

EU COMMISSION ANNOUNCES WIDE-RANGING CONSULTATION ON DISMANTLING BARRIERS AND FUTURE STRATEGY FOR THE AREA OF POST-TRADE SERVICES



INDUSTRY UPDATE

As part of the European Union's Capital Markets Union ('CMU') initiative which has been progressing since September 2015, the Commission issued a wide-ranging [public consultation on 23rd August addressing barriers and future strategy for post-trade services](#). The consultation seeks to gather views on a number of issues including the current state of post-trade markets, the main trends and challenges faced by post-trade services providers and users, as well as the best ways to remove barriers, including through financial technology. The results of the Commission's consultation will contribute to a communication on post-trade which is planned for the end of 2017, and to future legislative reviews.



This communication is intended to: provide a summary of the consultation with commentary on potential impact; update you on our efforts in relation to each; and invite your input.

A factsheet on the CMU project can be accessed [here](#), or you can view more detailed information [here](#).

■ WHAT ARE THE KEY IMPACTS FOR ISSUERS AND SHAREHOLDERS?

The consultation conducts an extensive review of global trends, technologies and competition in post-trade, and seeks views on how the future landscape will be impacted by:

- › Automation
- › New technology e.g. distributed ledgers
- › Competition and rules impacting cross-border arrangements
- › Shareholder relations
- › Brexit

An additional focus of the consultation is the report of the European Post Trade Forum ('EPTF'), which includes specific recommendations for the removal of remaining barriers to post-trade market infrastructure. The EPTF is an expert group assigned by the Commission to assess progress in removing the Giovannini barriers to cross-border clearing and settlement, following the implementation of recent legislation and market infrastructure developments. The EPTF's report is a substantial piece of work that has significant potential to impact Issuers and their shareholders. Of particular interest for Issuers and shareholders, the report includes recommendations on:

- › Harmonisation of operational registration procedures
- › Review of investor ownership rights in book entry securities
- › Harmonisation and standardisation of processes associated with Exchange Traded Funds
- › Full implementation of Market Standards for Corporate Actions and General Meetings
- › Review of information messaging protocols used for settlement and registration purposes
- › Withholding tax collection and reclaim procedures

■ EPTF IMPACTS FOR ISSUERS AND SHAREHOLDERS

We have set out each of the EPTF recommendations we consider relevant to you in more detail. Against each recommendation we have documented an anticipated impact for you and your investors, and Computershare's proposed approach.

The barriers listed have been colour coded for ease of reference:

Red = Major impact

Amber = Some expected impact

Green = Minor impact/information only

Fragmented corporate actions and general meeting processes (Barrier 1)	
EPTF proposed action	Fully implement the two sets of EU Market Standards. The amended Shareholder Rights Directive ('SRD') will provide a meaningful boost to the process of implementing the Market Standards for General Meetings. A re-surfacing of fragmentation at national level via implementation of the SRD for corporate actions and general meetings processes should be avoided by consistent level 2 regulation.
Key impact area	All corporate action and general meeting related functions.
Computershare view	During the last 10 years, Computershare has played a key role in representing Issuer interests in relation to the development and implementation of the Market Standards, and have actively participated on both the Joint Working Groups and the European Market Implementation Groups. There is already a high level of compliance across the major markets in Europe, and we will continue to monitor and influence via Commission and national contacts.

Lack of convergence and harmonisation in information messaging & reporting standards (Barrier 2)	
EPTF proposed action	Digitisation (in order to improve straight-through-processing), harmonisation (or interoperability when full harmonisation is not possible) and standardisation (common identifiers should be a common basis) should be the guiding principles. As far as cash markets are concerned it is even suggested that the EU authorities could create a compelling event that would accelerate the migration to ISO 20022 message standards or to future globally accepted standards.
Key impact area	All functions required to interact with market infrastructure.
Computershare view	Replacement of existing message standards (used for settlement, registration and corporate actions) is likely to be a multi-year project. Whilst the impact of any mandatory enforcement would be significant, we will have opportunities to influence aspects such as registration messaging. We intend to continue to influence future strategy e.g. through our relationships with market infrastructures and other industry contacts, to seek to mitigate any unnecessary cost for the industry.

