



Legal Certainty Group

Strand #2

Giovannini Barrier 3

(Corporate Actions)

Removing Barrier 3

- National rules relating to corporate actions processing should be harmonised
- Actors:
 - Private sector: ECSAs and ECSDA
 - National governments acting through the EU Council.
- [Barrier 3 should be removed within three months of removing Barriers 7 and 1]

LCG Barrier 3 work so far

- The draft Shareholder Voting Rights Directive (SvRD) and its cross-over with the LCG work
- Identification of the key issue in the legal construction of the relationship between the investor and issuer in indirectly holding systems:
the duties of the account providers necessary for the effective processing of corporate events.

Tasks of the Strand #2 Group

- Analyse **the differences in the way the Member States regulate corporate actions**
 - responses to LCG Questionnaire - Question 34
 - the market research by ECSA and ECSDA
- The impact of **SvRD** on the removal of Barrier 3
- Any **additional measures** essential to resolve Barrier 3
 - Corporate actions other than facilitation of shareholder voting, incl. market claims
- Relation to **other Giovannini barriers**, e.g. barrier 9 (removal of restrictions on location of settlement)
- Analyse whether eliminating remaining differences between national laws and ensuring even greater legal certainty in this area should be done at the **national level or an EU instrument**.

Constructing the legal relationship: Investor - Account Provider - Issuer

Question #34

- Differences in granting the **investors rights directly vis-à-vis the issuer** under the particular country system
- The exercise of the rights by the investor always requires **some action by the account provider** that facilitates the exercise of the rights
- The existence /or the lack of/ the legal recognition of the **date relevant for the entitlement determination (the trade date, the intended settlement date or the actual settlement date)**
- The **duty of account provider to pass all benefits related to securities** is not explicitly spelled out in some country legal systems. The answers to the questionnaire, however, indicate that this is the intention and approach taken by the Member States.
- **Omnibus accounts** and the processing of corporate actions

Corporate Actions - Typologies

- Type of distribution:

- Cash/Stock

- Mode of action processing:

- Mandatory/Voluntary

- Corporate events not requiring investor's action

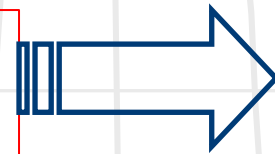
- (e.g. dividend distributions, information processing)

- Corporate events requiring action by the investor:

- actions requiring consent or a more complex investor decision/instruction (e.g. the exercise of pre-emptive rights to securities, tender offers with consent solicitations; voting, requesting information)

