

## IMMOBILIZATION OF STOCK CERTIFICATES: THE POSITION OF THE BENEFICIAL SHAREHOLDER

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### 1. Introduction

Under the registered share system, shares were registered in the record of the corporate issuer in the name of beneficial shareholders and then transferred by physical delivery of stock certificates from the transferor to the transferee. Indeed, delivery of the stock certificate served to facilitate the transfer of the transferor shareholder's invisible ownership right. However, the volume of share transactions on the facilities of organized markets, such as stock exchanges, has increased in recent years to such an extent that delivery of stock certificates has become a severe burden upon the parties participating in the share transactions: the stock certificate has begun to interfere with the smoothness of the share transactions themselves.

In the face of such a situation, the securities industry in many countries has endeavored to streamline share transactions by creating a central depository to deal with the transfer of stock certificates. This immobilization system is based on nominee or street name registration of shares, a practice that has been followed for years by financial intermediaries, such as brokers, with respect to shares owned by their public customers. Immobilization requires financial intermediaries to deposit customers' stock certificates with a central depository, which then becomes the record holder of the shares represented by the deposited stock certificates. Under this system the shares of any particular class or series of a corporate issuer which the stock certificates represent are treated as fungible and may be transferred by bookkeeping entry without physical delivery of stock certificates [1].

Although the immobilization system helps to alleviate the burden on the share transaction process that was created by the necessity to physically deliver stock certificates, it has collateral effects that may be disadvantageous.

First, the immobilization system makes communication between corporate issuers and their shareholders more circuitous because of the interpositioning of financial intermediaries and the depository. Shareholder rights, of which the right to vote at shareholders' meetings is the most important, might be impinged upon if

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the depository or financial intermediaries fail to transmit communications from the corporate issuer to its shareholders in a timely manner. Moreover, the depository or financial intermediaries might exercise undue influence over the affairs of corporate issuers if they vote on behalf of beneficial shareholders without or against their voting instructions. Secondly, it makes the share record of corporate issuers somewhat noninformative as to the identity of the true shareholders. Under the registered share system, unlike the bearer share system, the corporate issuer and others may learn who the shareholders of the issuer are by inspecting the share record of the issuer. But the immobilization system makes it impossible to discover the true, beneficial shareholders of the issuer from the share record kept by the issuer. It might enable directors and other insiders to traffic in shares of their corporation without this being known, or enable someone secretly to acquire control of the corporate issuer.

This article considers problems that are caused by the immobilization of stock certificates, focusing on issuer–shareholder communication and the disclosure of the identity of beneficial shareholders. General models of immobilization systems are described and particular national solutions to problems posed by these models are analyzed.

## 2. Issuer–shareholder communications

Corporate issuers with registered shares are required to keep a share record which lists their shareholders. This record serves as a convenient method for determining who are the real shareholders and thus who is entitled to the incidents of shareownership. Under the immobilization system it is not the beneficial shareholders but the depository who is the recorded holder of shares. Consequently, only the depository is entitled to receive notices, to vote or otherwise participate in control, and to receive dividends. Beneficial shareholders cannot exercise the ownership rights normally accorded the record holder since they do not appear as shareholders on the issuer's share record.

Under the immobilization system there are two alternatives to the exercise of the right to vote at shareholders' meetings by nonrecord beneficial shareholders. The first is indirect communication with the issuer, achieved by means of the depository and financial intermediaries. The second is direct communication with the issuer, achieved without the use of intervening parties.

### 2.1. *Indirect communications*

Under this method the corporate issuer refers to the share record to determine the party who will exercise shareholder voting rights; and the beneficial shareholders exercise their right to vote through the depository and financial intermediaries. Beneficial shareholders use either of two procedures to exercise their voting rights:

(1) the depository, through financial intermediaries, advises beneficial shareholders of the matters to be voted on and requests from them voting instructions which the depository then carries out; or (2) the depository signs blank proxy cards and forwards them, through financial intermediaries, to beneficial shareholders who then vote with the card.

