Custody Chains and Remoteness

Disconnecting Investors from Issuers

paper available on SSRN:

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Custody chains

Investor
Custodian 1
Custodian 2
Custodian 3
CSD
Issuer
Dilution of Investor Rights

Liability for Custody Services

- for custodian’s own conduct
- for conduct of sub-custodian
Dilution of Investor Rights

Erosion of Contractual Terms

• Sub-custodians are instructed ‘upon such terms as may be customary’
• Custodian ‘may, from time to time, determine the terms and conditions of arrangement’ with sub-custodian
Obstruction of Enforcement

- Enforcement by custodians
- Delivery of certificates
- Collapsing trusts
- Assignment
- Claiming as an intermediate owner
Obstruction of Enforcement

High enforcement cost
Time consuming process
Asset values and enforcement cost
Asset Values and Enforcement

Eckerle v Wickeder [2013] EWHC 68 (Ch)

Investor
German Custodian(s)
Clearstream AG
Bank of New York Depository (Nominees) Ltd
DNick Holdings Plc
Custody Chains and Stewardship

Custody chains are independent of both investors and issuers

Implications for the governance of issuers
Problems with Custody Chains

Reduction of liability for services
Erosion of contractual terms
Obstruction of enforcement
Custody chains have become independent from investors and issuers
Asset values
Stewardship
Can law overcome the problem?
Market infrastructure