

CASTRÉN & SNELLMAN



LCG Recommendation 15: the Approach of the 2008 Advice

Legal Certainty Group Conference organized by the European
Commission

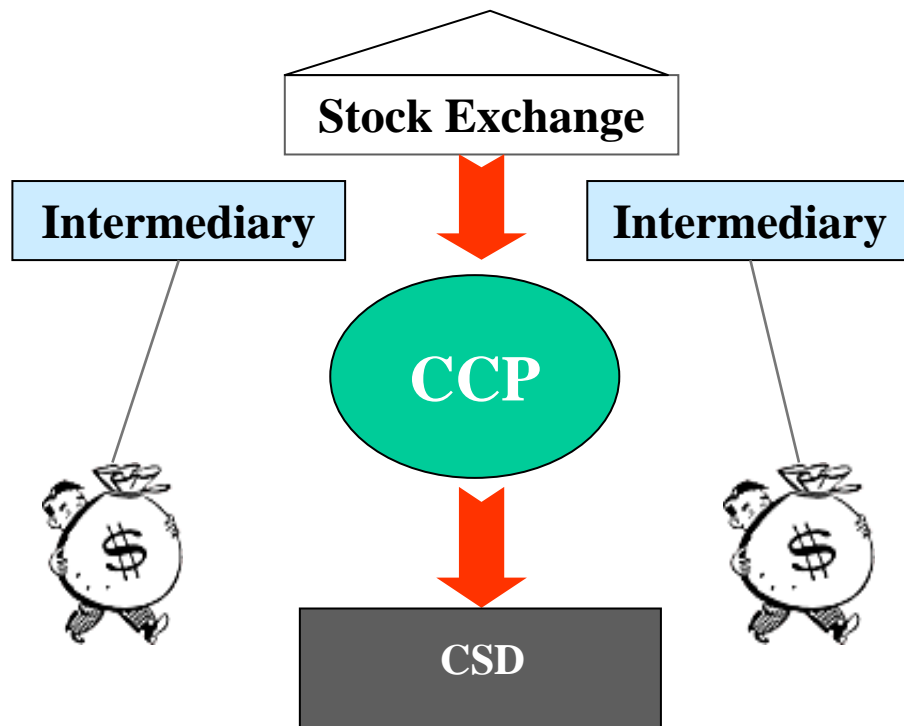
23 October 2008

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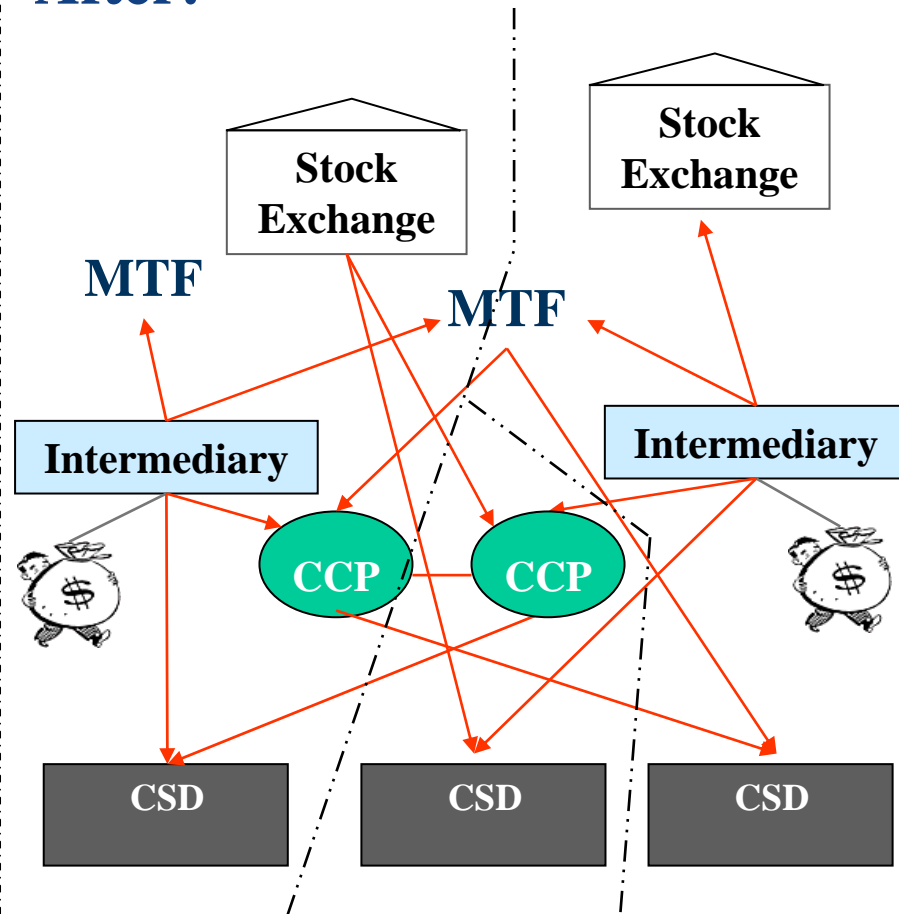
- Post-MiFID Structural Changes
- Giovannini Barrier 9, LCG Mandate and Findings
- LCG's Objectives
- Proposals in Recommendation 15
- Practical Examples

