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Internal Market and Services DG

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LCG-14

**Subject: EU Clearing and Settlement
Legal Certainty Group
8th meeting: 10/11 September 2007
MINUTES**

1. The meeting was chaired by Mr *Konstantinos Tomaras*, European Commission. Attendees are set out in Appendix 1.

Welcome (No. 1 on the agenda)

2. The Chairman conveyed to the Group the regrets of *Pierre Delsaux* who was unable to chair this meeting himself due to urgent business. He welcomed a new Member of the Group, Mr *Balász Sahin-Tóth* (Allen and Overy, Hungary) and introduced a new observer, Mr *Gilles Stuer* (National Bank of Belgium) who replaces Ms *Marianne Sandel* for the time of her absence.
3. The Chairman drew the Group's attention to the working papers LCG-12 and LCG-13 which had been prepared by the Secretariat on the basis of contributions delivered by the Members during the summer. He thanked all contributors for their dedication and the additional effort made.
4. He emphasised that the purpose of this meeting was to give feedback on the papers and additional input to the three subgroups on the leading questions addressed in the papers, whereas it was not intended to discuss the individual drafting of the chapters in the plenary. The subgroups would continue working along the guidelines given by the group.

Adoption of the agenda (No. 2 on the agenda)

5. The agenda as proposed by the Secretariat was adopted by the Group (cf. Appendix 2).

Subject 2 - "corporate actions processing" (No. 3 on the agenda)

6. The Chairman drew the attention of the Group to the fact that the work on corporate actions interlinked with efforts undertaken in other fora, notably in the CESAME Group, with existing EU legislation, notably the Shareholders' Rights Directive

(SRD) and with the future Commission's recommendation on shareholders' rights, which is currently being developed upon request by the Member States and the European Parliament. The latter would be issued by the end of 2007; consequently, there was no time for co-ordination with the outcome of the work of the LCG. However, on the basis of the future advice of the LCG, the Commission might revisit the recommendation at a later stage.

Overview of work (No. 3a on the agenda)

7. *Agata Waclawik*, co-ordinator of the Subgroup, set out that deliberations of Subgroup 2 took up on the *2007 Advice* and were aiming at the removal of the legal barriers to cross-border corporate actions processing (cf. *Appendix 3*). In case of intermediated holding systems, this consists in the re-construction of the legal relationship between investor and issuer by translating it into sets of legal relationships between the issuer, intermediary and the investor. The perspective of the work was slightly different from the perspective of Subject 1 as, rather than looking into the relationship between the investor and the intermediary in the context of investor's proprietary rights over a security, its starting point was to look at the relationship between the issuer and investor in the context of the enjoyment of corporate rights, and analyse how it is modified by the intermediation, whether problems ruptures occurred and how those could be resolved.
8. Assistance by the intermediary was regularly needed in order to permit the full exercise of corporate rights by the investor. To this end, work focussed on the main duties of intermediaries in this context, which were (a) passing down information, (b) passing up information, (c) facilitation of exercise of rights, and, (c) exercise of rights by the intermediary, whether including decision making or not. She explained that additional issues might turn out to be included in the work programme.
9. The focus of the work should be difficulties that arose in a cross-border context of processing corporate rights. The Subgroup would have to expand its analysis in this field as it mainly focussed on domestic situations (cf. Q 34 of the Compendium).
10. She furthermore emphasised the importance of the principles of subsidiarity and proportionality.
11. The contributions submitted by the participants in Subgroup 2 were processed by the Secretariat and were now reflected in Document LCG-12.
12. The further development of the report on Subject 2 centred on (a) the choice of the method to identify the person to exercise the corporate rights; (b) the range of corporate actions available to the investor; (c) addressee of the rights and duties addressed in the future work, (d) subsidiarity and proportionality of the measures proposed by the LCG, and, (e) identification of additional issues.

