

GENERAL MEETINGS MARKET STANDARDS
Barrier 3 - Corporate Actions

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Agenda

- EuropeanIssuers: the essentials
- Challenges of a cross-border and intermediated shareholding system
- General meetings market standards

EuropeanIssuers: the essentials

EuropeanIssuers: the essentials

- Scope:
 - common interests of companies listed in Europe, across all sectors
- Focus:
 - regulatory framework
- Goal:
 - strive for right balance between
 - well functioning, integrated and liquid markets and
 - a sound issuer-shareholder relationship
- Constituency:
 - dual membership: 15 natl associations and 60 leading listed companies
 - 14 countries: Austria, Belgium, Bulgaria, Cyprus, Finland, France, Germany, Greece, Italy, Netherlands, Poland, Spain, Switzerland, UK
- International not for profit association based in Brussels

Challenges of a cross-border and intermediated shareholding

Challenges for the issuer – shareholder relationship

Contemporary shareholder: multiple types of shareholders

Contemporary shareholding: intermediated & cross-border

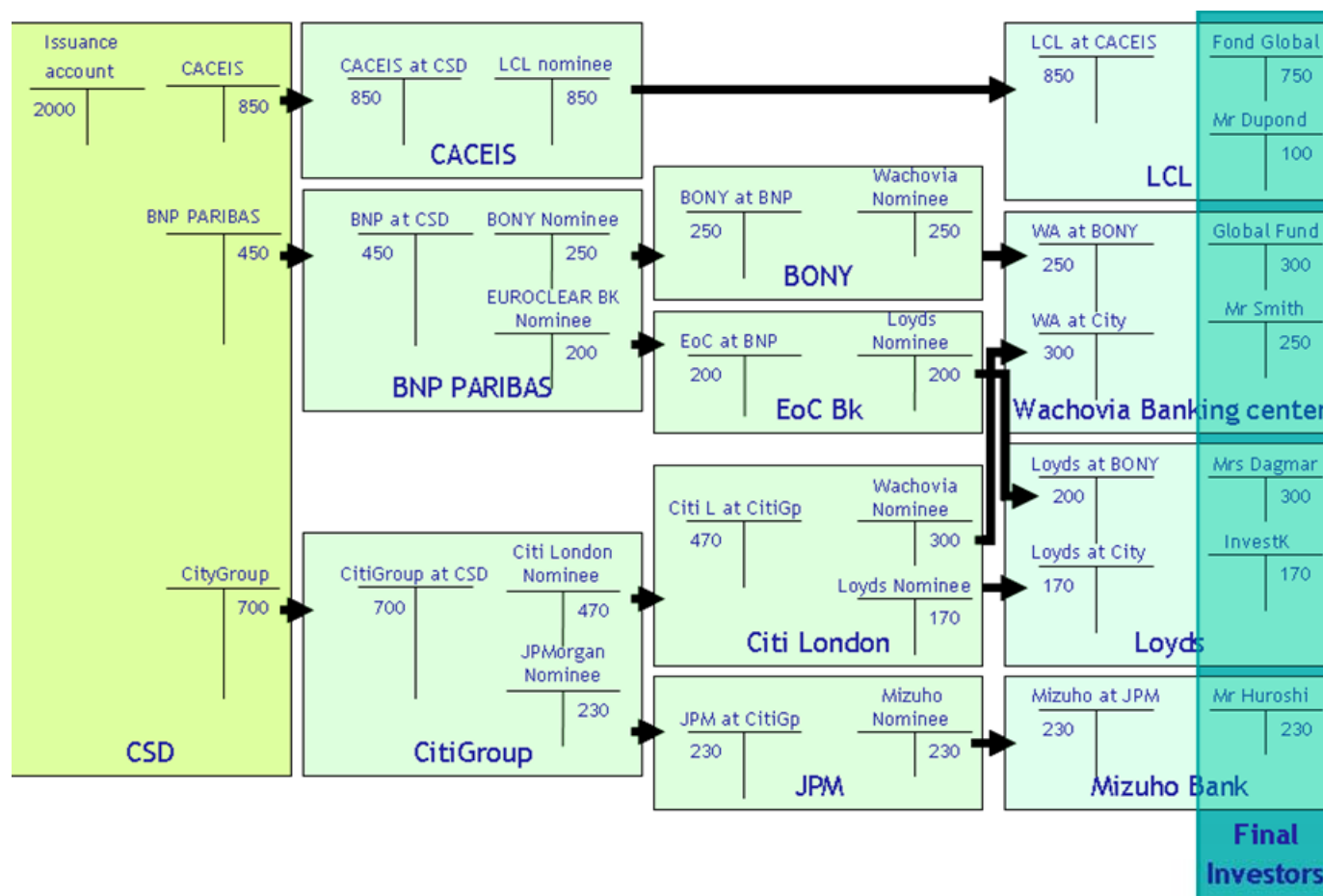
The contemporary shareholder

- **Bearer vs registered shares**
- **Legal owners vs beneficial or end owners = bearing the economic interest/risk**
- Followers vs activists
- **Domestic versus cross-border**
- **Institutional versus retail**
- Quick wins versus sustainable value searchers
- Owners of a part of the enterprise (economy) vs speculators in a financial instrument (financial)
- Economically/financially inspired versus politically inspired?