The Structural Changes Prompted by MiFID

Before:



After:



Giovannini Barrier 9 - National restrictions on the location of securities

“National restrictions often apply to the location of securities. Such restrictions can limit the choices for issuers when placing their securities and/or make it more complicated to hold and settle those securities in Member States other than the place of issuance. - - -

National restrictions on the location of securities reflect the evolution of historically efficient national structures, when there was little demand for trade in domestic securities by non-residents. However, formal restrictions on the location of securities are difficult to justify in the context of an integrated EU financial system and the Member States should take steps to remove them.”

LCG Mandate and Findings in respect of Barrier 9

Mandate

In-depth legal analysis of the issues raised in the 2004 Commission communication in particular regarding restrictions relating to the issuer's ability to choose the location of its securities.

Findings (1st Advice)

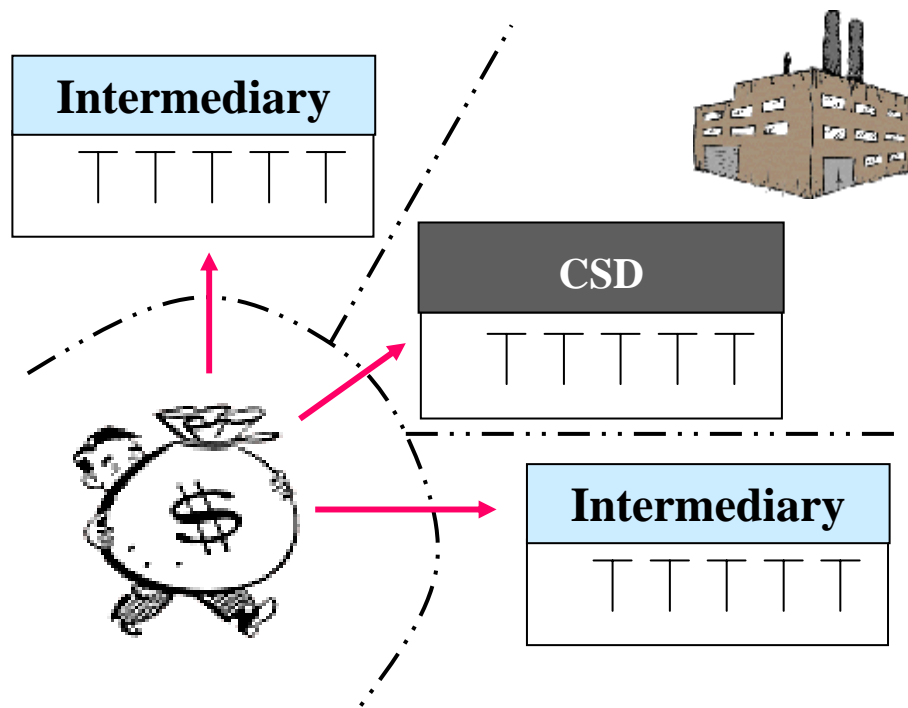
“The Group's advice is that the restrictions do indeed exist, such as national legal requirements that certain securities (typically, equities) issued by companies established under that Member State's company law must be initially located within that Member State, and that new legislation would be needed to abolish them.”

