

To Martin Thomas
cc: Klaus Löber
From: Hideki Kanda
Re: Legal Certainty Group EU Questionnaire
Date: 5 January 2006

Dear Martin,

Enclosed please find our answers to the questionnaire.

I have prepared these answers in collaboration with my colleagues at the Ministry of Justice in Japan.

If you have any questions, feel free to ask.

With all the best.

Hideki Kanda



EUROPEAN COMMISSION

Internal Market and Services DG

FINANCIAL SERVICES POLICY AND FINANCIAL MARKETS

Financial markets infrastructure

MARKT/G2/D(2005)

**Subject: EU Clearing and Settlement
Legal Certainty Group
Questionnaire**

Please provide clear and concise answers specifying the existing legal situation, whether there are points of uncertainty, and upon what specific elements the answer given depends (for example, the terms of any relevant contract).

It is fundamentally important in all applicable instances that the answers given should specify in what ways the answer would differ according to type of issuer, of intermediary or of security.

It is to be noted that the bulk of the questionnaire draws no distinction between (I)CSDs and other intermediaries (in the sense proposed below). Answers should make the distinction wherever relevant.

Where helpful, please identify the source of law (for example, legislation, regulation, jurisprudence or doctrine). In the case of legislation specific to the subject-matter of the questionnaire, please provide copies (or weblinks).

In this questionnaire, 'securities' is to be taken to mean all financial instruments (excluding cash balances unless explicitly asked for below) that embody entitlements and that can be subject to book-entry holding and transfer, irrespective of whether the holding can be characterised as direct or indirect.

In this questionnaire, 'rights in securities' is to be taken to mean both rights arising out of the instrument against the issuer or third parties and rights or entitlements of the holder in respect of the instrument as such, and 'rights in securities' is to be taken to be synonymous with 'interests in securities'.

In this questionnaire, 'intermediary' is to be taken to mean any person or entity that maintains positions regarding securities by way of book-entry. In this meaning, note that intermediary does not exclude an entity that maintains positions by way of book-entry for investors where according to the applicable law there is a direct relationship between the investor and the issuer. And in this questionnaire, 'securities accounts' is accordingly to be taken to mean all accounts maintained by intermediaries where positions for clients regarding securities are entered by way of book-entry.

Please note also that some issues are intentionally addressed more than once from different angles.

QUESTIONS

- (0) In respect of what legal system are the following answers given?

ANSWER: For book-entry securities, the Act for Book Transfers of Bonds, Shares and other Securities (Act No. 75 of 2001, as amended) (hereafter "the Act") applies. For shares, this Act will be effective in 2009. Until then, for shares, the Act for Custody and Book Transfers of Shares (Act No. 30 of 1984) applies. In addition to these Acts, the general law of corporations, namely, the Company Act (Act No. 86 of 2005) applies (effective in 2006). This Company Act replaces the existing rules regarding corporations, which are codified in the Commercial Code (Act No. 48 of 1899).

I. CONTENT AND STRUCTURE OF A LEGAL SYSTEM

General aspects

- (1) What are securities? Does a concept of securities such as is used in the Directive for Markets in Financial Instruments 2004/39/EC exist? If not, please describe the concepts used. What distinctions (e.g. bearer, registered, physical, dematerialised, book-entry) are made and with what consequences?

ANSWER: In general, securities are understood to mean rights attached to certificates, which represent the rights and are necessary for exercising and transferring the rights. Under current Japanese law, it is common for each statute to provide the list of securities for that statute, such as government bonds, local government bonds, bonds, shares, stock options, etc.

With regard to shares, the issuer may choose among (1) certificated shares, (2) dematerialised shares, and (3) book-entry shares (which will be dematerialised, effective in 2009). With respect to bonds, the issuer may choose among (1) bearer bonds (with certificates), (2) registered bonds (with certificates), (3) dematerialised bonds and (4) book-entry bonds (which are dematerialised).

Other securities are treated similarly.

- (2) In what manner are securities created and issued? What steps are necessary to have (existing or newly issued) securities validly held and transferred with the involvement of intermediaries?

ANSWER: Usually, shares and bonds are issued through a decision of the board of directors ("the board") of the issuer.

When book-entry shares are issued through a board decision, the issuer notifies the CSD of the names of the shareholders, the amount of the shares, etc., and the CSD in turn notifies the relevant intermediaries of such information. Each intermediary credits those securities to the respective securities accounts accordingly.

