



Securities Industry Association

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April 27, 2005

Via Electronic Mail to Andrew.Douglas@swift.com

Andrew Douglas
SWIFT
The Corn Exchange
55 Mark Lane
London, EC3R 7NE United Kingdom

Re: Consultation Paper: "The proposal for the removal of Barrier 1 of the Giovannini Report"

Dear Mr. Douglas:

The Securities Industry Association ("SIA")¹, through its Cross-Border Subcommittee², appreciates the opportunity to comment on the Consultation Paper regarding the recommendations for the removal of Giovannini Barrier 1. The Cross-Border Subcommittee addresses operational and regulatory trends, and proposals impacting the processing of securities transactions where one party involves a U.S. entity or client and the contra party involves an international element.

Our comments on the appropriate sections will follow the sequence of the proposed questions.

¹ The Securities Industry Association brings together the shared interests of more than 600 securities firms to meet common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and international markets and in all phases of corporate and public finance. Further information about the SIA membership, committees and initiatives are available on its website, www.sia.com.

² The Cross-Border Subcommittee is comprised of a subsection of representatives from SIA's Operations Committee. The Cross-Border Subcommittee is primarily a U.S.-based group of global and regional securities firms and banks. Several of our members join us regularly from Europe, in person or by conference call, and we also have U.S.-based representatives of non-U.S. entities. Our perspective, therefore, tends to be on the growth of global cross-border securities transactions.

Section 3: The Giovannini Recommendation

1. Do you agree with the scope of the solution as defined? If not, please define your suggested amendment and explain why it is required.

The scope is defined as “All participants should assume that the proposal for the removal of Barrier 1 is to be applied to communications in all post trade activities, including asset servicing and securities related cash activity, unless specifically stated otherwise. Unless stated to the contrary, participants should also assume the proposal is instrument neutral, i.e. it is applied to all traded instrument types.”

The SIA Cross-Border Subcommittee agrees with the goal of creating an efficient, safe and cost effective European Clearing & Settlement system via a common communication protocol. While it is important to focus on harmonizing the European markets, it is also important to maintain a global perspective and to understand the global impact. Therefore, we suggest taking a more opportunistic global approach. The focus should be on leveraging existing protocols and standards and developing new global standards where none exist. This approach will ensure a solid business case is established and quicker harmonization of the European markets.

All Post Trade Activities

While we agree conceptually that the scope should include all post trade activities, practically the scope is too broad to successfully develop and implement in a reasonable time frame. Leveraging existing and ongoing standardization efforts and developing standards where none currently exist will provide the basis for business harmonization.

Post trade activities can be broken up into four main categories, 1) trade initiation & confirmation (TIC), 2) clearance, 3) settlement, 4) asset servicing. FIX is a messaging standard developed specifically for real time electronic exchange of securities transactions and should be utilized as the standard for TIC. Additionally, there is a standard for clearance and settlement that already exists for other markets, ISO 15022, and we suggest that this standard is leveraged to create the EU market standard. Asset servicing and mutual fund processing are two areas where a global standard protocol should be developed.

All Traded Instruments

Again, we agree conceptually with the scope to include all traded instruments, but it is too broad to successfully develop and implement in a reasonable time frame. We suggest a phased in approach by product. One approach could be to group together products with similar characteristics and initially focus on products with the most cross-border transactions.

European Clearing & Settlement

We agree with focusing on standardizing certain areas for European clearing and settlement. However, standards should be developed for areas where there are none, with a global perspective in mind. Developing standards with a global perspective should not delay the European Union focus and implementation timeframes.

Section 4: The Proposed Protocol Framework

1. Do you believe the nine protocol elements correctly frame a potential communication protocol? If “not”, please specify the elements you would include/delete and why.

To the extent that the SIA Cross-Border Subcommittee can comment on technical issues, it believes that the protocol elements provide an adequate framework. However, it believes that the protocol should be network neutral.

2. b. Are there additional features you believe should be part of the mandatory baseline, e.g. should message archival and retrieval be a mandatory feature of the messaging service element? If so, what are these features and why should they be included?

The SIA Cross-Border Subcommittee believes that there needs to be further consideration of the manner in which the concept of a mandatory baseline, based on commitments from multiple service providers (that might not all be resident within the EU), might be monitored and enforced. It is not clear as to who or what type of organization should or could be entrusted with such a role.

It may be more appropriate to consider the establishment of standards of best practice that the industry and its service providers could sign up to through the use of Service Level Agreements. There is much to be said for peer and commercial pressure being used to achieve a desired outcome before considering the imposition of mandatory enforcement.