Examples of Restrictions

- Listing in the local stock exchange requires the securities to be entered into the local CSD
- Settlement of local securities tied to the local CSD or local registrar
- Dematerialisation of securities only possible through the local CSD
- The law under which the securities are constituted requires dematerialisation whereas the law of the intended CSD of initial entry requires certificates to be issued (and *vice versa*)

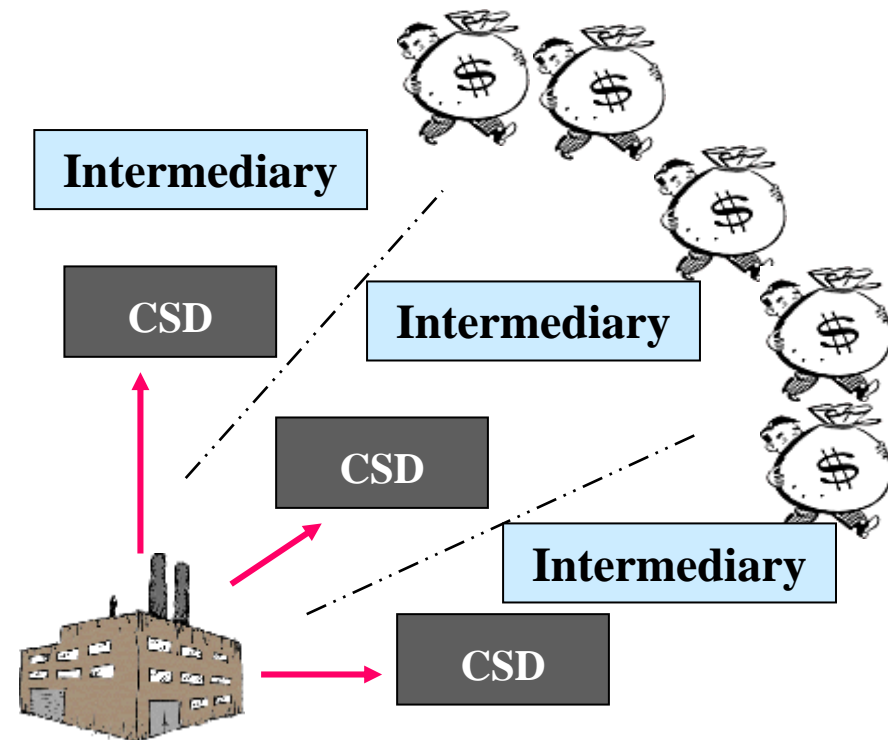
The Changes Intended by Legal Certainty Group

To Facilitate the Investors' Choice of Account Provider:



Recommendations 1-11, 12-14

To Facilitate Issuer's Free Choice of Distribution Mechanism:

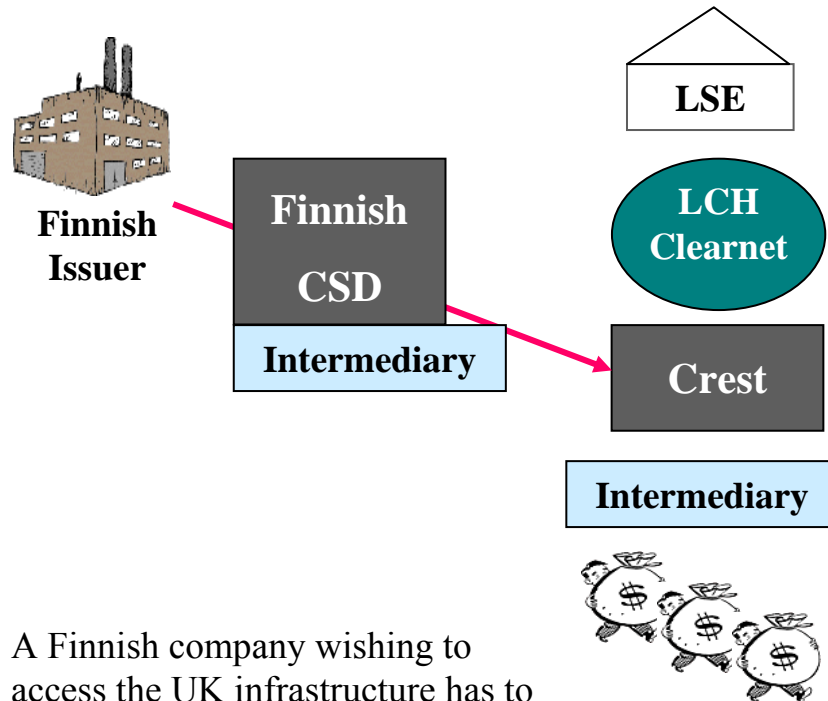


Recommendations 12-14, 15

LCG Proposal (2nd Advice, Recommendation 15)