Definition and nomination of the person to exercise corporate rights (No. 3b on the agenda)

13. The Secretariat explained the main thoughts regarding the personal scope of Subject 2, set out in document LCG-12 section B.I.1. The Subgroup's feeling had been to go in the direction of a functional/economic definition of the entitled person and that in the course of preparing the document LCG-12 the Secretariat had opted, for a first draft, to propose the definition contained in the Transparency Directive, as it

followed an economic approach and was already part of the *acquis communautaire*. However, this was not meant to predetermine the discussion on this subject.

14. The Members confirmed that for purposes of Subject 2 of the LCG the functional/economic approach was preferable. However, in detail, there were differing proposals regarding the details of this approach.
15. On a general note, some Members set out that a functional approach would necessarily follow the practical realities in a system, which was the multi-tiered holding approach. Consequently, future work had to address account holders and account providers in this system, making clear "who had to do what and for whom".
16. Some advocated investigating further into the definition used in the SRD. Its main advantage was that it did not attempt to change corporate law and therefore complied with the lines set out in the *2007 Advice* of the LCG. Others replied that the SRD was not suitable on the grounds that it only addressed "shareholders" and not holders of financial instruments other than shares. But even if the reasoning that underlies the SRD was extended to holders of other financial instruments, the SRD did not provide for a valid definition of the entitled person for purposes of the Subject 2 of the LCG as it entirely referred back to national corporate law. Some members, for that reason, found such approach backwards oriented.
17. There was agreement that the Transparency Directive in principle followed such functional approach. However, the majority of Members found the definition unsuitable as it was clearly designed for different purposes than the ones of the present exercise; in particular it was not designed to address cross-border scenarios.
18. In the view of the LCG, also the approach taken by Unidroit had some appealing elements but did not provide for a satisfactory result for the purposes of Subject 2. There were doubts regarding the harmonising effect of the rule in Article 7(1)a as its second subparagraph contained a reference to national law. Furthermore, there were doubts regarding the question whether the interplay between Articles 7(1)a, 7(2) and 26(3) of the Unidroit draft was understood by in the same way by all interested parties. It was stressed that the relevant Article 7 of the Unidroit draft needed to be looked at in keeping in mind Article 26(3) which made clear that the text did not even attempt to define who a shareholder was.
19. There was agreement that the future definition, under no circumstances, should encroach upon whom an issuer must recognise as the holder of securities, for example in the case of registered shares. Any new instrument was bound to be absolutely neutral on this question. A good example for such carve out was Article 26(3) of the draft Unidroit Convention.
20. Most Members agreed that no definition should be picked just because they have the advantage of already being part of the *acquis communautaire*, or because they have been negotiated at Unidroit. All these definition pursued different purposed which would probably not fit the needs of Subject 2 of the LCG. Consequently, there was agreement that the Group had to amalgamate existing approaches in order to achieve one that fits the purposes of the present project. It was stressed that a complementary question was, in this scenario, whether this new definition would still fit with the approach taken in Unidroit Article 7(1).
21. The co-ordinator concluded that, against the background of the above, probably in a first step, the content of the relationship between investor and issuer needed to be defined clearly. Then, in a second step, the LCG should try to "retranslate" the

findings into the language of the multi-tiered holding system, i.e. building on the interaction between account holders and account providers.

22. There was a call for resolving this issue before the final negotiation at Unidroit commenced, as the interplay between the future definition in the context of LCG Subject 2 and Unidroit Articles 7(1) a) and 26(3) was vital.
23. Finally, there was agreement that the LCG should continue its work on this Subject making reference to the person entitled to corporate rights as "the investor", at least for the time being. For more details, the Secretariat referred to document LCG-12 section B.2.