Book-entry shares and bonds may be transferred only by book-entry. Such book-entry is made upon an application or instruction by the transferor to his relevant intermediary.

Securities accounts

- (3) What is a securities account? What is its role and function? What are the relevant custody, commercial, accounting and tax laws?

ANSWER: Under Japanese law, there is no definition of "securities account." In general, the notion refers to a section in a book which is maintained by a financial institution for the purposes of recording the amount of securities which each customer owns.

With regard to book-entry shares and bonds, unless a credit entry is made to the account of the transferee, the transfer does not occur legally. Thus, the creation, transfer and extinguishment of the rights are linked to book-entry.

These matters are provided in the Act.

- (4) What securities may be credited to securities accounts? May cash be credited to securities accounts and, if so, does the account-holder have a right enforceable against third parties or against the intermediary only? What is the nature of such right?

ANSWER: Government bonds, local government bonds, bonds, shares, stock options, convertible bonds, certain beneficiary interests in trusts, etc. may be credited to the securities account.

Cash cannot be credited to the securities account.

For information with respect to the effectiveness of book-entry and the nature of the rights arising from book-entry, see the ANSWERS to the QUESTIONS (7)-(22) below.

- (5) Must the investor be recorded by name on the books of an upper-tier intermediary or of the issuer?

ANSWER: The name of the investor is not recorded on the books of upper-tier intermediaries.

However, with regard to shares, the issuer is notified of the name of the investor and other information and the issuer records such information twice a year, in principle.

With regard to bonds, as a legal matter, such notification system is not provided.

Nominee and omnibus accounts

- (6) May securities be credited to a securities account in the name of a person or entity who is acting on behalf of another (i) where the existence of the other is not indicated and (ii) where the existence but not the identity of the other is indicated? May the securities account be opened in the name of the person or entity who is maintaining the account? May securities be credited to a securities account in the name of a person or entity who is acting on behalf of more than one other, i.e. such that those others hold a collective securities position, rather than segregated individual positions per person? Is the person or entity in whose name the securities account is credited (if different from the person or entity maintaining the account) considered to be an intermediary? Does that person or entity have to disclose whether it is acting on behalf of investors and, if so, their identities?

ANSWER: This happens when an intermediary credits the securities owned by its customers to the account maintained by that intermediary's relevant (upper-level) intermediary. In this case, however, the securities are owned by the investor, and the intermediary has no rights at all. In such (upper-level) account, the investor's name is not recorded, as only the total amount of securities maintained by the intermediary is recorded. The accounts maintained by an intermediary are subject to a segregation requirement, applied between the customer account and its own account, so that it is known whether the intermediary acts on behalf of its customers.

Please see Appendix.

Under the Act, only banks (deposit-taking institutions), securities companies and other specific financial institutions may become intermediaries, and they must enter into a contract with an upper-tier intermediary and have such intermediary open an account for them. This means that even if an institution opens an account on behalf of others, it does not automatically become an intermediary for the purposes of the Act.

Nature of rights

- (7) What rights arise when securities are credited to securities accounts? Is there a specific regime for establishing these rights? Are these rights characterised as a claim, an intangible, a chattel, or a new and separate legal asset, distinct from the underlying securities, which can be the object of proprietary rights (e.g. ownership, security interest, usufruct) and proprietary dispositions (e.g. sale, pledge, loan)? What obligations of the investor may also arise?

ANSWER: Book-entries only mean the recording (i.e., debiting or crediting) of shares and bonds to the account, and therefore a book-entry does not create a new right or change the nature of the existing right. Credited rights are "intangible," but investors have the right directly against the issuer. The CSD or intermediaries do not become shareholders or bondholders at any time, but rather investors are shareholders or bondholders at all times.

A book-entry does not cause the investor to incur any duties.

- (8) What is the legal position of the intermediary in respect of the securities credited to an investor's securities account?

ANSWER: Intermediaries only maintain securities accounts and do not have any rights in respect of the securities.

- (9) Is there any distinction between (i) the rights arising out of the securities against the issuer and (ii) the rights in respect of holding the security?

ANSWER: No.

- (10) Where securities are held in pooled form (e.g. a collective securities position, rather than segregated individual positions per person), does the investor have rights attaching to particular securities in the pool?

ANSWER: Under Japanese law, a trust must be used for this.

