

Presentation to IX AECSD International Conference on “The Impact of the EU CSDR on the activities of Third Country CSDs”

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AGENDA

- Some Landmarks in EU FMI Legislation
- Origins of Increased Regulatory Focus on FMIs
- Where we are with the EU FMI Legislative Programme
- Main aspects of the CSD Regulation (“CSDR”)
- Impact of the CSDR on Third Country CSDs
- Equivalence between the EU and Third Countries
- CSDR: Indicative Timetable

Some Landmarks in EU Market Infrastructure Regulation

- Investment Services Directive (ISD) 1992
- Giovannini Barriers Reports (CESAME I and II, Legal Certainty Group, FISCO) 2001, 2003
- Settlement Finality Directive 1998 amended 2009
- Financial Collateral Directive 2002 amended 2009
- Market in Financial Instruments Directive (Replaces ISD) 2004
- Code of Conduct for FMI's 2007
- (ECB Target 2 Securities Project) (2007)
- NB: Although Switzerland is not part of the EU, we do business in the EU, and EU firms do business here, so **EU law impacts on us as well.**

Origins of Increased Regulatory Focus on FMIs

- Financial Crisis 2007 →
- Although Market Infrastructures coped well with increased volumes and volatility [Some outages – London Stock Exchange, CREST]
- Caused regulators to revisit whole regulatory framework: shadow banking, OTC derivatives, Infrastructures
- FSF (FSB) Report to G-7 in April 2008
- G-20 London and Pittsburgh Summits in 2009
- No part of the Financial System to be left unregulated
- Authorities' emphasis on FMIs (particularly CCPs) regaining position at centre of financial system again, as risk managers
- EU agrees with this and has embarked on its own legislative programme: much more interventionist (Barnier) stance since 2010

THE EU POST-TRADING AGENDA IMPACTING ON MARKET INFRASTRUCTURES

Segment of the Value Chain	Measure	Proposed (Published)	Adopted (Finalised)	Entry into Force (after Technical Standards)
Trading	Review of Market in Financial Instruments Directive (MiFID II/MiFIR)	July 2011	End - 2012?	2015
Clearing	European Market Infrastructure Regulation (EMIR)	September 2010	July 2012	End-2012
Settlement	Central Securities Depositories Regulation (CSDR)	March 2012	Mid - 2013?	Mid - 2015
Underpinning Law	Securities Law Directive (SLD)	Q4 2012/Q1 2013	End - 2015?	2017/18?

MAIN FEATURES OF THE CSDR (1) – HARMONISATION ASPECTS

- Article 3: Eliminates physical securities (certificates). Electronic book entry only by 2020
- Article 5: Shortens settlement cycle from T+3 to T+2 (wef 1.1.2015)
- Articles 6 – 8: Consistent treatment of settlement fails – definitions, buy-ins, and enforcement
- Articles 9 → : Puts all CSDs in the EU on an equal and harmonised footing as far as supervisory and prudential requirements are concerned
- Article 31: Transparency of prices and fees
- Article 47: Enables an issuer to issue into the CSD of its choice
- Articles 59 – 62: Sanctions – powers and enforcement

MAIN FEATURES OF THE CSDR (2) – PRUDENTIAL & ORGANISATIONAL ASPECTS

- Articles 9 – 22: Authorisation and Supervision of CSDs (No Colleges)
- Article 23: Relations with Third Countries
- Articles 24 – 38: Organisational requirements, including Governance, Pricing
- Articles 39 – 51: Prudential requirements, including Capital
- Articles 52 – 58: Treatment of Banking-type services
- Articles 59 – 62: Sanctions
- Articles 63 – 70: Transitional Provisions
- Annexes: Services - A (core), B (ancillary), C (banking)

MAIN FEATURES OF THE CSDR (3) –IMPACTS ON THIRD COUNTRY CSDS

- As things currently stand, Third Country CSDs might be caught, and therefore subject to the CSDR
- However, acceptance that many TC CSDs only operate via links to CSDs in the EU, and not considered necessary to have an approval regime for standard or customised links, e.g. Account opening (only subject to notification)
- So full authorisation régime would only apply, if TC CSD wishes to **provide CSD services** into territory of the EU, e.g. via inter-operable link

Would then require:

- Application for re-authorisation by EU Supervisor ESMA
- Interest from a number of competent authorities
- Range of conditions, including EU prudential requirements, and potential split between CSD and banking services
- Application of reciprocity and equivalence

MAIN FEATURES OF THE CSDR (4) – EQUIVALENCE AND RECIPROCITY

- Being tightened up by the EU. Also being applied in a differential sector-by-sector approach. Means Third Country must have:
 - An effective CSD authorisation and supervision regime, which the TC CSD complies with; and
 - Established co-operation arrangements with ESMA and relevant EU supervisors

- Commission has to rule - “equivalence decision” on:
 - Adequacy of a TC’s legal and supervisory arrangements to enable TC CSD to comply with local requirements equivalent to the CSDR
 - The TC CSD is subject to effective supervision and enforcement on an ongoing basis
 - The TC legal framework enables equivalent recognition of EU CSDs (i.e. Reciprocity)

CSDR: Indicative Timetable

Council Discussions

- Limited progress Under Danish Presidency to mid-2012
- Cyprus Presidency resume discussions later this month
- But CSDR is not a priority

European Parliament Discussions

- Kay Swinburne report issued in July
- Discussion in ECON and Tabling of Amendments to mid-October
- EP Plenary Vote in mid-December

Finalising the CSDR

- Trialogue between the Council and EP – Q2 2013, under the Irish Presidency
- End- June 2013 Agreement?
- ESMA Technical Standards by mid-2014
- Entry into force by mid-2015 (in time for T2S)

HOW DO I FIND OUT MORE?

For Further Information about the ECSDA
Position, please visit:

www.ecsda.eu



Thank you for your attention

Any More Questions?

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