

Custody Chains and Remoteness

Disconnecting Investors from Issuers

paper available on SSRN:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2413025

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Custody chains

Investor
Custodian 1
Custodian 2
Custodian 3
CSD
Issuer

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

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