Lack of harmonisation and standardisation of Exchange Traded Fund (ETF) processes (Barrier 3)	
EPTF proposed action	Implementation of best market practices, standards and recommendations. Where relevant, domestic legal obstacles to fluid cross-border movements of ETFs and related products should be removed. Suggested solutions: <ul style="list-style-type: none"> › The Depotgesetz in Germany should be modified to allow Collective Safe Custody status to ETFs held through CSD links, even though the 'notary function' is not carried out by the Issuer CSD itself, but by the ETF Registrar. › Euroclear UK and Ireland (EUI) should consider the inclusion of the notary function in their services.
Key impact area	ETF Issuers.
Computershare view	We have made extensive efforts in recent years to facilitate improved cross border settlement of ETFs between Ireland and Germany, and welcome this initiative. We will continue to offer direct input on these issues and seek engagement with the Working Group.

Inconsistent application of asset segregation rules for securities accounts (Barrier 4)

EPTF proposed action	<p>The approach to asset segregation should be made consistent across all EU legislation, for all markets and asset classes, so as to implement two principles:</p> <ul style="list-style-type: none"> > Client assets held by an intermediary should be segregated from proprietary assets in an insolvency-proof manner. > Account structures should be open to investor choice. Use of asset segregation to achieve a policy objective should generally be optional, and only required if it is demonstrated that it will achieve the objective and no better alternative is available. <p>Amendments should be made to EU and Member State legislation, as necessary, to conform to these principles.</p>
Key impact area	Issuers of Depositary Interests and those offering Corporate Sponsored Nominee or Employee Share Plan arrangements.
Computershare view	We have lobbied for clarification of rules for Issuer Sponsored arrangements in the context of the implementation of the CSD Regulation. Action on this barrier may offer a further opportunity to modify guidance provided to date in the specific context of Issuer-sponsored omnibus accounts.

Lack of harmonisation of registration and investor identification rules and processes (Barrier 5)

EPTF proposed action	<p>Investor transparency procedures (data fields, data content, messaging standards) should be harmonised and standardised.</p> <p>Where applicable, operational registration procedures should be harmonised and standardised along the harmonised framework defined for shareholder transparency and should also accommodate the specific requirements of the investment fund industry. The report proposes that a task force consisting of market experts should be established in order to assess the recommendations and agree an approach to remove the existing barriers.</p>
Key impact area	Issuers of registered securities and UK s793 / Irish s1062 rules.
Computershare view	Whilst we are broadly supportive of any harmonisation initiatives to improve efficiency, the resultant recommendations have potential to change/disrupt registration activity across Europe. We will continue our representations to the Working Group in an effort to balance the benefits to market participants with the potential development costs and process disruptions to Issuers and their agents.

Complexity of post-trade reporting structure (Barrier 6)

EPTF proposed action	A harmonised and simplified reporting 'package' should be developed, which can be referenced by all EU regulations and rules that require post-trade transaction reporting.
Key impact area	All services with regulatory reporting obligations (primarily dealing).
Computershare view	We do not anticipate any significant impact from this recommendation as presented in the report but will continue to monitor this initiative.

Unresolved issues regarding reference data and standardised identifiers (Barrier 7)

EPTF proposed action	In the medium term seek international agreement that all reference data identifiers that are necessary to ensure efficiency should be available to users for free or at cost, for internal and external use, and not restricted by commercial interest such as licence contracts or consumption reporting requirements.
Key impact area	Any services issuing or utilising reference data e.g. Company Announcements.
Computershare view	No direct impact expected; we will monitor this initiative.

Uncertainty as to the legal soundness of risk mitigation techniques used by intermediaries and of CCPs' default management procedures (Barrier 8)

EPTF proposed action	A number of recommendations in relation to risk mitigation actions taken by intermediaries and CCPs' default management procedures.
Key impact area	Information only.
Computershare view	On the face of it, this has no immediate relevance however we will monitor potential impact on securities transfer requirements resulting from collateral enforcement.