When the first procedure is followed, the depository or its agent attends the shareholders' meeting; the beneficial shareholders cannot attend the meeting and participate in the discussion of corporate matters. Two organizations, the Société interprofessionnelle pour la compensation des valeurs mobilières (SICOVAM), a French central depository, and the Japan Securities Clearing Corporation (JSCC), a Japanese central depository, have adopted it with respect to foreign corporate issuers' registered shares whose stock certificates are on deposit with them. In order to prevent such depositories from having a deciding voice in corporate affairs without their having invested in the issuers, the depositories should be prohibited from voting shares for which no voting instructions have been received from beneficial shareholders. The operating rules of SICOVAM require that it exercise the right to vote exactly in accordance with the instructions given by its participants acting on behalf of the beneficial shareholders [2]. The general conditions established by the Japan Securities Dealers Association for opening accounts in foreign registered securities include a similar provision with respect to the exercise of the right to vote by the JSCC [3].

When the second procedure is followed, beneficial shareholders exercise the right to vote formally as agents of the record holder depository; but in fact they are voting their own shares and are permitted to attend shareholders' meetings. The Frankfurter Kassenverein AG (FKV), a German central depository, has adopted this procedure with respect to registered voting shares of which it is the record holder. The General Rules of Conduct of the FKV forbid it to vote registered shares of which it is the record holder, but it grants written authorization to beneficial shareholders who wish to vote their shares [4]. A similar procedure is followed in connection with bearer form shares for which stock certificates are deposited with the French or German central depository. French and German central depositories issue certificates of deposit for those bearer form shareholders who wish to attend shareholders' meetings and vote their shares in person [5].

The Central Certificate Service, Inc. (CCS), an American central depository and the predecessor of the Depository Trust Co. (DTC), once gave its participants the option to employ either of the two voting procedures. It would send a copy of the voting form to its participants after the record date. Participants could then return the copy to CCS if they wished to vote through it; if they did not wish to vote through CCS, they could submit a written request to it and receive a signed proxy for their use [6].

Just as two procedures are conceivable for the exercise of the right to vote by nonrecord beneficial shareholders through the depository and financial intermediaries, two procedures are also conceivable in connection with proxy solicitation by

issuer managements or by third persons. Accordingly, when proxies are solicited from beneficial owners of stock for which the depository is record holder, in addition to transmitting proxy materials to beneficial shareholders the depository may either (1) request voting instructions from beneficial shareholders and vote proxies in accordance with the instructions received, or (2) transmit signed proxy cards indicating the number of shares held for beneficial shareholders and let the shareholders complete the cards and forward them to the person soliciting the proxies. Since they are not expected to attend the meeting themselves, no matter which procedure is used, the beneficial shareholders are not greatly affected by the choice of procedure. When the depository follows the first procedure, it should be prohibited from voting the proxies in any way that is inconsistent with the voting instructions received from beneficial shareholders; otherwise the danger exists that it could exercise undue influence over corporate affairs.

Similar treatment is required of the member firms of the New York and the American Stock Exchanges with respect to shares registered and held in their name for the account of customers. Exchange rules require that when proxies are solicited from members in connection with shares held in street name, they should transmit to the beneficial shareholders residing in the United States a copy of all the materials received from the person soliciting the proxies on the assurance that reasonable out-of-pocket expenses will be reimbursed. The members can then follow either of two procedures: (1) they can include with these materials a request for voting instructions and a statement to the effect that the member will exercise its discretion in determining how to vote the proxies if such instructions are not received by the tenth day before the shareholders' meeting, or (2) they can deliver to the beneficial shareholder a signed proxy card that indicates the number of shares held for him and bears a symbol identifying the proxy with the proxy card. The signed proxy is accompanied by a letter advising the shareholder to complete the proxy and forward it to the person soliciting the proxies in order that the shares may be represented at the meeting [7].

In addition, the National Association of Securities Dealers requires those of its members who are not members of any exchange or who otherwise opt for its procedures to send to their customers residing in the United States, and on whose account they hold shares, an appropriate signed proxy accompanied by the proxy materials furnished by the party soliciting proxies, contingent upon the assurance of reimbursement of reasonable out-of-pocket expenses [8].