The catalogue of mandatory and non-mandatory corporate actions (No. 3c on the agenda)

– Introduction

24. The co-ordinator stressed the importance of the exercise of going through the substance of corporate actions in the sense that all types of corporate actions needed to be classified and that legal issues involved were identified. She highlighted the strong dependence of this issue on the operational arrangements made for processing of corporate actions. This was the reason why close co-ordination with the relevant work undertaken in the context of CESAME was necessary.
25. She explained that ECSDA, within the framework of the CESAME Group, had provided for a first set of common terminology and had undertaken a classification exercise. However, the work of ECSDA did not yet cover all types of corporate actions but addressed mainly distributions. Consequently, the current elements on which the LCG could draw were the following: a) the SRD which dealt with aspects in respect of general meetings, and, b) industry standards with a main regard to distributions. Consequently, the first question was whether the LCG should try to tackle legal aspects of the whole set of corporate actions or whether it should concentrate on those which were already addressed previously in the context of the ECSDA initiative, i.e. those areas where already some operational cross-border standardisation had taken place.
26. Another element to be taken into account was the principle of subsidiarity and proportionality. The Subgroup was conscious that corporate actions were processed by intermediaries mostly on a voluntary basis, i.e. as value added type of service. The challenge for the Group would be to find out to what extent certain minimum assistance should be provided on a compulsory basis, in order to make sure that investors would not be deprived of corporate rights just because of the fact that the relevant securities were held through a chain of intermediaries which went across borders of EU Member States. Only this last aspect should be covered by the work, and all aspects which do not involve any cross-border difficulty should be left to the national legislator.
27. She mentioned that in some EU jurisdictions, there was already a catalogue of corporate actions the processing of which was compulsory.
28. She explained that the ECSDA classification is divided in mandatory and voluntary events, mandatory basically meaning that the relevant corporate event would occur without the individual shareholder taking any action (i.e. the issue of new securities).

29. She suggested the Group having to look at whether mandatory corporate actions under the ECSDA classification should be compulsory in the sense that intermediaries in the EU are bound to process them.
30. Against the background set out above, the leading questions for the plenary of the Group were a) which was the spectrum of corporate action that needed to be addressed by Subgroup 2 of the LCG (those already addressed by ECSDA/SRD or the full spectrum), and b) the processing of which (standardised) types of corporate actions should be compulsory in the EU Member States.

– *Discussion*

31. First, the Group identified the issue of cost of processing corporate actions as crucial. Generally, there were three options, i.e. the issuer, the intermediary or the account holder bearing the relevant cost. As long as there was a clear answer to this question, the issue of which corporate actions had to be processed and on which grounds, was of minor importance. To take a simple example, the information that had to go up from the investor to the issuer, the investor had to pay and *vice-versa*. Others replied that, however, there were "natural" services of the intermediary which were in many countries regarded as covered by the account fee, for example collection of dividends or the facilitation of voting rights; a different case would be the forwarding of a profit warning, which would not be regarded as belonging to the standard duties of the intermediary. Furthermore, in cases where the cost had to be born by the issuer, it would depend on the number of intermediaries intervening in the holding chain.
32. Some members sought further clarification regarding the scope of this exercise:
33. First, there was the risk of affecting unnecessarily the core legal rules on the investor-issuer relationship. Only the cross-border exercise of those corporate rights needed to be guaranteed which was absolutely essential for the position of shareholder or bondholder, etc. As regards the exercise of any corporate actions that went beyond this minimum standard, it was the role of the investor itself to monitor the corporate situation of the issuer.
34. Second, legal inconsistencies were not really apparent and most cross border difficulties could be eliminated by the financial industry by way of harmonising technical standards and procedures, in particular because of the market's interest in increasing efficiency. Furthermore, it was difficult to foresee any future technical market developments that would affect the scope of the present legal exercise. In the field of corporate actions processing, the problems in cross-border multi-tier constellations mainly stem from the use of omnibus accounts. Consequently, the LCG should address the issue from this angle.
35. On a different note, one Member reminded the Group that in many cases the processing of corporate events involved two separate acts, there were to be processed separately and differently: on one hand, statements and declarations of the investor (which often happen immediately between investor and issuer), and, on the other hand, the settlement of the consequences that follow from the former. E.g., the exercise of subscription rights would be followed by the crediting of new securities to the investors account.
36. The Secretary of the CESAME Group confirmed that the financial industry sought to achieve a high level of standardisation in order to decrease cost and to increase speed of corporate actions processing. This was also the point of reference for the exercise of classification of corporate actions by the financial industry. This exercise currently

concentrated on standardisation of cash distributions whereas the work on processing of actions related to general meetings had only just started. She informed the LCG that though work of the different CESAME working bodies in this area was well coordinated, there were still conceptual and terminological discrepancies to overcome. Important areas that should be addressed by the work of the LCG were, in the opinion of CESAME, in particular the recognition by national laws of electronic means of communication and the issue of liability with respect to the accurate translation of corporate documentation (in this area, the industry preferred that the first provider of the relevant information remained responsible).