5. What is your opinion of the need to implement a market wide Data Standards compliance commitment, i.e. when new data standards are published, all participants agree to implement within specific timeframes. If you agree, is a 6 month mandatory compliance window appropriate? i.e. compliance with the standard is mandatory within 6 months of publication.

We believe the standard should be developed first and subsequently phased in as a best practices effort. If the best practices prove to be unsuccessful, we would recommend the consideration of a mandatory approach. The imposition of mandatory deadlines is difficult to enforce, especially in such short deadlines as 6 months.

Please also see our response to Question 2b above.

6. What is your opinion on the mandatory outsourcing of dispute resolution and commodity services to the provider[s] of messaging and/or network facilities? If you agree that outsourcing of such services should be mandatory, what services should be considered:

- appropriate to dispute resolution
- as commodities?

Please see our response to Question 2b above.

8. If you do not agree with either accreditation or single service provision, how do you believe compliance with the baseline functionality should be monitored and maintained?

The SIA would support the concept of competition in service supply, as opposed to single service provision. The concept of accreditation needs further consideration, especially as to the most appropriate entity to provide such a service. We recommend the accreditation process should be implemented by an entity independent of the service provider.

Please also see our response to Question 2b above.

Section 5: Issues arising from the Primary Research

1. What is the industry view on establishing two distinct goals, effectively phasing the implementation of the solution:

- a. A short term system interoperability goal to be achieved within an agreed timeframe, e.g. two years?**
- b. A long term business interoperability goal to be achieved within an agreed timeframe, e.g. five years?**

While the concept of establishing two distinct interoperability goals is attractive on the surface, in that it allows system interoperability to be achieved much sooner, upon deeper reflection the SIA Cross-Border Subcommittee does not believe that such an approach is feasible.

It is generally believed among the SIA membership that business interoperability is much more difficult to achieve than system interoperability. In fact, the SWIFT provided completion estimate of five years may prove to be very conservative based upon our past experience in dealing with this complex issue. This is so because the barriers to achieving business interoperability are not just operational in nature. Rather, they include a myriad of economic and political considerations that will drive market participants to resist any such standardization efforts, should they come at the expense of their current or future business prospects.

We understand the attractiveness of pushing forward on a system interoperability solution while the more complex business interoperability issues are being debated and sorted out. However, despite this significant challenge of dealing with these complex issues we would suggest that it is

necessary to do so in order to understand the business implications before you can adequately plan and design the appropriate interoperable system. Therefore, as unattractive as the alternative may be, the SIA Cross-Border Subcommittee believes that interoperability cannot be a phased project, starting with system interoperability.

Two other points are also worth noting. Consideration should be given to the role that existing middleware solutions can provide in meeting a short-term need for system interoperability. If current providers are able to achieve an adequate degree of system interoperability in the short term, it may allow for the industry to focus on the more difficult challenge of business interoperability.

Secondly, we encourage consideration of the global implications of any such European interoperability standards and the need to harmonize the regulatory requirements with other regions trying to address this same issue. Not doing so could increase costs to the industry as service providers develop multiple system and business solutions to meet the needs of these varying market requirements.

2. If such a phased strategy is appropriate, what would be considered to be acceptable time frames for achieving each goal?

We do not agree that the short-term system interoperability and long term business interoperability goals as described are appropriate. As per our answer in question 1, we believe business implications must first be understood; only then is a phased-in approach practical.

4. What mechanisms should be used to encourage take up of the recommended protocol within agreed timeframes, e.g. mandatory migration, financial penalties etc...?

We believe a regulatory mandate should only be considered if adoption of a standard protocol as an industry best practice is unsuccessful. In general, government / regulatory rules would be difficult to obtain for global markets. It was also suggested by SWIFT that the European Central Bank (ECB) would be the regulator, which would be the equivalent of the Fed in the US market; however we do not feel that this would be an appropriate path to pursue.

It may be more appropriate to consider the establishment of standards of best practice that the industry and its service providers could sign up to through the use of Service Level Agreements. There is much to be said for peer and commercial pressure being used to achieve a desired outcome before considering the imposition of mandatory enforcement.

In conclusion, we welcome the constructive dialogue created as a result of this document and look forward to additional opportunities to share our perspective on matters pertinent to the Cross-Border Subcommittee. If you have any questions or would like to discuss any of these

Andrew Douglas

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issues further, please contact the undersigned at 212-902-7920, or Richard Bommer, Director, Operations, at 212-608-1500.

Respectfully submitted,

Mary Dupay

Chairperson

SIA Cross-Border Subcommittee of the
Operations Committee

cc: Ira D. Hammerman, SIA Senior Vice President and General Counsel