

European Affairs Update

Meeting French Issuers

25 November 2009 – 9.30 to 12.30

ANSA - Paris

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Secretary General

Agenda

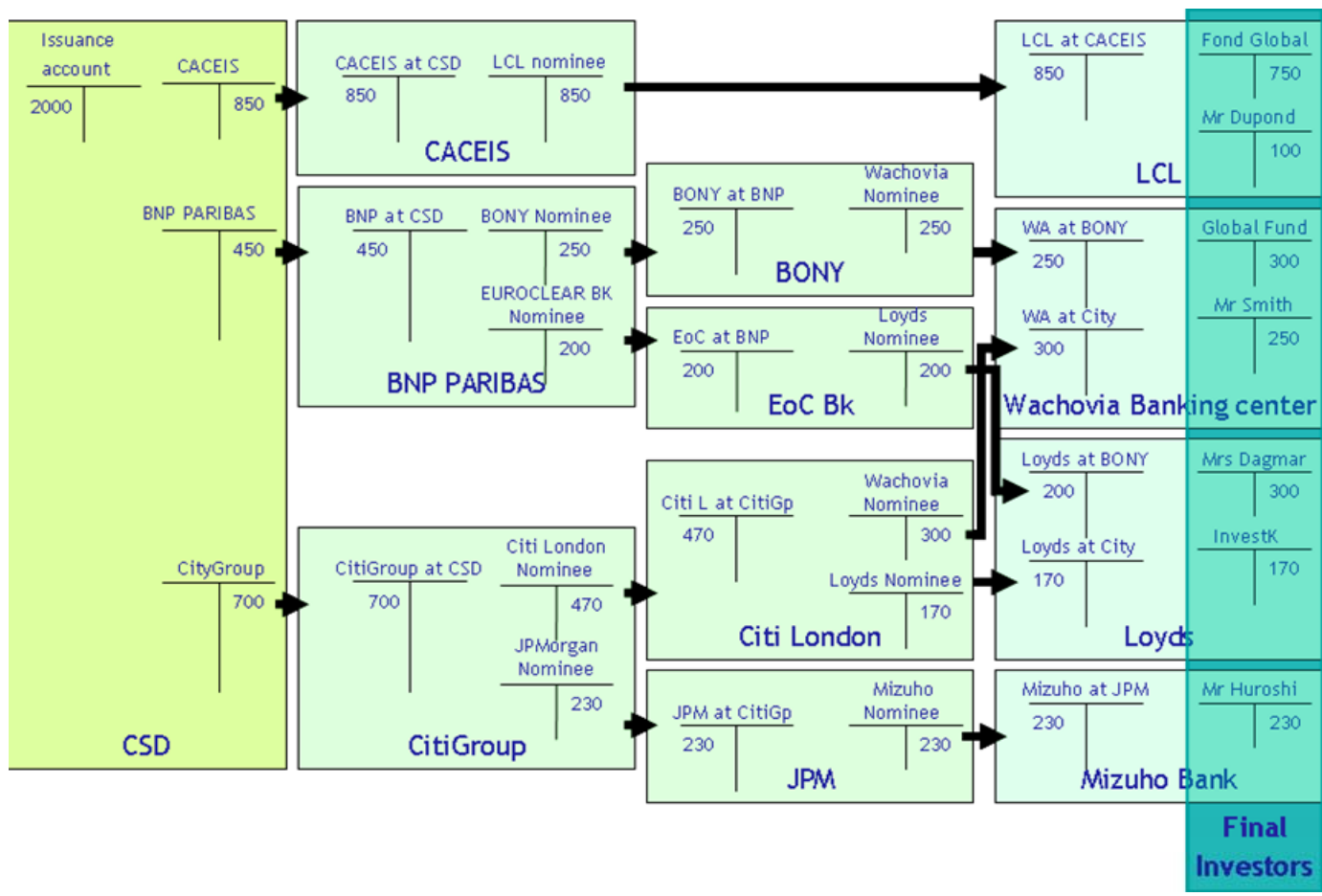
- European Issuers Top Priorities
- Market Standards on General Meetings
- Market Standards on Corporate Actions
- Intermediary Costs for GMs and CAs
- Harmonisation of Securities Law
- Cross-border Voting: 3-partite meetings
- Shareholder identification
- Channels for information and input

EuropeanIssuers Top Priorities

- An EU wide legal framework for shareholder identification
- An EU wide simple and easy system for cross-border voting
- A stable long-term investors base for European listed companies

A cross-border and intermediated shareholding

Issuer



A cross-border and intermediated shareholding

For beginners:



Chain of intermediaries between the issuer and the end investor:

NO DIRECT ACCESS

The unique position of the account provider

- Relation issuer - shareholder de facto replaced by relation account holder - account provider
- Which account provider? Which account holder?
- Bearer and registered nominees: only the account provider knows the account holder and has direct access to him
- End investor is (starting from issuer) at very end of chain

CONCLUSION: be it to

- identify the end investor
- communicate with him
- facilitate his voting,

you need to go via the chain of intermediaries.