Theoretically, these procedures adequately protect the beneficial shareholders' right to vote. However, theoretical protection does not necessarily guarantee practical protection. If the financial intermediaries who intervene between the depository and the beneficial shareholders do not transmit voting materials in proper and timely manner to the beneficial shareholders, or if the depository does not properly execute the voting instructions of beneficial shareholders, the beneficial shareholders' right to vote is diluted. Indeed, in such cases the beneficial shareholders may seek relief through private lawsuits. But such actions, which are sometimes expen-

sive and time-consuming, are generally expected to be taken only by persons possessing substantial monetary interest in the outcome. Thus, if it does not unduly burden the corporate issuers, the depository and the financial intermediaries, it is worthwhile to consider the alternative procedure which enables beneficial shareholders to vote directly and to receive direct communications from the corporate issuer.

## 2.2. Direct communications

Direct communications to and direct voting by the beneficial shareholders may be achieved through the following procedure. The depository compiles a list containing the names of the financial intermediaries that have deposit accounts with it and their holdings in the particular issue as of the record date, and forwards it to the corporate issuer. Upon receiving the list, the corporate issuer then asks the financial intermediaries to prepare their own list of the customers who have a depository position in the issuer as of the record date and their holdings, and to forward it to the issuer. From these beneficial shareholder lists the corporate issuer mails voting material directly to the beneficial shareholders. The party soliciting proxies also may solicit them directly from the beneficial shareholders whose names appear on these lists.

There are several advantages to this procedure. First, the beneficial shareholders are able to exercise their voting rights themselves because the depository and the financial intermediaries are removed from the issuer—shareholders communications process. Secondly, the risks attending the indirect communications procedure are eliminated, *i.e.* that financial intermediaries will fail to forward voting materials to the beneficial shareholders in a proper and timely manner, or that the depository or financial intermediaries will control the corporate issuers by exercising voting rights inconsistent with the instructions from the beneficial shareholders. Finally, the beneficial shareholders have the right to obtain relief directly from the corporate issuer if they are not sent voting materials in a proper and timely manner. Of course, if the financial intermediaries fail to compile accurate lists, the voting rights of the beneficial shareholders could be infringed. But this problem is unavoidable when beneficial shareholders deposit their stock certificates with the financial intermediaries and hold their shares in the name of someone else.

A United States House of Representatives subcommittee once hinted at the use of this kind of direct communication to break through the layers created by the widespread use of depositories. In recommending the enactment of legislation authorizing the Securities and Exchange Commission to determine whether and what steps could be taken to facilitate communications between corporations and their shareholders while retaining the benefits of nominee registration, the House Subcommittee on Commerce and Finance reported as follows:

One possibility which the Commission could consider would be a requirement that the depositories furnish the transfer agent with a list of depositors and their holdings as of a record

date and that those depositors could legally vote directly and receive direct communications of all kinds [9].

In 1975 the Depository Trust Company (DTC), the largest central depository in the United States, developed what is known as the "omnibus proxy procedure", under which the DTC extends to the appropriate participants the voting rights of shares registered in the name of DTC's nominee, thereby authorizing the participants to exercise those rights in their own names [10]. Participants in the depository are financial intermediaries such as banks and brokers. Under the omnibus proxy procedure the depository prepares a computer-generated list of names and holdings of participants who have depository positions in the issuer's shares as of the record date. The list is forwarded to the issuer along with an omnibus proxy which authorizes each participant, to the extent of its position, to act as the depository's proxy and to vote the share. The depository also forwards to the participants a notice advising them of the delivery to the issuer of omnibus proxy material and giving the record date, meeting date and number of shares on record. Upon receipt of the notice, it becomes the responsibility of each participant to contact the issuer directly for the appropriate sets of proxy material [11].

The omnibus proxy procedure extends the voting rights of shares registered in the name of the depository's nominee from the depository to the participants, but not to the customers of the participants, who are the ultimate shareholders. It removes the depository from the communications process, but not the participants of the depository whose practices with respect to the exercise of voting rights of shares should be carefully observed in connection with the protection of the beneficial shareholders.

This procedure substitutes the name of the participant, but not the name of the participant's customer. Since, in the immobilization system, through the central depository, there exist two entities interposed between the corporate issuer and its beneficial shareholder (with the depository being the record holder for the account of the financial intermediary which in turn holds the shares for the account of the beneficial shareholder), a double substitution of the shareholder name is necessary for bypassing these layers. First, the name of the financial intermediary is substituted for the name of the depository nominee, and secondly, the name of the beneficial shareholder is substituted for the name of the financial intermediary.