"Rights of the investor" or "duties of the intermediary (No. 3d on the agenda)

37. The next question discussed by the LCG was how future rules and principles should be phrased: either by referring to duties of intermediaries or rather by conferring rights upon investors. The Secretariat introduced this issue not only as a pure drafting point but suggested that there were conceptual implications involved with this choice.
38. The Members agreed with respect to the conceptual importance of this question and that the examples showed how potentially misleading a bad choice in this respect could be. They further agreed that rights of the investor were rather a question of corporate law, whereas the way by which this right is made available to the investor (through facilitation by intermediaries) was a rather operational question, governed by general private or commercial law rules plus the account agreement. Probably both elements had to be addressed in the future instrument, as they stood in kind of competition with while they were at the same time dependent on each other.
39. However, the following aspects had to be taken into account when shaping the concept:
40. The rights of an investor flowing from the securities, being a matter of corporate law, were generally not included within the scope of the LCG.
41. As to the operational side, in some cases, the solution was not transferring information from one tier to the next but the message might take shortcuts (e.g. from the issuer directly to the investor). Future rules should not deviate from these – apparently well functioning – shortcuts as any altering of those practices bore the risk of decreasing efficiency instead of increasing it. Therefore, only those entities that were anyway involved in the processing of the relevant corporate event were addressees of the duty.
42. In this context it was highlighted that the occurrence of such shortcuts often was dependent on the type of corporate action in question: e.g., information regarding general meetings needed to be made public and can reach the investor without the assistance of intermediaries, already because it must reach persons that are, at the time of the invitation, not yet investor but will become investor before the general meeting takes place. A different example was a stock split, where information was formally directed to investors, though it was more important that intermediaries received it, as it was them who ultimately had to put into practice the split; for this reason, the use of shortcuts was not appropriate.
43. Another element was the origin of the information to be processed, in particular the questions of (a) whether future rules could only cover the forwarding of information which had to be given by the issuer according to the applicable corporate law ("passing on the information he has received"); and (b) whether it was the issuer's

duty to make this information available to intermediaries (easy in case of registered shares; how could non-EU issuer be reached?) or whether intermediaries had to take the necessary (cost relevant) action to gather the relevant information.

Is the scope complete? (No. 3e of the agenda)

44. The LCG suggested to elaborate further on issues of

- Proxy collectors (is their activity included in the scope of the LCG?);
- Overvoting and reconciliation at the level of every intermediary;
- Examples of cases in which, for technical or legal reasons, corporate actions of a foreign issuer cannot be processed in a given country;
- Duties of issuers with respect to processing of corporate actions.

Subject 3 – "location of securities" (No. 4 on the agenda) [03:40]

45. *Linda Ziehms* gave a short overview on the state of work of Subgroup 3.

Subject 1 – "Book entry securities"

Overview of work (No. 3a on the agenda)

46. There were no comments on the overview of work given by the Secretariat

Consideration of the working draft Doc. LCG-13

- *On Section 1.1 (legal features of book-entry rights)*

47. There were no comments on this section.

- *On Section 1.2 (acquisition of book-entry rights)*

48. *Lars Afrell* gave a presentation on the subject matter as reproduced in Appendix 3. Some Members of the LCG advocated an immediate reference to the rules entailing "invalidity"; (the Unidroit draft Convention gave a suboptimal example in this regard, in having both the rule and the exceptions in different articles.)