How does this affect general meetings?

- Investors have access to a wide and deep pool of securities
- But are they able to enjoy all rights reflected in the price?
- For instance, corporate actions?
- For instance, general meetings?
- Cross-border investors should be treated on an equal footing as domestic investors
- However the Giovannini reports esteemed there was a serious barrier: **barrier 3!**

Main problems with general meetings

Communication and processing get stuck on a bumpy road

- Information on GMs doesn't reach the (foreign) investor (on time)
- Multiplicity of intervening parties (the chain)
- Slow, tiresome, inefficient, costly, inadequate and uncertain
- No standardisation or uniformity in communications, informations
- Difficulties to determine who is entitled to participate and vote
- Early market cut-off deadlines for voting instructions
- Loss of votes, double voting, empty voting, no voting at all!
- Omnibus accounts: no breakdown of votes
- Difficult to reconcile received voting instructions with voting rights and voting rights owners: no voting trail

-> not very encouraging for the (candidate) foreign shareholder!

Why bother?

- All shareholders should have equal possibilities to fully exercise their legal and economic rights
- Effective corporate governance relies on the possibility
 - for issuers to communicate with the end shareholders
 - for shareholders to exercise their rights, in particular voting rights
- Standardising general meetings processes will help to:
 - Remove discrimination between shareholders
 - Increase participation of shareholders to GMs to avoid incidental majorities
 - Increase transparency and integrity of voting process
 - Avoid loss of votes/double voting/empty voting
 - Establish a voting trail

What to do about it?

A European cross border problem calls for a cross border level playing field: domestic solutions alone will not do!

- EU legislative initiatives
- EU industry initiatives

EU legislative initiatives

- Shareholders Rights Directive (SRD) 11/07/07
 - improves shareholder rights wrt general meetings
 - clear obligations for the companies, but overlooked the securities industry that has to make this happen ...
- Possibility of Recommendation to address intermediaries' duties ...
 - dead and buried
- COM Legal Certainty Group 2nd Advice Aug 08 calls for basic legal framework on duties of intermediaries including wrt corporate actions
- Securities Law Directive could be coming our way soon

EU industry initiatives

- **Two cross sector industry groups:**
 - Joint working group on general meetings (JWGGM)
 - Corporate actions joint working group (CAJWG)
- **Participants:** issuers, CSDs, CCPs, intermediaries, stock exchanges (EuropeanIssuers, ECSDA, EACH, EBF, EACB, ESBG, ESSF, FESE)
- **Context:** EU COM mandate to dismantle Giovannini Barrier 3
- **Objective:**
 - Remove “discrimination” of cross-border shareholdings
 - increase efficiency and reduce costs and risks of supporting processes and communications
- **Domain:** general meetings and corporate actions
- **Deliverable:** EU market standards for communications and processing
- **Enforceability:** self-regulatory, but COM is closely watching and a future Securities Law Directive could set the legal framework and fill the gaps