The enactment of a statute to make such a double substitution workable is now being considered in Japan. In 1978 the Conference of the Central Depository Stock Clearance System, set up by the Tokyo Stock Exchange, proposed direct communications between the corporate issuer and its beneficial shareholders through a double substitution. The Conference proposed (1) that the participants in the depository prepare a list of beneficial shareholders specifying their identities and their holdings of shares with the depository as of the record date, and forward that list to the corporate issuer, and (2) that the beneficial shareholders specified in such lists exercise voting and other shareholder rights in place of the depository. The

corporation could rely on the list of beneficial shareholders to determine which shareholders are entitled to exercise shareholder rights [12]. In addition, the Securities and Exchange Council, a subsidiary organization of the Ministry of Finance, is considering the enactment of legislation with respect to the immobilization of stock certificates through a central depository in line with this proposal.

Double substitution appears to raise the problem of the shareholders' right of privacy. If the double substitution is mandatory and the financial intermediary is required to disclose the identities and interests of the beneficial shareholders to the corporate issuer, the shareholders' right of privacy in their shareholdings is not preserved. Some beneficial shareholders deposit shares with the financial intermediary in order to remain anonymous. And current practice, whereby the financial intermediary conceals the identities and interests of its customers' shares when so asked by the customers, should not be jeopardized even if double substitution is generally adopted. Double substitution and the shareholders' right of privacy can be reconciled if the financial intermediary discloses to the corporate issuer the names of the beneficial shareholders who so authorize while it refrains from disclosing the names of those who wish to remain anonymous. The Conference of the Central Depository Stock Clearance System has proposed that the beneficial shareholder has an affirmative duty to disclaim if he does not wish his name to be disclosed to the corporate issuer [13]. Under this proposal, unless the beneficial shareholder informs the financial intermediary that he does not wish his identity to be disclosed, the financial intermediary may disclose the beneficial shareholder's shareholding in the list forwarded to the corporate issuer; beneficial shareholders who disclaim, however, would be precluded from exercising shareholders' rights.

Direct communications between the corporate issuer and its beneficial shareholders would be achieved by enactment of legislation that permits the substitution of the beneficial shareholder for both the financial intermediary and the depository. Under such legislation the beneficial shareholder would have the option to reveal himself to the corporate issuer if he wishes to have direct communications, or to forgo his right as a shareholder if he wishes to remain anonymous.

### **3. Disclosure of beneficial ownership**

Immobilization of stock certificates interposes the financial intermediary and the depository between the corporate issuer and its beneficial shareholders; this serves to conceal the identity of those who have a financial interest from the corporation and the investing public. Inclusion of the shareholder on the shareholder list only enables the corporation or anyone else to ascertain the number of shares that are on deposit with the depository. Any listed depository nominee could represent tens of thousands of beneficial shareholders. Thus, the immobilization system enables corporate insiders and other parties to traffic secretly in shares registered in the name of the depository nominee.

Share ownership information is relevant to the judicious investment and voting decisions of the investing public. And the disclosure of share ownership and dealing has the effect of discouraging corporate insiders from using inside information for their personal advantage. But under the immobilization system the shareholder list reveals neither the identity of each beneficial shareholder nor the trafficking in shares. Therefore, it is imperative to take steps to ensure public availability of information regarding substantial beneficial ownership of shares registered in the name of the depository nominee under the immobilization system.

Problems concerning the disclosure of beneficial ownership frequently arise where the prevailing practice is that of street name registration. Legislators in many countries have tried to tackle these problems. We will review the steps that have been taken to disclose the beneficial ownership of shares registered in street name. Thereafter, we will consider disclosure problems of beneficial ownership under the immobilization system.

### *3.1. Disclosure requirements of beneficial ownership*

United States federal securities law requires extensive disclosure of the beneficial ownership of shares in publicly held companies. Section 16 (a) of the Securities Exchange Act of 1934 requires every person who beneficially owns, directly or indirectly, more than 10% of a class of equity securities registered under section 12 [14], and every officer and director of every company that has a class of securities registered under that section, to file a report with the Securities and Exchange Commission (SEC) and the national exchange on which it is listed, at the time he acquires such status and at the end of any month in which he acquires or disposes of any equity security of that company. The information obtained through the required reports is then made public by the Commission and the exchanges. The section was intended to serve two purposes: (1) to curb abusive insider practices by discouraging the rampant use of inside information for personal advantage, and (2) to provide investors with information concerning purchases and sales by corporate insiders that would help them to make more judicious financial decisions [15].

