EURONEXT

MEMO

MiFID Refit – Euronext Position on Scope of Share Trading Obligation

MiFID II Framework

Euronext welcomed the initial Share Trading Obligation (STO) provision as part of the MiFID II package given its objective to promote transparency and move trading away from OTC on to lit venues. It is an important cornerstone of the overall aim of MiFID II to enhance the efficiency, resilience and integrity of financial markets in the EU. However, it is clear that there are issues with its application, particularly in relation to its extraterritoriality and also its application to dual-listed shares. Therefore we support the view that amendments need to be made to this provision as the approach should avoid undue complexity and be based on predictable and meaningful criteria.

Issues with the current application of the STO

- ***Extraterritoriality***

Under the current provisions, if equivalence is not granted, non-EU shares traded on third country non-equivalent venues also admitted to trading in the EU would have to be traded in the EU by EU investment firms. These provisions would apply regardless of the liquidity of non-EU shares on EU markets, meaning that shares that are highly liquid on third country venues but for which liquidity on EU markets is low would have to be traded in the EU. While ESMA and the Commission have endeavored to try to address this issue, given the fact that only a handful of equivalence decisions have been adopted and determining equivalence can be problematic, it means there is a lot of uncertainty with respect to this provision, and therefore we agree with ESMA's analysis in its consultation that an alternative approach should be considered.

We agree with the approach to limit the STO provision to exclude third country shares.

- ***Dual-listed securities***

In addition, as highlighted by ESMA in its consultation, there is a further challenge with respect to securities that are dual-listed on an EU and non-EU trading venue as EU brokers may need to access both pools of liquidity. This is of particular concern to us. The STO should not restrict such access to this liquidity as this would harm EU investors and could disincentivise dual-listed issuers to retain their listing in the EU in order to extricate themselves from the STO if their primary liquidity is outside the EU. Therefore, we welcome the proposed solution that ESMA refers to in its analysis that in such cases where shares are dual-listed on an EU and a non-EU trading venue at the issuer's request, that there should be an exception to the provision to allow trading by EU brokers to take place on both the EU and non-EU trading venue where the issuer has specifically requested admission to trading.

One final point to mention regarding ESMA's analysis, is that it is suggested that if an issuer does not actively seek admission on an EU trading venue, then it could fall outside scope of the STO even if the security is admitted to EU MTFs without its consent. The only way this could work is to implement it in parallel with the provision to allow trading in dual-listed securities on both the EU and non-EU trading venue; otherwise, there is a huge risk that this could significantly incentivize certain issuers to delist from an EU trading venue in order to extricate themselves from the STO as this has been a live concern in

relation to Brexit developments. However, if the point on dual-listing is accepted, than this would mitigate the risk.

Proposed Determination of EU shares

Given the various challenges highlighted above in relation to the STO, a careful approach to determining an EU share is essential. The ISIN is a simple and straightforward method to use as part of the criteria but we also believe it is important to consider where the issuer has specifically requested an admission to trading. Therefore, in order to determine which shares should be considered as EU shares, we suggest the following approach should be taken:

- the STO should apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State plus those starting with a non-EU country code but where the issuer has its main listing within the EU27
- the STO should **not** apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State where the issuer has its exclusive listing in a third country (although this can only be implemented if the following point regarding dual-listed securities is also accepted)
- in cases where the security is dual-listed on both an EU trading venue and a non-EU trading venue at the specific request of the issuer, we propose that the STO should also still apply but that there is an exception in the provision (as suggested by ESMA in the consultation) to allow trading to take place on the non-EU trading venue where the issuer has listed the security, in addition to the EU venues.

- "Listing" in this sense is where the issuer has specifically requested the listing / admission to trading and is subject to various obligations for the initial admission and on-going obligations for maintaining the admission.

- "Dual-listed on an EU and non-EU trading venue" is where the issuer has specifically requested the listing /admission to trading on both the EU and non-EU market.

This approach will ensure that the key objective of the STO can still be achieved i.e. more transparency with OTC trading moving to lit trading, and it will also ensure in the case of dual-listed securities, that EU brokers and their investors can still access the main pools of liquidity where the issuer itself has requested its security to be traded and does not in any way disincentivise issuers from listing on EU trading venues.