In this case, investors do not have any rights on the specific piece or part of the trust assets.

The credit entry for the customer account of the intermediary (in the upper-level) is the total combined amount for all customers of that intermediary, but the securities in the accounts of that intermediary are segregated on a customer-by-customer basis, so that such customer account is not in pooled form.

- (11) In what manner does the investor acquire rights in respect of securities credited to his securities account (i.e. is the transferee's right in the securities derived from the right of the transferor or is it originally created in the moment of crediting in his favour)?

ANSWER: Investors have rights in respect to the securities credited to the account without taking any further procedures.

- (12) What legal effects arise from a credit entry on a securities account (e.g. book-entry as conferring or evidencing the root of title, book-entry as a replacement for the possession of the document of title, book-entry as an essential element for exercising the rights attaching to securities, other rights or obligations)? Please distinguish the legal effects against (i) the issuer, (ii) the intermediary, (iii) an upper-tier intermediary (or intermediaries) or (iv) third parties?

ANSWER: Against the issuer, the presumption is provided by law that the account holder is the holder of the rights in respect of the securities.

Against the intermediary, when a shareholder wants to exercise shareholder rights, etc., the shareholder may ask the intermediary to notify the issuer of the fact that this person is a shareholder.

Against the upper-tier intermediary, nothing in particular is provided by the Act.

Against third parties, the presumption is provided by law that the account holder is the holder of the rights. A bona fide purchase is recognised.

- (13) Is the investor entitled to set-off or net rights against the intermediary in respect of securities with obligations that investor might have to the intermediary?
- (14) Is the intermediary entitled to set-off or net obligations to the investor in respect of securities with rights the intermediary might have against the investor? Can any such entitlement be altered by contract?

ANSWER: The answers to Q(13) and Q(14) are both "no" because the investor has the rights directly against the issuer.

- (15) Is the investor protected against the insolvency of an intermediary and, if so, how? Does the investor have to rely on the intervention of a court or liquidator? In what way is the answer different if the insolvency is of an upper-tier intermediary?

ANSWER: Investors are protected from an intermediary's insolvency. An intermediary has nothing with regard to the securities in the customer account. This is the same in relation to the insolvency of an upper-tier intermediary.

- (16) What liability does the intermediary have (i) for upper-tier intermediaries or (ii) other third parties that it may rely on for the performance of its functions? May any such liability be altered by contract?

ANSWER: An intermediary owes no duty or obligation against upper-tier intermediaries or third parties.

Transfer of securities

- (17) What steps are necessary for securities to be transferred? Please elaborate both operational and legal steps. Do these steps differ as regards the effectiveness between the parties to the transfer and vis-à-vis third parties (e.g. perfection requirements)?

ANSWER: To transfer book-entry securities, the transferor must enter into a contract with the transferee (under the general principles of contract law) and instruct its relevant intermediary regarding the book-entries. There is no further step required for perfection.

- (18) What is the object of the transfer of securities (e.g. a claim against the intermediary, a *sui generis* right, the security itself)?

ANSWER: Securities themselves.

- (19) At exactly what moment or moments in time does a transferee become entitled, and to what? At what moment or moments in time does the transferor become disentitled?

ANSWER: Based on the instruction by the transferor for the book-entries, the credit book-entry is made to the account of the transferee. At that time, the transfer becomes legally effective and as a result the rights of the transferor are extinguished.

- (20) Which concepts of finality (e.g. unconditionality, irrevocability, enforceability) apply to transfers of securities? Is any such concept chosen by an intermediary or imposed by law? Do they relate to the transfer orders, the settlement, the passing of title or ownership, the fulfilment of the underlying obligations, or other?

ANSWER: Under the Act, if the transferee acts in good faith and without gross negligence, the transferee acquires the rights (the bona fide purchase rule). Where the transferee does not act in good faith or acts with gross negligence, the book-entry, once made, cannot be nullified or rescinded, but rather the true rights holder has the right to ask for the making of a new set of book-entries, which means a debit entry to the transferee's account and a credit entry to the true rights holder's account. Thus, finality is provided at the level of intermediaries.

- (21) What would be the effect on concepts of finality of each of (i) a revocation of transfer instructions, (ii) the debiting of provisional or erroneous credits; (iii) insolvency challenges, (iv) fraud? Are there specific rules relating to erroneous entries on accounts?

ANSWER: Once an application or instruction for book-entry is made, it cannot be revoked.

