

[REDACTED]

Van: [REDACTED]@euroclear.com
Verzonden: dinsdag 23 oktober 2012 10:05
Aan: [REDACTED]
CC: [REDACTED]@euroclear.com;
[REDACTED]@euroclear.com
Onderwerp: MiFID II - Input to Council discussion on Cypriot compromise - applicability to CSDs/duplication with CSDR + Access
Bijlagen: 2012-10-22 Extract from MIFID II Cypriot compromise proposal-doc.zip.html

Dear [REDACTED]

In view of tomorrow's MiFID Council meeting I allow myself to revert to you on the earlier exchange of views we had on the applicability of MiFID to CSDs, and also to provide some additional input to the evolving discussion on access.

Applicability of MiFID to CSDs

As I wrote to you on 11 October, the MiFID Council texts left us with questions as to whether ultimately CSDs are now excluded from MiFID or not. As the current drafting gives rise to confusion and requires interpretation, we thought it would be useful to suggest some drafting changes that improve the texts and eliminate some of the potential ambiguity.

It is our understanding that the exemption in Article 2q grants an institutional exemption from MiFID to CSDs. It is our view that this should take precedence over any possible interpretations that could follow from the less than optimally drafted Annex and recital 26(b). In fact the wording of the annex creates confusion around the exemption, and the relevant recital 26(b) seems to refer to two conflicting solutions. It is therefore our view that the text cannot stay as it is and deserves to be clarified and amended.

Since we continue to agree that CSDs should be subject to some requirements in MiFID, but maintain that they should be located in the CSDR, we propose to:

1. delete the explicit exclusion for "maintaining securities accounts at the top tier level" from safekeeping activity in the list in annex 1. It seems to be a leftover from a previous approach to CSDs and creates confusion about the entity exclusion in article 2 which otherwise would be clear.
2. Recital 26b needs redrafting to reflect the approach in Article 2q. It makes mixed references to the current approach and an old approach. The simplest way of amending is to delete large parts of it. This way, the legislator also avoids making incorrect reference to items which have not yet been finalised in the CSDR. The modifications can be made even simpler by deleting the middle sentence.

I attach a one pager with drafting suggestions on the basis of the latest Presidency compromise texts d.d. 10 October for your consideration and as input to your Council WG discussions

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As post-trade infrastructure active in settlement, safekeeping and related services such as collateral management, we support the views of those MS, like the [REDACTED] who are in favour of open access. We hope you can take these views in consideration.

Kind regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**Extract from MIFID II Cypriot compromise proposal
of 3 October 2012 re CSDs**

Recital 26b says :

[new] Central Securities Depositories [CSDs] are systemically important institutions for financial markets that ensure the initial recording of securities, the maintenance of the accounts containing the securities issued and the settlement of virtually all trades of securities. However, CSDs might provide investment services and activities which are regulated under this Directive. ~~In order to ensure that any entities providing investment services and activities are subject to the same similar regulatory obligations framework and to avoid competitive distortions between different types of providers of the same services, it is appropriate to ensure that CSDs are subject to the requirements of this Directive concerning their internal organisation and the operating conditions for the provision of investment services and activities as well as Regulation [MiFIR].~~ Union legislation regulating CSD [CSDR] should identify the provisions of **obligations** in this Directive and of Regulation [MiFIR] which should apply to CSDs providing investment services and activities **including when they hold an authorization as credit institution**. ~~In order to avoid duplications in the authorisation process of CSDs when providing investment services but, in the meantime, ensuring that CSDs are able to comply with the requirements of this Directive and of Regulation [MiFIR],~~ Union legislation regulating CSDs should establish specific exemptions from the authorisation requirements under this Directive and put in place consultation and cooperation mechanisms between the competent authorities authorising CSDs and the competent authorities referred to in Article 69 of this Directive.

Opmerking [ESTGFP1]: The modifications can be made even simpler by deleting this middle sentence.

Article 2(1)(g) says :

This Directive shall not apply to Central Securities Depositories that are regulated under Union legislation.

Article 4 (definitions) says:

35) Central Securities Depositories (CSDs) means Central Securities Depositories as defined in Regulation [] (CSDR).

The list of investment services and activities in Annex 1, Section A says:

(9) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management ~~and excluding maintaining securities accounts at the top tier level (central maintenance service)~~ referred to in point (2) of Section A of the Annex of the [CSD Regulation];

[REDACTED]

Van: [REDACTED]@Euroclear.com
Verzonden: woensdag 7 maart 2012 17:02
Aan: [REDACTED]
CC: [REDACTED]@Euroclear.com; [REDACTED]@Euroclear.com; [REDACTED]
(FM/ME)
Onderwerp: Re: MiFID II/ MiFIR - upcoming Council Working Group meeting 9 March
Bijlagen: MiFID Review_MEP Ferber Questionnaire_Euroclear Response-pdf.zip.html

Dear [REDACTED]

Further to my email below, please find attached Euroclear's response to the consultation.

Kind regards,

[REDACTED]
[REDACTED]
[REDACTED]
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From: [REDACTED]
To: [REDACTED]@minfin.nl
Cc: [REDACTED]@minfin.nl; [REDACTED]@EUROCLEAR; [REDACTED]@EUROCLEAR
Date: 07/03/2012 04:12 PM
Subject: MiFID II/ MiFIR - upcoming Council Working Group meeting 9 March

Dear [REDACTED]

As announced by [REDACTED] during your telephone conversation this afternoon, we would like to draw your attention to Euroclear's view on the MiFID II/ MiFIR proposal in light of the MiFID II Council Working Group meeting this Friday, 9 March. Although we have informed you of our view before, the upcoming meeting seemed a good opportunity to reiterate certain points. It concerns Euroclear's comments and concerns previously submitted as a response to MEP Marcus Ferber's consultation on this subject.

Euroclear's main concern is the proposed classification of the services "safekeeping and administration of financial instruments, and related services" (e.g. cash/ collateral management) as an investment service, where these services currently qualify as ancillary services only. This reclassification would bring with it a requirement for Euroclear to have an investment services licence pursuant to MiFID II/ MiFIR.

Mildly put, this consequence is very undesirable. Firstly, MiFID has not been designed for CSDs. Secondly, application of this legal framework to CSDs will bring with it the risk of conflicting requirements being applicable in future once the CSD Regulation has come into force. Furthermore, if (parts of) MiFID were to apply to CSDs, under the current proposal the exact obligations related to the safekeeping of securities are very unclear as the MiFID obligations have not been specified for this kind of service.

I understand that your colleague [REDACTED] will be attending the meeting, for which reason [REDACTED] is copied into this email. I would be grateful if [REDACTED] could take this on board in preparation for the meeting on Friday.

