

MEMORANDUM OF UNDERSTANDING
among
the Financial Services Authority, the Bank of England
and the Central Bank of Ireland (each, an "Authority")
on the co-operation framework for the regulation/oversight of the CREST
securities settlement system operated by
EUROCLEAR UK & IRELAND LIMITED
as it relates to the settlement of Irish securities

1. PREAMBLE

- Whereas the settlement of Irish Equities, warrants, unit trusts, OEICs and exchange traded funds together with certain corporate bonds (hereinafter 'Irish securities') is provided by the securities settlement system ("**CREST**") operated by Euroclear UK and Ireland Limited ("**EUI**");
- Whereas the UK Financial Services Authority ("**FSA**") is the primary regulator of the CREST system;
- Whereas the Bank of England ("**BoE**") is the overseer of the interbank payment system operated as part of CREST.

Whereas the Central Bank of Ireland ("**CBI**") is the statutory regulator (overseer) of payment and securities settlement systems in the Irish State;

- Whereas the FSA, in regulating EUI, includes in its regulatory remit **the** oversight of that part of the settlement system and processes that relate to the settlement of Irish securities;
- Whereas the FSA and BoE have agreed an MoU clarifying how the two Authorities will work together in relation to payment systems, including payment systems that are embedded in FSA-regulated organisations; and
- Whereas EUI is a wholly-owned subsidiary of Euroclear SA/NV ("**ESA**") and the arrangements for cooperative oversight and supervision of ESA are defined in a multilateral MoU between relevant authorities in Belgium, France, the Netherlands, Finland, Sweden and the United Kingdom.

This MoU sets out principles for co-operation among the CBI, the FSA and the BoE in relation to the regulation of the services provided by EUI as it relates to the settlement of Irish securities.

1.1 Euroclear UK & Ireland

EUI is incorporated in the UK as a private limited company, and as such is subject to UK company law. It is regulated by the FSA:

- as a Recognised Clearing House (RCH) under the Financial Services and Markets Act 2000 (FSMA);

- subject to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulation 2001 (SI 2001/995);
- according to the FSA's specialist sourcebook: Recognised Investment Exchanges and Recognised Clearing Houses (REC); and
- as an approved operator under the Uncertificated Securities Regulations 2001 (SI 2001/3755) (USRs).

The inter-bank payment system operated as part of CREST has been recognised by HM Treasury for oversight by the Bank of England under Part 5 of the Banking Act 2009. The system operates in sterling, euro and US dollars.

In addition, EUI is designated under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979) (Settlement Finality Regulations) which implement the Settlement Finality Directive (Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems); (named in the designation as '*CREST settlement for UK corporate securities and government bonds*').

EUI is also:

- subject to, and an approved operator under, the Irish Companies Act, 1990 (Uncertificated Securities) Regulations 1996 for Irish Securities (SI No. 68 of 1996); and
- designated by the Irish authorities under the Regulations implementing the Settlement Finality Directive in Ireland (SI No. 539 of 1998 and SI No. 88 of 2008) (named in the designation as '*CREST settlement for Irish equities*').

1.2 Need for co-operation and purpose of this memorandum

Under the Irish Central Bank Act, 1997, the CBI is responsible for the oversight and regulation of all payment systems operating in Ireland. Under the Central Bank Act, 1997, the definition of 'payment system' encompasses securities settlement systems.

EUI provides settlement facilities for Irish securities, which settle under Irish law and as such can be considered as part of the financial infrastructure in Ireland, and in which the CBI has a legitimate regulatory interest.

Direct regulation/oversight of EUI and CREST by the CBI would, however, be difficult and cumbersome, and would duplicate the work of the FSA as primary regulator and the BoE as overseer of the embedded inter-bank payment arrangements.

As the regulatory interest of the CBI is (largely) covered in the supervision /oversight activities carried out by the FSA and the BoE, the CBI intends to rely on the work carried out by the FSA and the BoE in this regard. At the same time the CBI would retain its oversight responsibility for the efficiency, effectiveness and stability of CREST insofar as it relates to the settlement of Irish securities.