If an intermediary makes a book entry by mistake, the intermediary may revoke the book-entry by its own decision.

Where avoidance in insolvency proceedings or other anti-fraud measures are triggered, the effect is not that the book-entry already once made will be rescinded but rather that a new book-entry will be made from the account where the securities were credited (a debit) to the account of the rights holder (a credit).

- (22) Are there specific rules relating to conditional transfers of rights, i.e. rules which specify that transfers of securities are considered to be conditional and which would allow (re-)debiting or reversal and, if so, under what circumstances? What position does the receiving investor have as a result of such credits?

ANSWER: Contracting parties are free to impose conditions regarding the contract for the transfer of securities, but a party may not make an application or give an instruction for book-entry in a way such that the party retains the right to rescind after the book-entry is made if certain conditions are met.

Once the book-entry is made, the securities cannot be returned to the transferor unless the transferee makes an application for another book-entry.

Priorities

- (23) What rules apply when (i) competing claims are asserted against the intermediary; (ii) competing claims are asserted respectively against the intermediary and an upper-tier intermediary?

ANSWER: Where the intermediary makes inflated credit entries, (1) the issuer is not liable for the amount above the amount of the outstanding securities, and (2) investors may ask the intermediary for the recovery of the rights or damages in regard to the rights which they cannot exercise against the issuer because of the inflation.

- (24) What rules protect a transferee acting in good faith (the '*bona fide* purchaser')? What are the limits of the *bona fide* protection?

ANSWER: A person who acquires book-entry securities in good faith and without gross negligence acquires the rights.

There is no limitation as to the scope of this *bona fide* acquisition rule.

- (25) Are there rules regarding liens of intermediaries over investor's securities accounts? If so, what are they and are they mandatory?

ANSWER: No. But an intermediary may retain the customer's securities under certain circumstances (the so-called the retention right by operation of law, see Art. 557 and 31 of the Commercial Code).

Upper-tier attachment

- (26) Can the investor enforce rights against an upper-tier intermediary (i) normally, (ii) in the event of breach of duty by the intermediary, (iii) in the event of breach

of duty by the upper-tier intermediary, (iv) if the event is insolvency rather than breach of duty?

ANSWER: No.

(27) In what circumstances can (i) a creditor and (ii) a non-creditor third party (such as a liquidator) of the investor claim securities from an upper-tier intermediary?

ANSWER: This cannot happen.

(28) In what circumstances can (i) a creditor and (ii) a non-creditor third party (such as a liquidator) of the intermediary claim securities from an upper-tier intermediary?

ANSWER: This cannot happen.

Shortfalls

(29) Is a shortfall (i.e. the intermediary's position with an upper-tier intermediary is less than the aggregate recorded position of the intermediary's account-holders) at the level of the intermediary possible? What rules are applied to resolve the resulting difference of positions? Are there any rules on how to handle such a situation from an accounting point of view (for example through an interim securities debit balance)? How are shortfalls handled in practice?

ANSWER: A shortfall is possible.

Where a shortfall occurs, the intermediary must acquire the balance and waive the rights regarding such balance (see Arts. 79 and 154 of the Act).

No provisions are provided with regard to accounting.

(30) What duty is there on the intermediary to avoid shortfalls?

ANSWER: There is no special duty to prevent possible shortfalls, other than ordinal book-entry procedures.

(31) Does the treatment of shortfalls differ according to whether there is (i) no fault on the part of the intermediary, (ii) if fault, fraud or (iv) if fault, negligence or similar breach of duty? Does the treatment of shortfalls differ according to whether the intermediary is solvent or insolvent?

ANSWER: There is no difference that depends on the negligence or solvency of the intermediary.

(32) Can the responsibility of the intermediary for negligence or wilful behaviour (e.g. of its employees) be contractually excluded or reduced?

ANSWER: The intermediary's duty or liability for rectifying the shortfall may not be discharged or reduced by contract (a mandatory rule).

(33) If at any level the underlying securities are physical, what is the position if they are destroyed, e.g. stolen, burned, ruined by water?

ANSWER: Under the Act, all securities are dematerialised and therefore there is no certificate. Under the current scheme for shares (until 2009), certificates do exist and if they are stolen, the CSD and intermediaries are obliged to obtain the same amount of the certificates to rectify the shortage.