49. On the question whether the scope should only cover accounts that were provided by authorised account providers, opinions within the LCG were divided: some thought that it was not that clients of non-authorised entities would be without protection, as there were still the rules of general insolvency law in place. Other replied that the new legislation should apply to all institutions because book-entries arose also in a non-regulated environment. However, there was agreement in the Group that

application to all entities was not just a regulatory question because applying the future rules to an undefined group of addressees would necessitate a very clear definition of the terms "account", "entity", "securities", etc. Most Members thought that this was impossible without running into legal uncertainty. Even those Members advocating a restrictive approach agreed that the new rules could be applied to an institution that just lost its license. All Members agreed that a decision needed to be taken before the final Unidroit negotiation would take place.

50. As regards the various methods for disposing of securities Members agreed that these methods comprised all methods documented on the account, similar to the concept underlying the Unidroit draft. Generally, all information regarding the holding should be documented in the account.
51. Regarding the issue of "moment of transfer", some Members wondered whether its definition would at all add something to legal predictability. However, in some systems this moment existed and should therefore not be denied. Others were not convinced that the system could work without a definition of moment of transfer, as rules on effectiveness and finality both implicitly required a previous transfer having taken place; furthermore, this was a clear question of doctrine which should not be altered by the future legislation. However, leaving the question open could work only in a purely national context but would not work in a cross-border, in particular cross border DVP mechanism. A third opinion was that the LCG should stay away from defining the moment of transfer and should ultimately reveal that in reality nothing is transferred because "no thing" was actually moved. Equally, CCP and netting mechanism made the definition of moment of transfer, at least between the buyer and the seller, nearly impossible.

– *On Section 1.3 (account holder – account provider relationship)*

52. *Federico de Tomasi* presented this section to the LCG (cf. *Appendix 4*). A detailed discussion took place on the necessity to limit the parties' freedom to exclude or limit the intermediary's liability. The starting point was that such rule would not only have effects on consumer (ultimate account holder) protection but would also have systemic benefits, as all account holder – account provider relationships were covered (including the one between CSD and its participant). Some Members were strongly in favour of leaving any limitation of the intermediaries' liability to the national law. The relevant national legal frameworks were of highest complexity, different from country to country, and there was no justification or need to fully harmonise them. In particular, it should be necessary for an intermediary to limit the liability with respect to holdings in certain countries. Insofar, any harmonised European rule had to strike the right balance between investor protection and the unavoidable risk of the intermediary (in particular: country risk). Others reminded the Group of diligence standards for financial institutions included in MiFID which could serve as a benchmark. However, a part of the Members was in favour of a common diligence standards and strict liability rules, at least on the level of consumer-account holder.
53. Another comment related to the technique of retrieval: it was essential that retrieval could be limited contractually as in some instances, in particular involving a cross-border holding, the retrieval of a certificate might be too expensive for practical reasons.