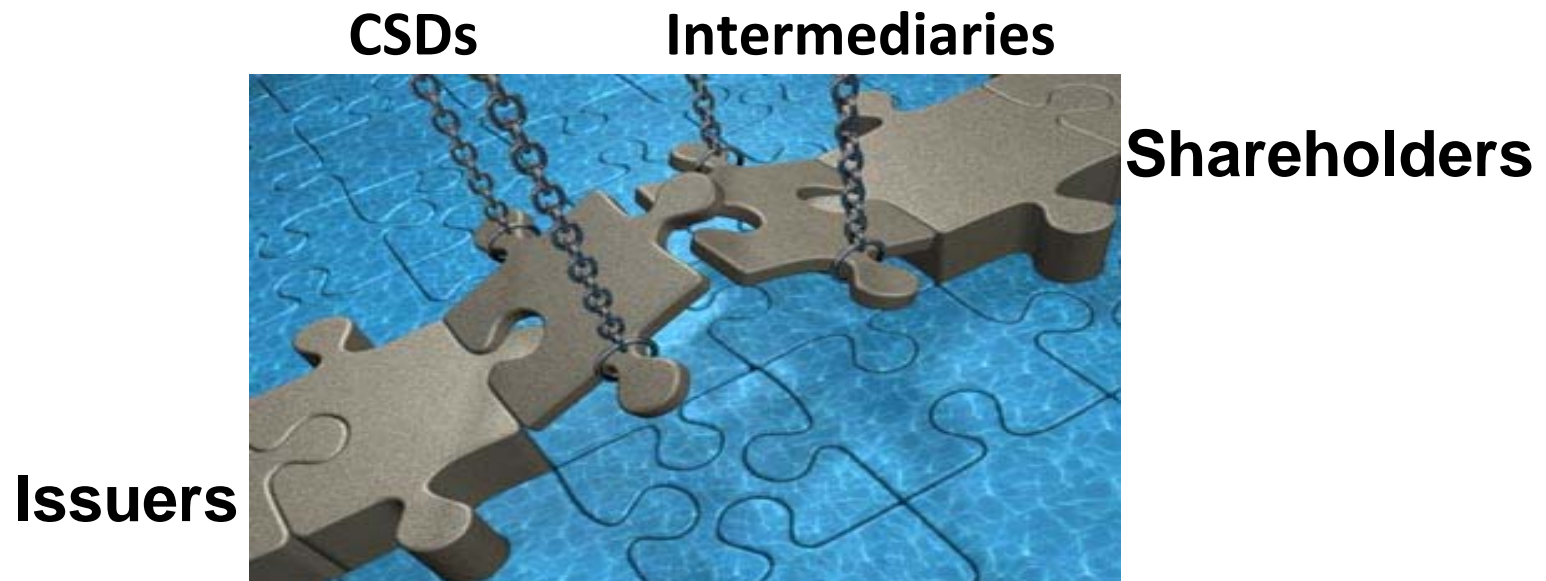
Market Standards on General Meetings: state of play

- Standard setting finalised on 30/10
- Subject: quick and easy communication from issuer to end-investor via chain of intermediaries
- Standards submitted to involved EU associations for endorsement by 15/12/09
- Workshop at Commission in Brussels on 4/12
- Endorsement to be followed by local market gap analysis and implementation: methodology yet to be defined

What are the market standards about?

- Practical interpretation of the shareholder's right to information and communication regarding GMs as in the SRD
- **Introduce** standardised communications:
 - from the issuer to the end investor
 - from the account providers to the account holders
 - from the end investor to the issuer

Bridging the gap



What is standardised in the communications?

- Who should communicate: issuer (his agent), intermediary, issuer CSD, shareholder...
- And when: timelines and deadlines
- What should be in the messages: precise contents
- Who says what to whom: communication flow
- And in what format: formatted messages such as ISO 20022 and « clear and comprehensible form »

Communication model

- Based on the holding chain
- Issuer = golden source, initiates communication process
- CSD, ultimate depository, as preferred channel to dispatch information
- Communication via chain of intermediaries
- Cooperation of every link in the chain crucial
- Communication to be continued until the end investor

Selection of 3 phases

- Focus on phases PRE, UP TO GM
 - Process 1: Meeting notice
 - Process 2: Entitlement
 - Process 3: Notification of participation

Process 1: Meeting notice

- Subject matter: give all investors quick key info on GM
- Info flow:
 - Issuer -> issuer CSD -> participant -> intermediaries -> end investor
- Content: key elements of the full convocation
 - Type, date, time and place of meeting
 - Short agenda items
 - Issuer website links
 - Record date
 - Means of participation
- Language: issuer original language and English (intl shareholderbase)
- Non paper based only
 - ISO formatted messages
 - Clear & comprehensible format based on **sample notice**
- Service offered by default; informed opt-out by end investor possible

-> Uniform notice format for all investors for all GMs in the EU!