II. CORPORATE ACTIONS/VOTING RIGHTS¹

- (34) What are the rights of the investor, and how do they operate in practice, as against (i) the issuer, (ii) the intermediary, (iii) the upper-tier intermediary (a) in relation to voting or receiving of information on shareholders' meetings and (b) in relation to corporate actions, e.g. payments of dividends and coupons, and any other action that affects price or structure?

ANSWER: Investors have rights in respect of the securities directly against the issuer, as where they own certificated securities.

- (35) How can these rights be exercised? Who is entitled to assert rights against the issuer in respect of securities credited to a securities account? Under what circumstances is the intermediary required to pass benefits on to the investor? How is this achieved if there is an omnibus or a nominee account?

ANSWER: The method of exercising the rights does not differ between book-entry securities and other (typically certificated) securities. The upper-tier intermediary is notified of the name and other information with regard to the investors and so on, up to notification of this information to the CSD, and then from the CSD to the issuer.

Only investors can exercise the rights against the issuer.

Under the Act, there is no provision regarding the intermediary's duty to pass on what it receives from the issuer. This matter can be provided by contract or the rule of the settlement system. For instance, the current practice is for interests on convertible bonds to be paid from the issuer to the CSD and from the CSD to the relevant intermediary. The intermediary then passes the payment on to the investor. The practice that will be developed for shares is unknown at this stage.

The relevant intermediary does not maintain an omnibus account for customers' securities.

- (36) How is it ensured that no more than those so entitled exercise, or benefit from, the rights attaching to securities?

ANSWER: Where securities are credited to the account, the rights are attached to the securities and can be exercised, and the rights holder enjoys the benefits.

- (37) Is the investor entitled to exercise a right to set-off or net against the issuer rights in respect of securities with obligations that the investor might have to the issuer?

¹ These questions are of equal interest to, and may overlap with enquiries made by, those in the Commission dealing with company law and corporate governance issues.

ANSWER: A set-off is not prohibited on the grounds that securities are held through intermediaries.

III. CHOICE OF THE SECURITIES LOCATION/PLACE OF ISSUE

- (38) Are there any rules and, if so, what that have the effect of restricting an issuer's ability to choose the legal and/or operational location of its securities for the purposes of the issue process?

ANSWER: No.

IV. THE CROSS-BORDER DIMENSION

Generally

- (39) Are foreign securities, meaning those that are (i) governed by a foreign law (ii) issued by a foreign entity, (iii) issued within in a foreign jurisdiction or (iv) issued in a foreign currency, treated differently from domestic ones and, if so, how (as regards the issuer, intermediaries and investors)? Does the answer depend on the foreign country to which the securities are related?

ANSWER: There is no difference for foreign securities.

Specifically

- (40) Are there any rules which specifically define a domestic investor's right to foreign securities credited to a domestic account? If so, what is the nature of the right given and does it differ from the right of investor to domestic securities?

ANSWER: No.

- (41) Does the protection of a domestic investor differ in relation to the holding of foreign securities (i) with a domestic intermediary or (ii) with a foreign intermediary, e.g. in case of the insolvency of the intermediary?

ANSWER: If an intermediary (as defined under the Act) is insolvent, investors may recover the loss from a safety net, known as the Investor Protection Trust Fund. A foreign institution may become an intermediary under the Act.

- (42) Are foreign intermediaries (where (i) the headquarter, (ii) a branch or (iii) an office is in a foreign jurisdiction) treated differently from domestic ones? Does the answer depend on which country the foreign intermediaries are related to?

ANSWER: There is no special provision for foreign intermediaries. Foreign securities companies (registered under the Act for Foreign Securities Company Act, Act No. 5 of 1971) and institutions which are designated by the Minister for Financial Services, the Minister of Justice and the Minister of Finance may become an intermediary under the Act. In that case, they are treated in the same manner as domestic intermediaries.

- (43) How is finality (in the meaning of questions 20 and 21) achieved for transactions involving (i) foreign intermediaries or (ii) links between more than one intermediary? Does the answer depend on the type of intermediary or securities?

ANSWER: In both cases, finality is obtained by a series of book-entries made from the relevant intermediary of the transferor, or up to the common upper-tier intermediary, and then down to the intermediary of the transferee. It does not depend on the type of intermediary or the type of securities.

- (44) Do foreign intermediaries which hold domestic securities need a special authorised status in order to convey rights to its investors? How are foreign intermediaries recognised when entering into a link with domestic intermediaries?