Section 13 (d) of the Act requires any person or group who, after acquiring ownership of equity securities of a publicly held company, is the beneficial owner of more than 5% of any class of such securities, to send to both the issuer of the security and the stock exchange upon which the security is listed, and to file with the Securities and Exchange Commission, a statement containing, among other things, that person's name, address, occupational background, source of funds, and purposes in effecting the acquisition, as well as the number of shares of the subject security which are beneficially owned by such person and each associated person. Thereafter, any material change in ownership must likewise be reported. The section was intended to provide information to the investing public and the affected issuer about rapid accumulations of its equity securities in the hands of persons or groups who would then have the potential to change or influence the control of the issuer [16].

Section 14 (d) of the same Act requires the filing with the Securities and Exchange Commission of a statement by any person or group proposing to make a tender offer if, after the consummation of the offer, such person or group would beneficially own more than 5% of any class of equity securities of a publicly-held company. The section was designed to provide investors with information adequate to make an informed decision on whether to sell their holdings or to maintain their investment in a company that might be changing hands and undergoing significant transformation [17].

Finally, the rules of the Securities and Exchange Commission under sections 14 (a) and 14 (c) require that each publicly-held company transmit to record holders prior to the shareholders' meeting, a proxy statement or information statement which, among other things, identifies any person who owns beneficially or of record more than 10% of the voting securities [18].

British company law also requires disclosure of the beneficial ownership of directors and substantial shareholders. In addition to the shareholder register, British company law requires a company to maintain and to leave open for public inspection two additional registers relating to shareholdings and dealings: (1) a register of the interests of and dealings by every director in shares or debentures of the company or its holding or subsidiary companies, and (2) a register of the holdings of and dealings by those having interests in 5% or more of any class of listed shares in a company carrying unrestricted voting rights. While the disclosure requirements of the shareholdings of and dealings by directors are designed to prevent dealing by them with undisclosed inside information, the disclosure requirements of the substantial shareholders are primarily intended to protect directors and shareholders against a secret buildup of substantial shares with a view to takeover [19].

Under British company law, directors are required to notify the company within five days of acquiring or disposing of any beneficial interest in shares or debentures of companies in the group [20]. The company must maintain a register of directors' interests and dealings, and within three days must enter thereon the information received [21]. The register is to be open to public inspection and copies may be obtained [22]. Also, where the company receives notice of a transaction relating to listed securities, it must notify the stock exchange, which then publishes the information [23].

British company law also requires every person who becomes beneficially interested in 5% or more in nominal value of listed shares carrying unrestricted voting rights or any class thereof to give notice to the company [24]. The company must maintain a separate register of these shareholdings and dealings which is open for public inspection, and of which copies may be obtained [25]. The company is not, however, required to notify the stock exchange on which the shares are listed. Moreover, a company whose shares are listed on a recognized exchange may require any member to indicate the capacity in which he holds that company's shares otherwise than as a beneficial owner, and the name and address of any person who has an interest in them so far as that lies within his knowledge [26]. The company

may then require similar information from any person so identified [27]. When any information is obtained through such process, it must be entered separately in the register, and must also be open to public inspection [28].

These regulations make the practice of street name registration no longer the impenetrable screen which hides true ownership of shares so far as the shareholdings of directors and substantial shareholders are concerned. But they do not require disclosure of shareholdings of the great majority of shareholders under the immobilization system.

### *3.2. Disclosure problems under the immobilization system*

When shares are deposited with the central depository for the immobilization of stock certificates, a single name on the shareholder list maintained by the corporate issuer represents thousands of beneficial shareholders whose identities and interests are not revealed by the above-mentioned disclosure requirements. But the corporation and its shareholders have a legitimate interest in knowing the true owner of shares covered by such a single name.