The purpose of this MoU is to formalise the respective roles of the CBI, the FSA and the BoE relating to the regulation of EUI and CREST insofar as the settlement facilities for Irish securities are concerned. This MoU reflects the common understanding among the FSA, the BoE and CBI as to the specific arrangements to be established for organising co-operation between authorities in the UK and Ireland, whose markets are served by EUI.

2. LEGAL NATURE OF THE MEMORANDUM

This MoU does not constitute a contract or agreement among the parties to it. It is only a statement of intent and does not create or give rise to any legal or fiduciary obligations. Furthermore, this MoU will be without prejudice to any laws, regulatory models or requirements in force in, or applying to, the UK and Ireland.

The FSA, BoE and CBI remain solely and fully responsible for the proper execution of their respective competences, tasks and duties under applicable national law. The Authorities recognise that the interaction contemplated in this MoU must be compliant with the laws under which they are established and which govern their powers, capacities and responsibilities.

3. CO-OPERATION PRINCIPLES

3.1. Scope

The parties confirm that the FSA is the primary regulator of the CREST system operated by EUI. As direct regulator of EUI, the FSA will be responsible, according to UK law, for the enforcement of the UK regulatory framework applicable to EUI.

In order to avoid EUI being submitted to several sets of, or inconsistent, standards or requirements by overseers, the parties agree that, unless otherwise agreed¹, FSA will act as the single contact point to EUI with regard to regulation of that entity insofar as the settlement facilities for Irish securities is concerned.

FSA and BoE will continue to participate in the arrangements for the cooperative oversight and supervision of ESA².

FSA, BoE and the CBI will also participate in TARGET2 Securities cooperative oversight and supervision discussions.

Co-operation between the FSA, BoE and CBI shall be carried out as follows:

1. FSA, BoE and CBI will meet annually, or as circumstances dictate, to discuss issues of common interest relating to the supervision of EUI and CREST, and settlement of Irish securities within CREST. Without prejudice the issues to be discussed at these meetings may include, but will not be limited to:
 1. assessment of risks affecting CREST services subject to regulation and oversight, including those arising from payment arrangements for euro, for which CBI provides the operational interface; and
 2. compliance with UK, Irish, EU and other international standards
2. FSA and BoE will use best endeavours to inform CBI of any major events with actual or potential impact on EUI or on the operation of the CREST system and to provide the CBI with relevant information about any matter that is likely to assist

¹ As, for example under the MoU between the BoE and the FSA regarding the oversight of payment systems.

² The CBI attends the ESA Technical Committee as an observer.

the CBI to perform its functions as regulator of securities settlement systems, insofar as those functions relate to EUI and CREST.

3. CBI will (either at its own initiative or at the request of the FSA and / or the BoE) provide the FSA and / or the BoE with relevant information about any matter that is likely to assist the FSA and / or the BoE to perform its functions relating to the supervision and oversight of EUI and CREST.

4. GENERAL PROVISIONS

4.1 Confidentiality

1. An Authority which receives non-public information under this MoU will only disclose that information if it would be disclosable in accordance with disclosure permitted when that authority obtains information under its applicable laws, regulations and requirements. The recipient Authority will notify the other Authorities if it proposes to pass on information to another person. The recipient Authority will endeavour to comply with any restrictions on the use of information that are agreed when the information is provided.
2. If there is a legally enforceable demand for non-public information supplied under this MoU, the Authority receiving the demand will notify the Authority that supplied the information of the demand, unless this is not practicable for reasons of urgency. The Authority receiving the demand will use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available.

4.2 Amendments

This MoU may only be amended by the mutual consent of the signatories, as they deem necessary.

4.3. Entry into force/termination

This MoU shall come into force at the date of signature shown below. It remains in force until terminated in writing by any of the signatories, giving 30 days advance written notice to each of the other signatories.

4.4 Disclosure

The FSA, BoE and CBI agree to publish the existence of this MoU using procedures to be defined by mutual consent.

4.5 Review of the MoU

The signatories will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any issues arising.

Signed by: 

Date: 8/2/2011

David Lawton, Head of Market Infrastructure and Policy, Financial Services Authority



Date:

5/2/11

Andrew Haldane, Director, Financial Stability, Bank of England

Date:



11/3/11

**Paul Molumby, Head of Payments and Securities Settlements Department,
Central Bank of Ireland**