And many more ...

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 positioning 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
 - 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

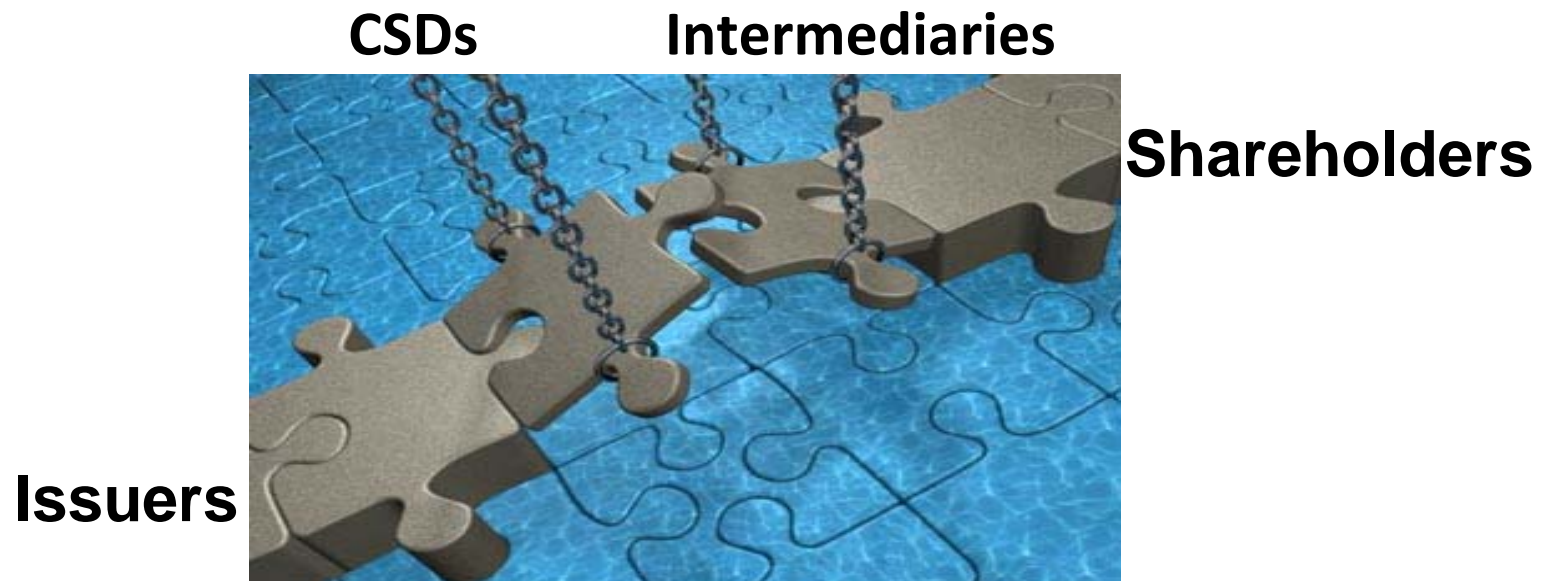
- **Two cross sector industry groups:**
 - Joint working group on general meetings (JWGGM)
 - Corporate actions joint working group (CAJWG)
- **Participants:** issuers, CSDs, CCPs, intermediaries, stock exchanges (EuropeanIssuers, ECSDA, EACH, EBF, EACB, ESBG, ESSF, FESE)
- **Context:** EU COM mandate 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

General meetings market standards

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
- Non paper based only
- 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
 - Mechanism to cast votes ahead of the GM
- Info flow:
 - 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
- Formatted messaging except by end investor
- Service ONLY if investor wants to use this system = opt-in

Difficult issues

- Standards introduce rather than streamline practices
- No real benchmark
- Standards are simple as such but the underlying practice is incredibly complex: e.g. determination of entitlement at record date complicated by multiple layers of holdings, stock lending, derivatives ...
- Legal and functional notions as “last intermediary”, end investor, shareholder, record date, entitlement, ...
- Different national legal frameworks
- And not to forgetCOST

State of play

- Standard setting with mini consultations from end 2005 to end 2008
- Public consultation from end 2008 to early 2009
- Some 40 (lengthy) replies received
- Since March 2009 + monthly meetings to revise standards
- Latest meeting JWGGM 23 September

- There is light at the end of the tunnel, isn't there?
- Next: endorsement, gap analysis and implementation to be liaised with national implementation of SRD

Questions?

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