system maintains participant details for each member, including name, address and any designation. The information is supplied by the member and is validated by EUI when the account is first set up. These details are made available to the Registrar.</p>	
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