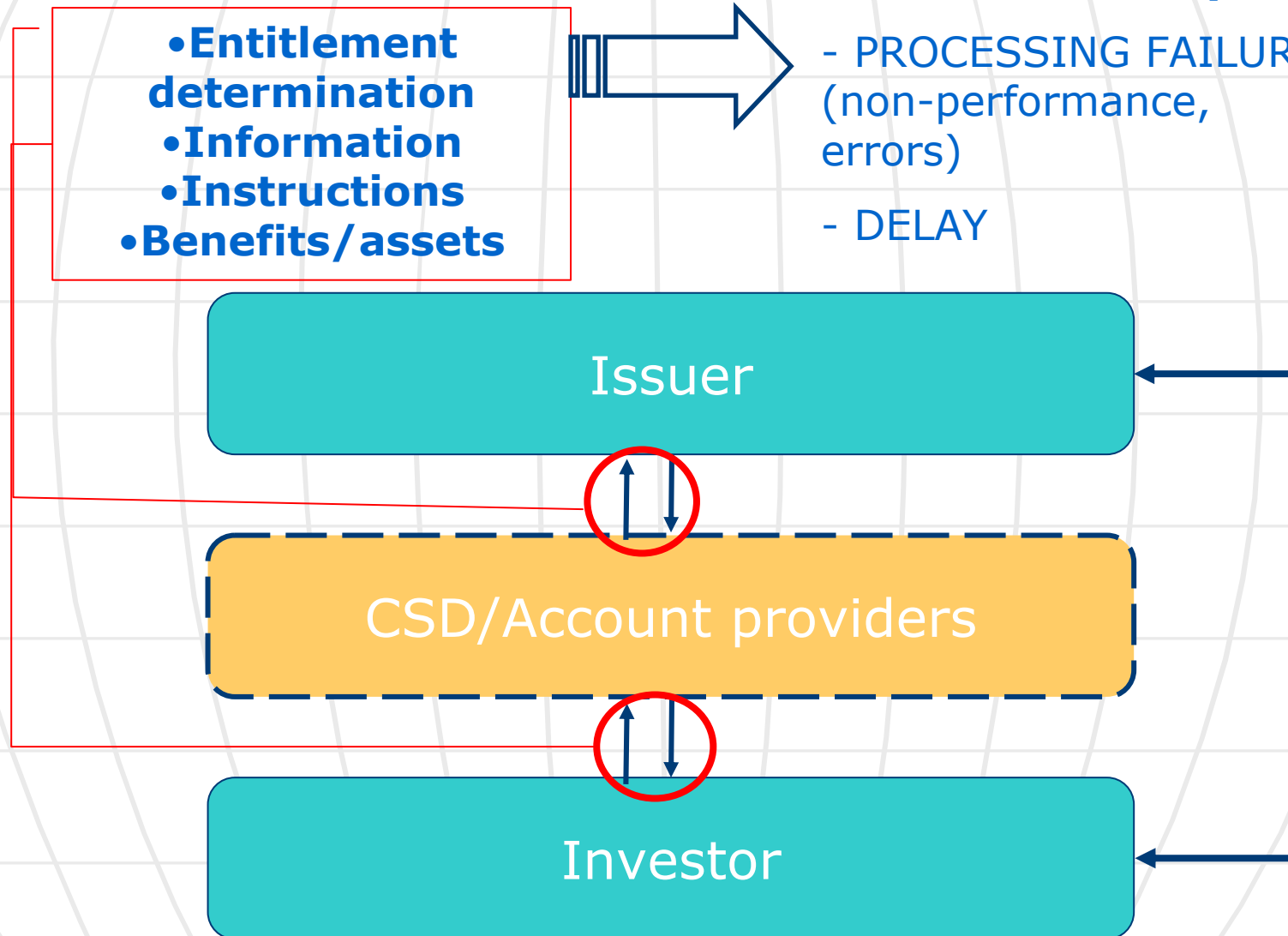
Corporate actions processing

- Entitlement determination
- Information
- Instructions
- Benefits/assets



The risks/liability:

- PROCESSING FAILURE (non-performance, errors)
- DELAY



The Proposed Shareholder Voting Rights Directive

- The impact of the SvRD on the “book entry rights” (5.2.1 of the Advice) and the account provider duties
 - Pass-down rights
 - E.g. information
 - What are the account providers’ duties to account holders in respect of issuer information?
 - When is the issuer's duty to identify its shareholders on a certain date fulfilled?
 - Pass-up rights
 - e.g. instructions, voting/proxy voting.
 - What should be the extent of the account provider's duty? Should it be contractual or statutory?

Examples of other Corporate Actions

- dividend payment,
- interest payment and bonds redemption,
- processing of market claims,
- conversion of convertible bonds into shares of a new issue,
- exercise of pre-emptive rights to shares in a new issue,
- exercise of warrants,
- redemption of investment certificates,
- exchange of securities,
- conversion of securities,
- exchange of securities following mergers or divisions of public companies, etc.

The legal relationship: Investor - Account Provider - Issuer

Account Provider's Duties

- **Passing down information** between issuer and investor/account holder
- **Passing up information/instructions** of the investor/account holder to issuer
- **Facilitating the exercise of rights** vis-à-vis the issuer (or a third party) by the investor/account holder
- **Exercising rights** vis-à-vis the issuer (or a third party) by the account provider upon authorization and instruction by the investor/account holder

Determining the scope of the AP's Duties

- The legal basis for account provider's duties and liability
 - Contractual
 - Statutory (national laws or an EU-wide level playing field for certain types of corporate actions, e.g. mandatory actions)

Corporate actions - key legal uncertainties identified by ECSA/ECSDA

■ Moment of transfer

- Giovannini Report: Barrier 3 includes national differences in the rules governing corporate actions as well as the timing of transfer of ownership
- Legal determination of the moment of transfer?
 - Certainty as re entitlement
 - Effects of book entry – validity of the entitlement
 - Record date – identification of the investor entitled to participate in the particular corporate action

■ Record/ex/payment dates

- Is the legal recognition of the key dates necessary?
- Connection to tax procedures

■ Notification: requirements, language, use of electronic communication

The Legal Certainty Group and the legal obstacles to cross-border processing of corporate actions

- Legal issues related to indirect securities holdings in the cross-border context
 - Company law- the substantive issuer-investor relationship
 - E.g. the duty to notify of the corporate event
 - the way of publication, data to be included in the notification; the language of the notification?
 - Legal Certainty of Securities Accounts - the process of determination and realisation of the entitlement:
 - Issuer-Account provider-Account Holder/Investor
- Policy Issues
 - Attribution of the legal risk/liability/costs