

# Custody Chains and Remoteness

## Disconnecting Investors from Issuers

paper available on SSRN:  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2413025](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2413025)

Dr E Micheler



# 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

# Solutions

Can law overcome the problem?  
Market infrastructure