The advocate of corporate democracy might argue that the public shareholder should be required to reveal himself in the same spirit of disclosure as he demands of the management, and to accept the same responsibility as is expected of management by the public shareholder. However, it is also arguable that the public shareholder should enjoy the same benefit of anonymity under the immobilization system as is otherwise enjoyed through the practice of street name registration. The latter argument appears to have merit.

Even if disclosure of the beneficial shareholders is not made mandatory, it could nonetheless be achieved by requiring that the financial intermediary with depository accounts reveal the names and interests of the beneficial shareholders who do not ask the corporate issuer for anonymity, and that only such shareholders be permitted to exercise and enjoy the rights in respect of shares registered in the name of the depository nominee. British company law provides for a similar sanction against nondisclosure of beneficial ownership information. It also authorizes the Department of Trade to impose restrictions on transfers, votes or dividends in respect of shares if full information as to the true ownership of the shares cannot be obtained owing to the unwillingness of persons concerned to assist in the investigation conducted by the Department or its inspector [29].

The plan proposed by the Central Depository Stock Clearance System in Japan requires depository participants to notify the corporate issuer of the identity and interests of the beneficial shareholders on whose behalf it has a depository account, and who did not request anonymity. The corporate issuer is then required to prepare the list of beneficial shareholders on the basis of the information received from the participants and to make it available for inspection by shareholders and creditors of the issuer. The plan provides that only the beneficial shareholders on the list may exercise and enjoy rights in respects of shares in place of the depository, or

record owner; the other beneficial holders may not [30].

If the list of beneficial shareholders is required to be prepared on the basis of information received from financial intermediaries, and to be made available for the inspection of shareholders and others, steps should be taken to guard the legitimate interest of the financial intermediaries. The intermediaries may consider the identity of the beneficial shareholders, who are their customers, to be an important trade secret and therefore ought not to be required to divulge such information. Thus, the list maintained and made available for public inspection by the issuer should be modified so as not to reveal the customer lists of the financial intermediaries.

#### 4. Conclusion

The immobilization of stock certificates through the depository greatly facilitates the efficient conduct of the day-to-day business of share transactions in the securities industry [31]. But the system interposes layers — the depository as the record holder, and the financial intermediary as the participant — between the corporate issuer and its shareholders. This complicates issuer–shareholder communication and makes it susceptible to error and abuse. It also makes it extremely difficult for the corporation and its shareholders to ascertain who are the true owners of the corporation’s shares.

With respect to issuer–shareholder communications, steps should be taken to protect the rights of the beneficial shareholders and to prevent the depository and the financial intermediary from exercising control over the corporate issuer. The omnibus proxy procedure adopted by the United States central depositories provides a partial solution to these problems by substituting the financial intermediary for the depository.

With respect to disclosure of beneficial ownership, the disclosure requirements of the United States federal securities laws and the British company law do not reach the share ownership of the public shareholders. Therefore, further steps should be taken to reveal the share ownership of the public shareholders under the immobilization system.

Adoption of the following plan would effectively address these problems. The financial intermediary who participates in the depository should notify the corporate issuer of the identity and interests of the beneficial shareholders for whose account it holds a share account with the depository, if they have not requested anonymity. Only those beneficial shareholders whose identities and interests are revealed to the issuer, and placed on an issuer list that is open for inspection by shareholders, should be able to exercise and enjoy the rights of share ownership in place of the record owner depository.

## Notes

[1] Immobilization of stock certificates through a central depository also serves to minimize the risks of loss and theft of certificates that accompany the physical delivery of stock certificates for the completion of the share transaction. In Europe, where the typical stock certificate is in bearer form, the central depository system has been developed precisely for such a purpose.

[2] Article 29 of the General Regulations of the Société interprofessionnelle pour la compensation des valeurs mobilières.

[3] Article 8 of the General Conditions for Opening Accounts in Foreign Securities established by the Japan Securities Dealers Association provides that the Japan Securities Clearing Corporation will exercise the voting rights of the shares deposited with it in accordance with the instructions given by the beneficial shareholders and that it will not exercise the rights if no instruction is given.

[4] Article 33-4 of the General Rules of Conduct of the Frankfurter Kassenverein AG.

[5] Article 22 of the General Regulation of the Société interprofessionnelle pour la compensation des valeurs mobilières; article 22 of the General Rules of Conduct of the Frankfurter Kassenverein AG.

