



European Commission  
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## Consultation on post-trade in a Capital Markets Union

We refer to the European Commission's *Consultation document on post-trade in a Capital Markets Union: dismantling barriers and strategy for the future*, published on 23 August 2017. We appreciate the work of the European Post-Trade Forum (EPTF) to assess the European Union (EU) post-trade landscape, and we welcome the opportunity to contribute our perspective.

Norges Bank Investment Management (NBIM) is the investment management division of the Norwegian Central Bank (Norges Bank) and is responsible for investing the Norwegian Government Pension Fund Global. NBIM is a globally diversified investment manager with EUR 162 billion invested in equities and EUR 95 billion in fixed income in the EU.<sup>1</sup> NBIM's equity portfolio consists of minority stakes in nearly 9,000 listed companies, of which 1,650 are listed in the EU.

NBIM supports measures that facilitate market access for all investors and reduce costs and operational risks associated with fragmented market regulation.<sup>2</sup> We welcome the Commission's efforts to create a single market for capital and remove unjustified national obstacles to cross-border investments in the EU. We support the Commission's view that removing such obstacles will support economic convergence and help cushion economic shocks in the euro area and beyond, making the European economy more resilient.<sup>3</sup>

Under its mandate, NBIM can only invest in assets outside Norway and is therefore always a cross-border investor. As a participant in EU post-trade markets, we have observed the growing importance of new technologies and also encountered several barriers to cross-border investments. In this letter, we highlight several areas in particular that could benefit from further harmonisation at EU level.

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<sup>1</sup> As at 31 December 2016

<sup>2</sup> NBIM [Discussion Note](#) on well-functioning financial markets, 2012

<sup>3</sup> Commission [Communication](#) on Capital Markets Union - Accelerating Reform, 2016



### Corporate actions and general meeting processes (EPTF barrier 1)

Shareholder meetings are an important opportunity for investors to exercise ownership rights, hold boards accountable and influence companies. In the EU, corporate voting is subject to national differences in the rules governing operational processing. Some of these effectively limit the ability of cross-border investors to exercise their full ownership rights. We welcome the new Shareholder Rights Directive (SRD), which introduced common rules for the transmission of information throughout the voting chain. We look forward to the next step in the harmonisation process, which will be to address operational complexities, including:

- The lack of a common **messaging standard** adapted to the voting process. Currently, the process is still manual, with a free text box for instructions, rather than pre-defined fields where data is entered in the form of codes. Harmonising regulation as to which message fields are necessary would enable automated processing of votes.
- Obtaining **confirmation** that resolutions have been voted on in line with electronic instructions can be difficult because of complexity in the voting chain. We hope all intermediaries will respect the new SRD requirements on vote confirmation.<sup>4</sup>
- The **timeline** between the announcement of a general meeting, the release of proxy material, and the deadline for investors to cast their vote is often very short. Shareholders should have a reasonable amount of time to make informed decisions.
- There is no common **definition of the record date** in the EU.

Concerning corporate actions, the **payment of dividends** can take place at different points in time, depending on whether the ex-date (i.e. date of the trade) or the record date (i.e. date of settlement) is used as a reference point. Another illustration of diverging market practices is the **calculation of interest** on fixed-income instruments, due to the lack of a harmonised approach to counting the number of days in a year.

The Commission could address some of these issues and national differences through the implementing acts on the revised SRD. The upcoming review of company law also offers an opportunity to introduce more automation in the voting chain. Finally, the Commission should continue to encourage market solutions where possible.

### Lack of convergence in information messaging standards (EPTF barrier 2)

We see the trend towards increased **automation throughout the custody chain** as a positive development, as it reduces operational risk and increases efficiency. For some financial products such as repos, the matching process is still manual, and confirmations of trades are sent by e-mail or fax. This method is unnecessarily time-consuming and can lead to processing errors. For equities and fixed income, on the other hand, standard practice is

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<sup>4</sup> [Directive 2017/828](#) requires confirmation of receipt of votes and the right to verify after a general meeting whether the vote has been validly recorded and counted by the company.



for matching and confirmation to be performed automatically, thanks to market participants using common tools.

We would welcome the development of market standards that extend the automation of matching and confirmation to all financial products, in order to reduce operational risk.

*Lack of harmonisation of registration and investor identification rules and processes (EPTF barrier 5)*

The rules and practices relating to the **registration of securities** holders vary across the EU. This fragmentation prevents the efficient establishment of holders' rights in relation to issuers and the identification of legal and beneficial owners. This also leads to significant complexity and potential risk exposure for cross-border investors. In addition, the **lack of transparency** can hamper the work of market supervisors and regulators.