ANSWER: The Act does not have special provisions with foreign intermediaries in mind.

To become an intermediary under the Act, a foreign institution must be a foreign securities company or otherwise obtain a designation under the Act (see above).

- (45) Under what rules may domestic investors acquire foreign securities?

ANSWER: There is no special provision.

- (46) Under what rules may domestic investors use foreign intermediaries?

ANSWER: There is no special provision.

- (47) Are there any regulatory or other restrictions affecting foreign investors exercising shareholders' rights in domestic securities, or inhibiting domestic investors from exercising foreign rights?

ANSWER: Certain types of companies, such as those in the areas of broadcasting or air transport, may refuse to record the names of foreigners in their shareholder record if such recording would result in the foreign investors' ownership being more than a certain percentage promulgated by law.

There is no provision that prevents domestic investors from exercising the rights regarding the foreign securities.

V. PUBLIC LAW AND REGULATORY CONTEXT

- (48) What rules are applicable to the existence, establishment and operation of intermediaries (and where relevant for co-operation between particular intermediaries)?

ANSWER: The Act applies.

- (49) Who is entitled to maintain securities accounts? Does the holding or transfer of securities on behalf of others require any license or any other authorisation from a public authority?

ANSWER: The capacity of an intermediary is limited to the categories listed under Article 44(1) of the Act, including banks and securities companies. For them to act as intermediaries, a license is not necessary, but securities companies must obtain registration and banks must be licensed as banks.

- (50) Is the access of investors to intermediaries in another Member State affected by their access to central bank money and, if so, how?

ANSWER: No.

- (51) Does an account agreement have to comply with any requirements as to form or content?

ANSWER: No.

- (52) Are there any disclosure requirements on the intermediary regarding securities credited to securities accounts (relating -to (i) taxation, (ii) company law, (iii) takeover regulation, (iv) money laundering, (v) control of regulated entities or (vi) any other matter). Is there any requirement to ascertain and/or disclose details of final investors (e.g. beneficial owners) of securities held with the intermediary?

ANSWER: Generally, no. These requirements are not different from those that pertain to intermediaries dealing with certificated securities (with some exceptions regarding the duty of withholding taxes).

- (53) What data storage requirements are there?

ANSWER: The name and address of each investor, the name of the issuer, the type or kind of book-entry shares or bonds and the amount of the same kind of securities.

- (54) Are there any transfer restrictions applicable to securities (e.g. are transfers restricted to certain types of investors or intermediaries, is there a need for notifications or certifications, can delivery only occur against payment, is there a prohibition of over-the-counter transactions, etc.)? What is the effect of a breach such restrictions?

ANSWER: With regard to shares, a transfer may be restricted in that a transfer may require board approval. In this case, if such approval is not obtained, the transfer is not effective against the issuer.

With regard to bonds, a transfer can be restricted or prohibited under contract. In this case, if the transferee obtains the bond with knowledge of such clause, the transfer is ineffective, but if the transferee has not been had notice of such clause or has no knowledge of such clause, such clause is not effective against the transferee.

- (55) How is it effected that title to the securities passes from the seller to the buyer only at the very moment when the transfer of the purchase price from the buyer to the seller becomes effective (delivery versus payment (DvP))? Are the relevant rules established by an intermediary, by market conventions or imposed by law? Is the effectiveness of the credit to the securities account conditional upon the payment of the purchase price?

ANSWER: The clearing house (CH) takes on the obligations and rights of the participants, so that the CH is the counterparty (CCP) to all participants, recognising DVP.

DVP takes place in accordance with the rules of the clearing and settlement system.

Under the Act, legally, the effectiveness of a credit entry does not depend on payment.