[6] See Central Certificate Service, Inc., Operating Procedure, F-6 (1972).

[7] Rules 450-452 of the New York Stock Exchange; rules 574-577 of the American Stock Exchange. The rules of these stock exchanges prohibit member firms from voting the shares in the absence of instruction in the event of a contest or as to matters which substantially affect the rights or privileges of the security. The supplemental comments of the American Stock Exchange rule specify a number of matters deemed to involve a substantial right of shareholders as to which a member firm may not vote without instruction from the beneficial shareholder.

Although exchange rules require brokers to supply soliciting material to their customers, banks are not subject to a comparable requirement under United States law.

[8] Article III, section 1, interpretation 0.05; section 2 (2) of the National Association of Securities Dealers.

[9] Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, *Securities Industry Study*, H.R. Rep. No. 1519, 92d Cong., 2d Sess. 74 (1972). See also Committee Print for the House Committee on Interstate and Foreign Commerce, Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other Than the Name of the Beneficial Owner of Such Securities, Dec. 3, 1976. More recent concerns of the SEC are reported in [1980] 577 Sec. Reg. L. Rep. (BNA) A-3.

[10] In addition to the DTC, two other major depositories in the United States — the Midwest Securities Trust Company and the Pacific Securities Depository Trust Company — are now using the omnibus proxy procedure.

[11] See the Depository Trust Company, Participants Operating Procedures, V-1, 2 (1977).

[12] See the Conference of the Central Depository Stock Clearance System, Preliminary Report on the Central Depository Stock Clearance System (1978) at 31-38. A further right of privacy may be asserted by brokers with respect to their customer lists. See text following note 30, *supra*.

[13] See *id.* at 33.

[14] Section 12 of the Securities Exchange Act of 1934 requires any issuer which has a class of securities traded on a national securities exchange, or any company which has total assets exceeding \$1 million and a class of equity securities with at least 500 shareholders of record, to register with the SEC. Hereafter, such an issuer/company will be referred to as a publicly-held company.

[15] See H.R. Rep. No. 1383, 73d Cong., 2d Sess. 15, 24 (1934).

[16] See S. Rep. No. 550, 90th Cong., 1st Sess. 7 (1967); H.R. Rep. No. 1711, 90th Cong., 2d Sess. 8 (1968).

[17] See S. Rep. No. 550, 90th Cong., 1st Sess. 4 (1967); H.R. Rep. No. 1711, 90th Cong., 2d Sess. 4 (1968).

[18] Schedule 14A, item 5(d), 17 C.F.R. §240.14c-101 (1980).

[19] See *The Principles of Modern Company Law* (4th ed. Gower, Cronin, Easson and Wedderburn, eds. 1979) at 632.

[20] The Companies Act 1967 (1967 c. 81), §27 as amended by The Companies Act 1976 (1976 c. 69), §24.

[21] *Id.* §29.

[22] *Id.* §29(7) and 29(10).

[23] The Companies Act 1976 (1976 c. 69), §25.

[24] The Companies Act 1967 (1967 c. 81), §33, the Companies Act 1976 (1976 c. 69), §26.

[25] The Companies Act 1967 (1967 c. 81), §34.

[26] The Companies Act 1976 (1976 c. 69), §27(1).

[27] *Id.* §27(2).

[28] *Id.* §27(6).

[29] The Companies Act 1948 (11 & 12 Geo. 6c. 38), §174. As a sanction against nondisclosure of shareholding, the German Stock Corporation Act provides for the suspension of rights attached to the shares. With regard to the regulation of reciprocal shareholding, section 21 of the Act requires a company which becomes a holder of more than one-quarter or one-half of the shares of another company to notify that other company of its shareholding, and negates the exercise of rights in respect to the shares held by such a company until the company notifies its shareholding.

[30] The Conference of the Central Depository Stock Clearance System, Preliminary Report on the Central Depository Stock Clearance System (1978) at 33, 57 and 59.

[31] Efficiency in the conduct of the securities business is thought by some to lie in the elimination of the share certificate altogether. Developments in the United States along this line have been described in an earlier issue of this journal. Aronstein, *The Decline and Fall of the Stock Certificate in America*, 1 J. Comp. Corp. L. & Sec. Reg. 273 (1978).

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