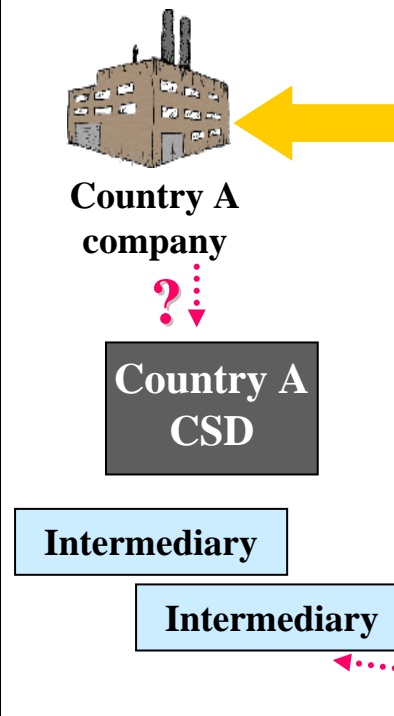
- Exportability
 - Securities constituted in one Member State should be capable of being initially entered into a CSD any other Member State
- Importability
 - The Member States should allow their domestic CSDs to initially enter securities constituted under other Member States' law
- Also shift of an entire issue from one CSD to another should be facilitated
- Recommendation 15 concerns initial entry of securities into holding systems, not creation of securities or other matters belonging to core corporate law

Practical examples

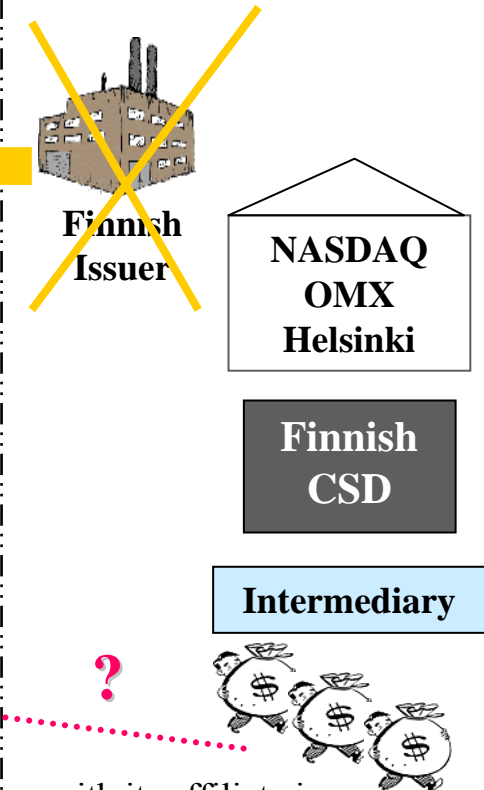


A Finnish company wishing to access the UK infrastructure has to enter its securities initially through the Finnish CSD structure as the Finnish law - and the UK law? - may not support entry of the company's shares directly to Crest.

Member State A



Finland



A Finnish company merges with its affiliate in Member State A under Directive 2005/56/EC and becomes a company registered in Member State A. However, the company wishes to remain listed in Finland and maintain its investor base there. Member State A legislation may not facilitate this.

Text of Recommendation 15

Part III

Restrictions on the location of securities (Barrier 9)

Recommendation 15 – Initial Entry in Any Member State

- 15.a Securities constituted under the law of a Member State should be capable of being initially entered into holding and settlement structures for securities, in particular those maintained by a central securities depository, in or governed by the law of any Member State.
- 15.b The law of Member States should allow an issuer to arrange for its securities to be initially entered into holding and settlement structures, in particular those maintained by a central securities depository, in or governed by the law of any Member State. To this end, rules should be abolished that explicitly or implicitly prohibit or impede such initial entry, as for example:
- rules requiring securities to be initially entered into a local holding and settlement structure;
 - rules requiring securities to be registered with a local registrar; or,
 - rules requiring securities to be acquired and disposed of through a local holding and settlement system.
- 15.c The law of Member States should allow for holding and settlement structures for securities, in particular those maintained by a Central Securities Depositories, to be open for securities constituted under a law different from the law governing the initial entry into such structures. This concerns for example the following rules which should be abolished:
- rules requiring securities which are not constituted under the local law to have the same form (dematerialised or certificated) as local securities; or,
 - rules that apply discriminatorily against securities which are not constituted under the local law with regard to holding, acquisition and disposition.

Thank You!

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