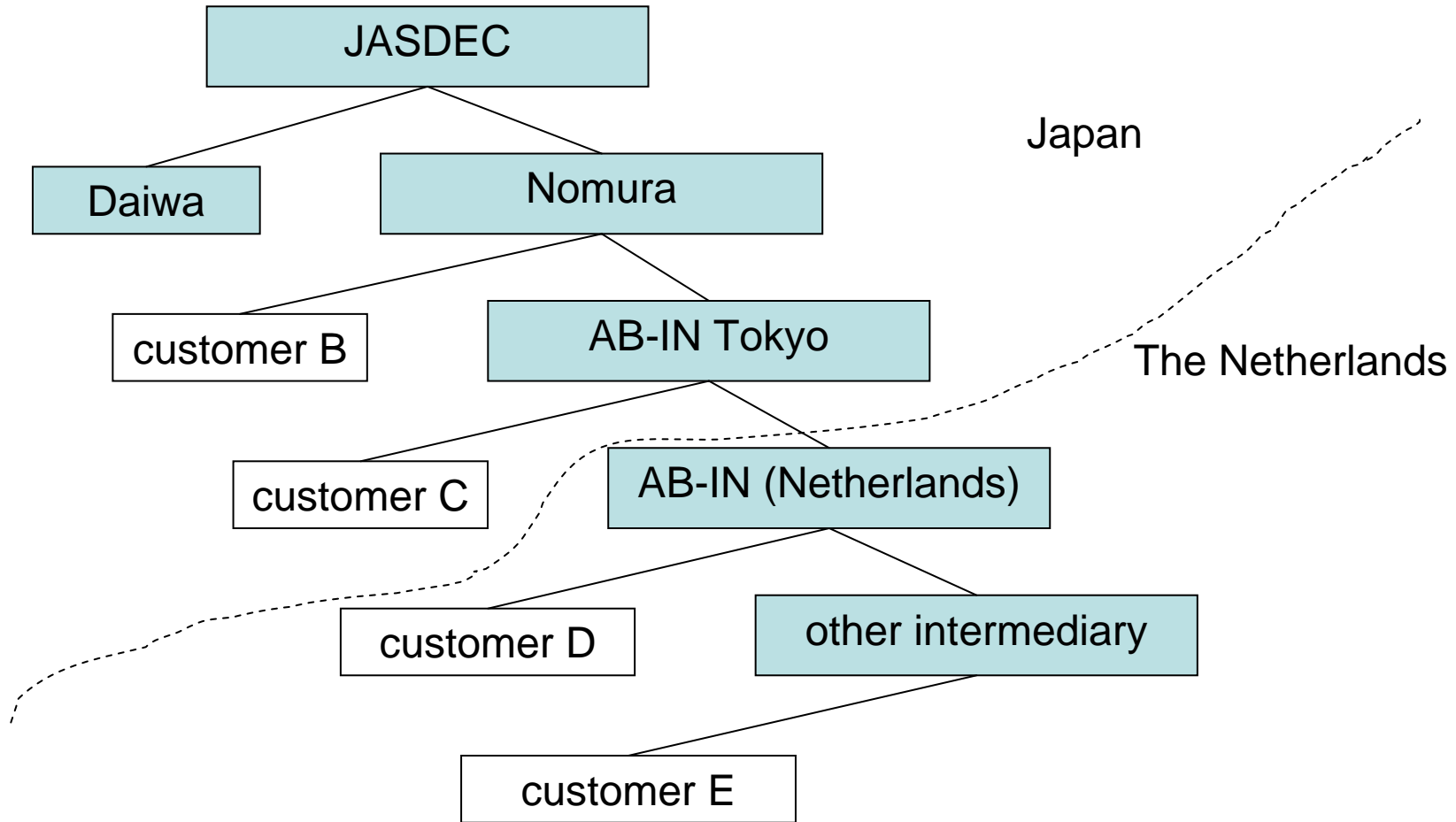
- (56) Is the intermediary required to have information about final investors (e.g. beneficial owners) of securities before it takes any action in respect of such securities?

ANSWER: Where a title transfer is made by way of security, if the collateral taker wants the collateral provider to be treated as a shareholder and asks the intermediary to provide notice to the issuer in this regard, then the intermediary must provide notice to the issuer indicating that the collateral provider (to whose account the securities are not credited) is to be treated as the shareholder.

- (57) Is there any specific penal law protection in case of fraud on the side of the intermediary? Are there any other specific rules of penal law applicable to protect the investors' interest against appropriations or other encroachments by the intermediary upon investors' rights?

ANSWER: If a book-entry is not made when it is required to be made, a book-entry is false, or a notification to the issuer is false, criminal sanctions are triggered against the intermediary.

APPENDIX



 intermediaries

JASDEC's Book

Nomura		Daiwa		customer A	
own	customer				

Nomura's Book

AB-IN Tokyo		other int.		customer B	
own	customer				

AB-IN Tokyo's Book

AB-IN Netherlands		other int.		customer C	
own	customer				

AB-IN's Book

other int.		other int.		customer D	
own	customer				