Deficiencies in the protection of client assets as a result of the fragmented EU legal framework for book entry securities (Barrier 9)

EPTF proposed action	<p>EU legislation should be introduced to:</p> <ul style="list-style-type: none"> › ensure that an end investor (often referred to as a beneficial owner) enjoys ownership rights over all securities credited to an account intended to confer ownership, and that the end investor obtains ownership rights when the end investor's account-provider credits their account subject to robust reconciliation and no duplication in the recording of assets throughout the custody chain. › clarify that securities credited to a client account do not belong to the account-provider, regardless of whether the account is an omnibus account or an individually segregated account. › enable prompt return of the securities in the intermediary's insolvency by establishing common processes for the return of assets. › specify how losses should be attributed in cases of shortfalls arising in the intermediary's insolvency.
Key impact area	Issuers of registered securities.
Computershare view	Various proposals to assess and cement ownership rights have emerged from the EU in the past decade. This is an enormously difficult area to tackle considering the existing range of legal and operational arrangements nationally and cross border. Such issues are very hard to resolve without addressing entrenched market structure issues with intermediated ownership. We intend to continue to engage directly with the Commission and associated working groups, and will endeavour to ensure Issuer views are adequately represented.

Shortcomings of EU rules on finality (Barrier 10)

EPTF proposed action	The Settlement Finality Directive should be amended to consolidate an EU-wide understanding of the actual moment of finality of transfers, and to protect the principals of Delivery versus Payment.
Key impact area	Information only.
Computershare view	No direct impact expected; we will monitor this initiative.

Legal uncertainty as to ownership rights in book entry securities and third party effects of assignment of claims (Barrier 11)	
EPTF proposed action	<ul style="list-style-type: none"> › Introduction of a single conflict of laws rule for ownership rights in book entry securities. › Introduction of a conflict of laws rule on third party effects of assignment of claims.
Key impact area	All Issuers.
Computershare view	If the ownership entitlement for beneficially held securities, for example, is considered to be exercisable against all third parties - including the Issuer - then it could create a substantive risk of conflict with Issuers' domestic legal obligations, and could impact the administration of shareholder rights, risking effectively 'inflating' the securities issuance with consequent governance and integrity concerns. There has been a recent EC consultation on the topic (to which Computershare responded) and we will continue to represent these concerns while welcoming efforts to clarify the ownership position for investors.

Inefficient withholding tax (WHT) collection procedures (Barrier 12)	
EPTF proposed action	Public authorities are requested to adopt a common harmonised process for WHT collection and reliefs, based on standard rules and forms, in application of the relevant Double Taxation Treaties. For such harmonisation, the European Commission should foster a coordinated approach among Member States, in order to establish a common set of procedures and enhance communication tools.
Key impact area	Dividend paying Issuers with withholding tax obligations.
Computershare view	Issuers that apply withholding tax services are likely to be impacted by any proposals. Consequently we will monitor and respond to any implementation proposals.

Note that the consultation closes on 15th November 2017, and our intention is to provide further updates as we develop our full response.

■ ASSOCIATED CMU DEVELOPMENTS

In addition to the future strategy consultation, the Commission has recently consulted on [conflict of law rules](#) and [digitalisation and cross border operations relating to company law](#).

In relation to the conflict of law consultation, any consequential legislation has potential to impact who will be required to be recognised as the owner of securities and entitled to certain rights, and could create substantial issues including (but not limited to) inflation of the securities issuance.

The consultation on digitalisation of company law sought views on a number of aspects including digital tools for companies to interact with Member States (registration, filing, publication) and digital processes or tools for companies to interact with shareholders, and conflicts of law. Computershare responded to this consultation and our key areas of focus were:

- > Online filing including security, templates, recognition and deduplication
- > Communications between Companies and Shareholders e.g. lack of email address
- > Participation and voting at General Meetings
- > Virtual meetings
- > Blockchain

We will be happy to discuss our feedback with interested clients.

■ *[UK Issuers only]* Will Brexit negate the impact on these arrangements for UK Issuers and shareholders?

It is too early to say what aspects of EU legislation will continue to apply in relation to UK securities after finalisation of the Brexit negotiations, and whether UK authorities will continue to adopt EU proposals relating to the financial sector. In the absence of any definitive guidance we will continue to monitor and engage with the relevant authorities to ensure that the UK perspective continues to be represented. It seems likely that the competitiveness of companies operating within the domestic equity market will continue to be affected by the EU's efforts to harmonise regulation irrespective of the precise nature of the Union's relationship with the UK.

WHAT'S NEXT?

Using our network of local industry experts and our Global Capital Markets team, we will make you aware as and when further information becomes available but if you have any questions regarding CMU implications in the interim, please contact andy.callow@computershare.com.

