

MARKET STANDARDS ON GENERAL MEETINGS

Barrier 3 : Corporate Actions

DACSI- Utrecht
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Agenda

- About European Issuers
- A cross-border and intermediated shareholding
- Market standards on general meetings

About EuropeanIssuers

- ***Our history***
Merger of EALIC (° 2002) and UNIQUE (°2003) in March 2008
- ***Our scope***
Interests of companies, across all sectors, listed on a European market
- ***Our focus***
Regulatory framework issuers have to comply with because they are listed
- ***Our goal***
strive for well functioning and integrated liquid markets
- ***Our constituency***
National associations and companies from 15 countries:
Austria, Belgium, Bulgaria, Cyprus, Finland, France, Germany, Greece, Italy, Netherlands, Poland, Portugal, Spain, Switzerland and the UK

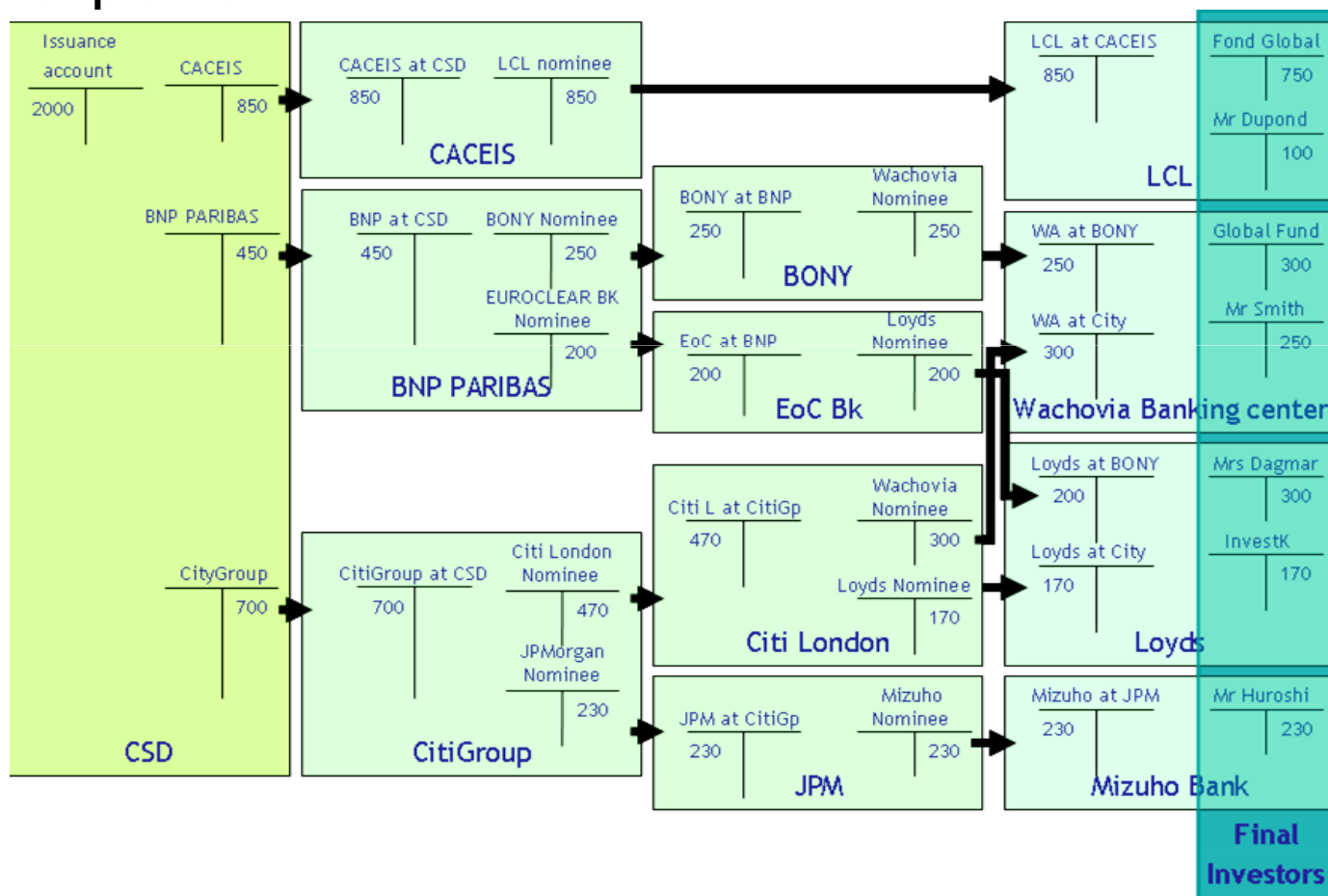
Our markets count some **9,200 listed companies with a combined market value of some € 8,500 billion.**

Program of activities 2008

- Priority topics:
 - shareholder rights and corporate governance
 - clearing & settlement: market standards on general meetings and corporate actions, Cesame
 - company law: simplification
- Other:
 - Accounting, auditing and financial reporting
 - review of Lamfalussy process; supervision
 - mutual recognition of securities between US and EU
 - US SEC Foreign Private Issuers regime
 - credit rating agencies
 - possibly MiFID level 3, Prospectus level 3, Transparency level 3, market abuse
 - possibly other, unforeseen issues ...