Process 2: Entitlement

- Subject matter:
 - Number of shares held on record date determine right to vote
 - How to determine entitlement on record date
 - Communication of entitlement to end investor
- Info flow :
 - Issuer CSD -> CSD participant -> intermediaries -> end investor (on RD)
- Formatted messaging, narrative text with retail end investor
- Service offered
 - by default to investors who can receive formatted messages but they can opt out
 - on an opt-in basis to others

Process 3: Notification of participation

- Subject matter:
 - Notify the shareholder's attendance to the meeting
 - A mechanism to cast votes ahead of the GM
 - Non exclusive: if shareholder wants to vote via other means, intermediary should give him necessary proof of entitlement
- Info flow as generally agreed between Last intermediary and End investor:
 - Indirect flow: End investor -> other intermediaries -> CSD participant -> issuer CSD -> issuer
 - Direct flow: End investor-> last intermediary -> issuer
- Content :
 - Identity of end investor
 - Entitlement
 - Proxy, where applicable
 - Votes, where applicable (with breakdown as specified by issuer)
- Formatted messaging, except by end investor
- Service ONLY if investor wants to use this system = opt-in

Basic service, cost and opt-out

- Process 1 Meeting notice = delivered by default as standard procedure to end investor
- Process 2 Communication of entitlement = delivered by default to investors who can receive ISO messages
- = basic service, non paper based, no translation
- Part of basic custody services, to be rendered at affordable and reasonable cost
- Cost for communicating through the chain should not negatively impact cost at level last intermediary – end investor
- Costs should be charged only once and in full transparency
- What if the investor does not want to receive all this? -> OPT-OUT
- OPT-OUT:
 - ONLY at the initiative of the end investor
 - Well informed, non cost driven decision
- Process 3 is a value added service

Market Standards for Corporate Actions (CAs)

- What?
 - Harmonised standards for processing of CAs
 - Distributions and reorganisations and transaction management
 - Parties : issuers, market infrastructures, intermediaries and end investors
- Why?
 - To reduce risks and costs for all parties involved in CAs
- State of play:
 - Endorsed by all associations, EuropeanIssuers made “reservations”
 - Implementation at national level: national market implementation groups
- Consequences for issuers
 - Important changes for issuers as they are at the start of the information chain
 - Issuers and investors should benefit: reduced banking fees? (see hereafter)
 - See mailing to our members: where and how should benefits materialize?

Intermediary Costs for GMs and CAs

- Recent mailing to EuropeanIssuers members encouraging them to claim benefits from intermediaries resulting from the standardisation of CAs
- Recent letters to European Commission (COM) to complain about lack of transparency in fees for securities accounts, CA processing, GM communications
- Asked COM to set up tool to monitor costs and fee evolution, to make sure benefits would flow back to issuers and investors
- We are preparing a survey among our members to gather figures on GM related intermediary costs

Future Securities Law Directive

- Harmonisation of securities law in EU
- Securities held by book entry: relationship “issuer – shareholder” de facto superposed by relationship “account provider – account holder”
- Follows 15 recommendations made by Legal Certainty Group
- Includes proposals on acquisition and disposal of securities, integrity of system, **duties of intermediaries**, free choice in EU for issuer of issuer CSD
- No provision on identification of shareholder!!!
- Corporate law should remain unaffected
- COM will consult first Member States on basis of draft before year end
- Another large stakeholder consultation scheduled
- Formal proposal for Directive expected to be adopted early 2010

3-partite working group

- 3-partite working group consisting of European Corporate Governance Forum (incl J. Winter, E. Wymeersch), Joint Working Group General Meetings (D. Fransens and representatives from banks and CSDs) and COM (Company law and Clearing and Settlement units)
- Next meeting: 15 December
- Liaison between industry work (standards) and legislative initiative (Securities Law Directive - SLD)
- Works on draft provisions of the SLD on duties of intermediaries:
 - set a framework for GM standards
 - lay down provisions on remaining issues: unique proof of entitlement
 - COM proposes mandatory reimbursement by issuers of costs exposed by intermediaries for passing information on CAs and GMs!

Shareholder transparency

- A never ending crusade
- Do companies need a EU framework that establishes the right
 - to know their shareholders, or
 - to impose the enforcement of that right on intermediaries?
- European Commission
 - Future Securities Law Directive: NJET!
 - Review of Transparency regime: maybe?
- Target2Securities
 - A central platform for settlement of securities transactions
 - Discussions between Issuers and issuers agents and ECB on how T2S could help with disclosure of investors
 - Proposal to be presented to T2S Advisory Group meeting on 9/12

Channels for information and input

- Legal Committee
 - Designated experts from national associations and companies
 - Monthly conf calls and some face to face meetings
- Ad hoc working groups
 - Specific topics: for instance, ICRM, Accounting & Financial reporting
 - Open
- Cross sector working groups
 - JWGGM and CAJWG
 - Open
- Mailings and surveys:
 - Addressed to our permanent contact persons
 - CA market standards; GM market standards; GM and CA costs in preparation
- Workshops: market standards on general meetings: 4/12 Brussels
- Website
- Bi-monthly newsletter

Questions?

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