– *On Section 1.4 (methods regarding the creation of security interests)*

54. *France Drummond* presented the three main issues which were addressed in the preparatory paper: (a) should the advice provide for methods for creating security interests? (b) should the possibility to create a security interest by title be expressly recognised? and, (c) is there a conceptual difference between security interests created by book entry and one created by designating entry?
55. As regards the first issue, there was agreement that the LCG should not attempt to harmonise methods of creating security interests from a legal-conceptual point of view. Like the Unidroit draft Convention, future European legislation should focus on the role of the account. In terms of legal-conceptual harmonisation, the level of harmonisation achieved by the FCD (which is actually relatively low) would probably be the maximum that could be obtained. In this context, some members advocated that the rules of the FCD regarding the creation of security interests could be extended to market participants not covered by its scope; however, this would be better addressed in an all comprising but self containing legal instrument which was exclusively dedicated to the treatment of book-entry securities.
56. On the second question, one member advocated to rethink the issue and actually include security created by way of credit expressly in the scope of the future instrument. Another member was of the opinion that “title transfer” was not actually the issue for the LCG, as the future rules should not care about legal-conceptual issues. Only the fact that a credit is made was relevant in the context of the future instrument.
57. The main part of the discussion focussed on the issue whether security created by credit and security created by designating entry were to be treated differently. Members agreed on the fact that from a technical point of view, credit entries and designating entries were different. Consequently, the only question was whether it was politically sensible to attach different legal effects to credits and designating entries and to make one of the methods, the credit, superior over the other one, notably in the case of priority conflict between a designating entry and a subsequent credit both creating security over the same asset. Members agreed that market expectation was that both methods could be used to provide security. Generally, none of them should prevail. In a specific case, legal certainty requires a clear position of which method prevails in case of conflict:
58. CP grants a security interest over his assets by allowing for a designating entry being made in favour of CT1. Subsequently and under breach of the first collateral arrangement, he provides for a second security interest in favour of CT2, this time by debit and credit of the securities without that CT2 knew about the previously established security interest. Some LCG Members were of the opinion that the only logical consequence of this scenario was that the security interest of CT2 prevailed and that the advice should stay in line with the Unidroit draft Convention on this issue. Others disagreed.
59. Others emphasised that there were differences not only in relation to the priority question but also with respect to areas unrelated to the legal concept of holding and disposition of book entry securities, for example specific liens (tax, labour law) in the scenario of an insolvency of the collateral provider.
60. One Member remarked that the treatment of automatic banker's liens should be somehow mentioned in the Advice in order to assure the market that this concept can persist.

– *On section 1.5 and 1.6 (Priority and Bona fide)*

61. *Marc van der Haegen* presented the sections on issues of priority and bona fide (cf. [Appendix 5](#)).
62. First, the discussion centred on the question whether the priority rule, as in the Unidroit draft Convention, should only apply to the grant of interests in intermediated securities by other methods than book-entry or whether the priority rule should also be applied to book-entry credits as such. The second question – whether a designating entry should be fully assimilated to a credit entry – had already been discussed earlier. The third issue related to Article 15 Unidroit draft Convention, i.e. whether a specific priority should be granted to security interests granted to the relevant intermediary. The next question was whether and to what extent security interests created by control agreements should be included in the system of priority. The last issue related to the relationship of security interests created under harmonised rules with security interests which were created under diverging (national) rules.
63. The disagreement remained on the question whether a subsequently established security interest could prevail over a previous security interest which was created by designating entry. It was emphasised that the first in time rule can only relate to entries to the same account; furthermore, that tracing of earlier transactions is impossible in most systems as the fact that “the same” securities are credited to the account of a collateral taker was a pure fiction. Others stressed that a clear rule was needed as it was after a trading day entailing many transactions virtually impossible to unwind all transactions that were based on a violated designating entry. It was highly controversial whether the afore-mentioned aspects could be left to national law without losing the harmonising effect of the exercise.
64. On bona fide acquisition, the reporter started from the bona fide principle as contained in the *2006 Advice*. However, he suggested that the concrete bona fide rule should be left to the national law. The Secretariat added that the relevant section of the Unidroit draft Convention was equally heavily debated since the last session and had been therefore put into square brackets. There was broad sympathy with the proposal. Some added, there should be a precision on whether gross or simple negligence should be required. Others added that the test should be based on “knowledge” which could be, according to national law, actual or constructive knowledge (delete “ought to have known”).

– *On Section 1.7 (validity, etc.)*

65. *Klaus Löber* and *Ulrik Rammeskov Bang Petersen* presented the section on issues of validity (cf. [Appendix 6](#)). However, the LCG did not come to tangible results on this issue. The Secretariat proposed to put the issue again on the agenda of the next session.

– *On Section 1.8 (Integrity of the system)*

66. *Olaf Christmann* reported on this issue. Members agreed that there was generally no business case for a harmonised rule which assures the integrity of the system as most systems dealt with this issue in a satisfactory way. They equally agreed that the future Advice should clearly state that generally shortfalls should be avoided instead of

providing for remedies once shortfalls had occurred. However, the means should be coming from public law, avoiding mechanisms that render credits automatically invalid, as this jeopardises the bona fide rule and would end up in kind of tracing. In this context it was said that it would be valuable to have a statement on CCP and netting where you loose your transaction partner. Furthermore, conditional booking, as far as generally allowed in a jurisdiction, should not be allowed at the top level (others disagreed on this point). Ultimately, the cross border aspect was highlighted: even though internal mechanisms preventing shortfalls work fine, it was often unclear whether such mechanisms worked also in a cross border context.