A cross-border and intermediated shareholding

For experts:



A cross-border and intermediated shareholding

For beginners:



Chain of intermediaries between shareholder and issuer: a *de facto* “barrier”
Nearly impossible to see through and reach last person in chain: **the end shareholder**

Cross-border voting problems

- Multiplicity of intervening parties
- Slow, tiresome, inefficient, costly, inadequate and uncertain
- Communication and processing get stuck on a bumpy road
- Omnibus accounts
- Early market cut-off deadlines for voting instructions
- Loss of votes, double voting, empty voting, no voting at all!
- Difficult if not impossible to identify the shareholder
- “incidental” majorities at GMs
- Difficult to reconcile received voting instructions with voting rights and voting rights owners

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

What to do about it

- Tackle/remove barriers, so as to
 - identify and know the shareholder
 - (re) establish a solid relationship
 - allow the shareholder to fully exercise his rights
 - Increase transparency of voting process
 - Ensure integrity of voting process
 - **Increase participation of shareholders to GM's**
 - **Increase cross-border shareholdings**

Securities industry holds the key

CSDs and intermediaries to form the **bridge** between the issuers and the shareholders

Issuers



Shareholders

At the legislative level

- Shareholders Rights Directive (SRD) 11/07/07
 - improves shareholder rights in general meetings
 - a step in the right direction
 - However, clear obligations for the companies, but overlooked the securities industry who is in the driver's seat ...
- Recommendation to complement the Directive to address intermediaries' duties ...
 - Still pending
- ***A European cross border problem calls for a cross border level playing field: domestic rules alone will not do***
- COM Legal Certainty Group 2nd Advice Aug 08 calls for basic legal framework on intermediaries duties as account providers

At the industry level

- Two cross sector industry groups: JWGGM and CAJWG
- **Participants:** EACH, ECSAs (EBF, EACB, ESBG), ECSDA, ESSF, EuropeanIssuers, FESE (issuers, CSDs, intermediaries, stock exchanges)
- **Context:** EU COM mission to dismantle Giovannini Barrier 3
- **Objective:** increase efficiency and reduce costs and risks
- **Domain:** general meetings and corporate actions
- **Deliverable:** market standards
- **Application of standards:** EU wide, cross-border and domestic
- **Enforceability:** self-regulatory, but EC is closely watching

Market standards for general meetings

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What is covered?

- “Best practices” implementation of Shareholder Rights Directive (SRD)
- Where SRD deals with communication of information
- Scope: listed shares deposited with CSD, Europe (no direct communication possible)
- Three areas selected
 - Process 1: Meeting notice
 - Process 2: Entitlement
 - Process 3: Notification of attendance

Some key features

- Issuer to initiate the information process
- CSD, the ultimate depository, as preferred channel to dispatch information via chain of intermediaries
- Communication via chain of intermediaries
- Cooperation of every link in the chain crucial
- Communication to be continued until the end shareholder

What is standardised?

- Introduce standardised communication processes
- Components of standardisation
 - Parties involved: issuer, intermediary, CSD, shareholder...
 - Timelines to be respected
 - Content of the communication
 - Proof of entitlement
 - Information flow: who says what to whom
 - Formatted messages: such as ISO 20022

Parties

- Issuer: includes issuer agent
- (I)CSD = always the issuer CSD
- Intermediaries: all securities account providers with a holding on the concerned securities
- (End) shareholder: person acting for his own account; but excludes holder of a unit in a UCIT

Process 1: Meeting notice

- Objective:
 - Disseminate meeting notice in a non discriminatory and efficient way
- Parties: all
- Info flow:
 - Issuer -> issuer CSD -> CSD participant -> other intermediaries -> end shareholder (at that moment)
- Content (i.a.) (in line with SRD):
 - Date, time and place
 - Meeting agenda
 - Brief description of proposed resolutions
 - Issuer website links
 - Ways of participation
- Formatted messaging except at lowest tier level (“clear & comprehensible”)

Process 2: Entitlement

- Entitlement = number of holdings on record date = entitled to participate and vote
- Objective:
 - Determine entitlement
 - Communicate entitlement to shareholder
- Parties: all, except issuer
- Info flow:
 - Issuer CSD -> CSD participant -> other intermediaries -> end shareholder (on RD)
- Content (i.a.):
 - Indication of entitled voting position
 - Proof of entitlement
- Formatted messaging except at lowest tier level (“clear & comprehensible”)

Process 3: Notification of attendance

- Objective:
 - Inform issuer of shareholder's attendance to the meeting
 - Allow shareholder to cast votes
- Parties: at least shareholder and issuer, but possibly all
- Info flow:
 - Indirect flow: End shareholder -> other intermediaries -> CSD participant -> issuer CSD -> issuer
 - Direct flow: End shareholder -> last intermediary -> issuer
- Content (i.a.):
 - Entitlement
 - Proof of entitlement
 - Attendance or not
 - Proxy, where applicable
 - Voting instructions, where applicable
- Formatted messaging except for end shareholder

Difficult issues

- Communication with shareholder / Opt out
- Cost aspect at every level
- Market standards should/could not impose a commercial business model
- 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 ...

State of play

- Last meeting: 25 November
- Final EU wide public market consultation: from end November till mid February
- Final revision, endorsement, gap analysis and implementation ASAP in view of national implementation of SRD

Questions?

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Contact

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some 9,200 listed companies with
a combined market value of some € 8,500 billion!**