The Commission's level 2 measures on the revised SRD will be an opportunity to harmonise procedures for investor transparency and operational registration. We would welcome the streamlining and standardisation of securities holders' identification, leveraging the information granularity provided by the trade reporting requirements under MiFID II. The issuer's responsibility to maintain a registry should be consistent across the EU, with clear rules for each type of instrument. In addition, there should be visibility across all layers of the securities holding chain, regardless of the custody models employed. Finally, we see the need for security holders' rights in relation to issuers to be standardised, in particular regarding the timing of entry into the register and the resultant rights to dividend streams.

*Complexity of post-trade reporting structure (EPTF barrier 6)*

Shareholding **disclosure requirements** (e.g. substantial shareholding disclosures, takeover disclosures) vary across jurisdictions in the EU. This leads to high complexity and cost, as well as increased risk of non-compliance for market participants. While the revised Transparency Directive<sup>5</sup> aimed at the further harmonisation of rules, many differences still exist among member states.

Examples include differing disclosure thresholds and ownership calculations (i.e. financial instruments to be included, treatment of lent out shares, shares received as collateral, etc.). Additionally, there are differences in the disclosure process itself in terms of submission deadlines, notification recipients, format of disclosure forms and submission methods. We would therefore welcome further harmonisation in shareholding disclosure requirements.

*Unresolved issues regarding reference data and standardised identifiers (EPTF barrier 7)*

Different applications and systems are often used to **identify counterparties** in the trading of securities. This means that users need to perform a cross-mapping exercise to translate data from one system to the other, which is a complex process and creates operational risks.

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<sup>5</sup> [Directive 2013/50/EU](#)



Furthermore, **reference data** is important for accurate ownership calculations for shareholding disclosure purposes. Currently, there is no single golden source of such data (e.g. total shares and votes outstanding) and data providers do not always provide data that is 100% accurate. This can lead to incorrect ownership calculations.

We support efforts by standard-setters such as ISO to increase standardisation with the help of a common electronic language. Furthermore, we agree with the EPTF that it would be preferable for reference data – either security or organisation identifiers – to be freely available to all market participants.

*Uncertainty as to the legal soundness of risk mitigation techniques used by intermediaries (EPTF barrier 8)*

Disparity in the implementation of the EU framework at a national level gives rise to **unnecessary legal uncertainty**. Uncertainty, unlike risk, is often difficult to mitigate as there is no clear scenario that can be addressed and it can therefore be an obstacle to investment. It is important to address this as a barrier, not as a mere cost of market entry.

We support the EPTF recommendation to adopt the UNIDROIT principles on close-out netting in the EU. We also agree with the EPTF proposed changes to the Financial Collateral Directive (FCD) to ensure additional consistency and harmonisation of national frameworks.

*EU legal framework for book entry securities (EPTF barrier 9)*

NBIM's mission is to safeguard and build financial wealth for future generation. Therefore, when approving markets for investment or engaging intermediaries in specific jurisdictions, an area of significant scrutiny for NBIM is the legal framework and market infrastructures. We need to make sure that the framework allows the safeguarding of the fund's assets.

From this perspective, it is critical that the legal framework clearly recognises **investors' ownership rights**; and provides greater certainty concerning the recovery of assets in the event of **intermediary insolvency**.

*EU rules on finality (EPTF barrier 10) and ownership rights in book entry securities (EPTF barrier 11)*

As a cross-border investor, we support **consistency** of national frameworks and **clear conflict of laws rules**. We therefore welcome EPTF's recommendations seeking:

- uniform identification of key process points by harmonising definitions;
- to ensure that settlement finality is consistent with the order matching process; and
- enhanced legal certainty in respect of cross-border ownership of securities.

*Withholding tax collection procedures (EPTF barrier 12)*



Withholding tax regimes are not harmonised in the single market, which means that cross-border investors face complex refund procedures when investing in the EU. We agree with the EPTF's conclusion that addressing this barrier should be considered a high priority.

- Ultimately, we would welcome the introduction of a **relief at source** system in all member states, where the specific tax rate that applies to the investor is applied on the date of the dividend or coupon payment. This would avoid complex tax reclaim procedures.
- In the short term, we see a need to define **standard documentation** investors should provide in order to assert their tax status. This would facilitate an efficient relief process, reduce the risk of incorrect tax treatment, and limit the associated administrative burden.
- We also see a need to harmonise the **methodology for calculating** refunds. All member states should apply consistently the common market practice of calculating refundable tax in the same way as the underlying income entitlements are determined.

To address this barrier, the Commission could harmonise standards at EU level concerning the operational processes and the documentation required. The Commission could also ensure that the new code of conduct for efficient withholding tax procedures is implemented. Finally, a relaunch of the OECD's work on withholding tax would also be beneficial, building on the Treaty Relief and Compliance Enhancement (TRACE) project, which aimed at developing efficient treaty relief systems.

We appreciate your willingness to consider our perspective, and we remain at your disposal should you wish to discuss these matters further.

Yours faithfully

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