– *On Section 1.9 (Holding through intermediaries)*

67. *Antoine Maffei* presented the section prepared by him. As regards the issue of nominee holding, members agreed with the reporter that its discussion in the future Advice was of utmost importance; the SRD addressed the matter only partly (for shares) and did not give answers in respect of all emerging questions. Therefore, the LCG had to form an opinion on whether the concept of nominee should be recognised Europe-wide and, if this was the case, what the answers to questions on split voting etc. should be. It was emphasised that Article 24 of the Unidroit draft equally dealt with the treatment of nominees but that the text was still pending as the Unidroit Drafting Committee did not have time to consider the Plenary's comments which had been made during the last day of the session. Again, the importance of the cross-border aspect was highlighted: national solutions, regardless whether they recognised nominee holding or not, worked generally smoothly and reliably; however, the legal analysis was often unclear as soon as such holding system formed part of a cross-border holding chain. Given the close connection to Subject 2 of the LCG, the Group felt that this chapter was the best point of connection between both Subjects.

– *On Section 1.10 (attachments)*

68. *Philippe Dupont* explained the relevant section which deals with both upper-tier attachment and attachment of segregated client holdings (*cf. Appendix 7*). Members clarified that, regarding the second aspect, in some jurisdiction there was already a rebuttable presumption that account that an intermediary has with a higher tier intermediary are always clients' accounts which was probably the strongest protection possible. The Group recognised that the second aspect went considerably further with respect to the first one. Whereas the first one pursues the protection against systemic risks, the second one aims at the protection of individual accounts. The Group discussed whether the second aspect also retained a higher tier intermediary from attaching accounts that were clients' accounts of the lower-tier intermediary. The prevailing view was that this was not the case, in particular were the higher tier intermediary needed access to the assets because the purchase price had not been paid to it.

Future work (No 6 on the agenda)

69. The LCG was informed that the Diplomatic Conference for the adoption of the Unidroit Securities Convention was apparently postponed to September 2008. Consequently, there was room for the LCG to consider finalising its Advice before

the Unidroit Diplomatic Conference will take place. Against this background, the Group decided to make an effort in order to deliver the final Advice before the end of 2008. The Secretariat was charged to deliver the planned interim report to the Commission in the form of an internal paper by the end of 2007 under own responsibility. The LCG equally welcomed the Secretariat's proposal to make the final report accompanied by a set of detailed principles which could serve as a blueprint for the further legislative work of the Commission.

Any other business / closing

70. There was no other business. The meeting was closed at 5 p.m.

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EU CLEARING AND SETTLEMENT: LEGAL CERTAINTY GROUP

Participants at meeting of 10th and 11th September 2007

held in Brussels

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CHRISTMANN, Olaf	Deutsche Bundesbank, Frankfurt am Main
COCHARD, Sebastien	BNP Paribas, Paris
COLOCASSIDES, Georghios	Georghios Colocassides & Co., Lefkosia
DE VAUPLANE, Hubert <i>(11th September)</i>	Calyon, Crédit Agricole Group, Paris
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DUPONT, Philippe <i>(11th September)</i>	Arendt & Medernach, Luxembourg
FERREIRA MALAQUIAS, Pedro	Uría Menéndez, Lisbon
KALAJDIEV, Angel <i>(10th September)</i>	University School of law, Sofia.
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LAUHA, Janne	NCSD, Helsinki
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EUROPEAN COMMISSION

Internal Market and Services DG

FINANCIAL SERVICES POLICY AND FINANCIAL MARKETS

Financial markets infrastructure

Brussels, 4 September 2007

PP D(2007)

LEGAL CERTAINTY GROUP

Draft Agenda (v.2)

Centre Borschette, room 2D
Rue Froissart 36, 1000 Brussels

10th September: 1 p.m. – 6 p.m.

11th September: 10 a.m. – 5 p.m.

Day 1 – 1.p.m.

Welcome, *Pierre Delsaux* (10 min)

Adoption of the Agenda, *Pierre Delsaux* (10 min)

Subject 2 - "corporate action processing"

Overview of Work, *Agata Waclawik* (10 min)

Definition and nomination of the person entitled to exercise corporate rights (*cf.* Doc. LCG-12, section B.I. of the draft report), *Philipp Paech* (presentation – discussion, 30 min)

The catalogue of mandatory and non-mandatory corporate actions, (*cf.* Doc LCG-12, section B.II.2.b.-d.), *Agata Waclawik* (presentation – discussion, 30 min)

Addressee of the future rules - "right of the investor" or "duty of the intermediary" (*cf.* Doc. LCG-12, section B.II.2.b.ii.), *Philipp Paech* (presentation – discussion, 30 min)

Is the scope complete? Aspect to be taken into account besides the investor-issuer relationship, *Agata Waclawik* (presentation – discussion, 30 min)

Subject 3 ("location of securities"), State of play, *Linda Ziehms, Philipp Paech* (10 min)

Subject 1 ("book entry")

Overview of work, *Philippe Dupont, Philipp Paech* (10 min)

Consideration of the working draft Doc. LCG-13

Legal features of book-entry rights, section 1.1, *Philippe Dupont* (presentation – discussion, 30 min)

Acquisition of book-entry rights, section 1.2, *Lars Afrell, Joanna Benjamin* (presentation – discussion, 30 min)

Day 2 – 10 a.m.

Account holder – account provider relationship, section 1.3, *Angel Kalaidjiev, Federic de Tomasi* (presentation – discussion, 30 min)

Methods for creation of security interests, section 1.4, *Geoffrey Davis, France Drummond* (presentation – discussion, 30 min)

Priority of competing interests, section 1.5, *Marc van der Haegen, Max Ganado* (presentation – discussion, 30 min)

Bona fide acquisition, section 1.6, *Marc van der Haegen, Max Ganado* (presentation – discussion, 30 min)

Rules on "validity", etc., section 1.7, *Klaus Löber, Ulrik R. Bang Pedersen* (presentation – discussion, 30 min)

Lunch break

Integrity of the systems, section 1.8, *Olaf Christmann, Ignacio Gomez-Sancha* (presentation – discussion, 30 min)

Holding through intermediaries, section 1.9, *Antoine Maffei* (presentation – discussion, 30 min)

Attachments, section 1.10, *Philippe Dupont, Ignacio Gomez-Sancha* (presentation – discussion, 30 min)

Future work, *Pierre Delsaux* (10 min)

Any other business, *Pierre Delsaux* (10 min)

Closing and end of the session

**List of Documents
as of 4 September 2007**

Document Number	Date of issue	Title	Remarks
LCG-1	11.08.2006	Legal Certainty Group Advice 2006	
LCG-2	22.08.2007	Subject 1: Introduction/Methodology	
LCG-3	22.08.2007	Subject 1: Monitoring Unidroit	
LCG-4	22.08.2007	Subject 1: Principles for new legislation	Extract from 2006 Advice
LCG-5	22.08.2007	Subject 1: Scope	
LCG-6	02.05.2007	Subject 1: Scope (v.2)	(replaces LCG-5)
LCG-7	02.05.2007	Subject 1: Monitoring Unidroit (v.2)	(replaces LCG-3)
LCG-8	02.05.2007	Subject 2: Methodology	
LCG-9	02.05.2007	Subject 2: Investor-issuer relationship	
LCG-10	26.04.2007	Minutes of the 6 th meeting	
LCG-11	08.06.2007	Minutes of the 7 th meeting	
LCG-12	03.09.2007	Subject 2: Advice 2007, working draft	(replaces LCG-4)
LCG-13	04.09.2007	Subject 1: Advice 2007, working draft	(replaces LCG-4)

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