



**DIPLOMATIC CONFERENCE TO ADOPT A  
CONVENTION ON SUBSTANTIVE RULES  
REGARDING INTERMEDIATED SECURITIES  
Final session**  
Geneva, 5 to 7/9 October 2009

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**Proposal on the Preamble, Articles 10, 15, 24(1) and 28(1) and (2)**

*(submitted by the Member States of the European Community, and  
the European Community itself, and supported by the European Central Bank)*

The Member States of the European Community, and the European Community itself, supported by the European Central Bank, jointly propose, referring to issues listed under section B6 to B17 of the report of the Filtering Committee (CONF. 11/2 – Doc. 22), and on the basis of additional explanations to be given to the Plenary, the following amendments to the draft text of the Convention:

**1. AMENDMENT OF THE PREAMBLE:**

States signatories to this Convention

[... ]

**HAVING** due regard for non-Convention law in matters not determined by the Convention,

**RECOGNISING** the importance of the integrity of a securities issue in a global intermediated environment in order to ensure the exercise of investors' rights and to enhance their protection;

**RECOGNISING** that this Convention does not limit or otherwise affect the powers of Contracting States to regulate, supervise or oversee the holding and disposition of intermediated securities or any other matters expressly covered by the Convention, except in so far as such regulation, supervision or oversight would contravene the provisions of this Convention,

**RECOGNISING** the importance of intermediaries in the application of this Convention and the need of Contracting States to regulate their activity and supervise the compliance by intermediaries with their regulations.

**HAVE AGREED** upon the [...]

## 2. AMENDMENT OF ARTICLE 10

### Article 10

#### *Measures to enable account holders to receive and exercise rights*

1. An intermediary must take appropriate measures to enable its account holders to receive and exercise the rights specified in Article 9(1).

#### 2. An intermediary must, at least

– Protect account holder securities and intermediated securities credited to an account, as provided in Article 24(1);

– Allocate securities or intermediated securities to account holders so as to be unavailable to an intermediary's creditors, as provided in Article 25(2)

– Give effect to any instructions given by the account holder, as provided by the non-Convention law and the account agreement;

– Not dispose of securities credited to a securities account without instruction or without authorisation by the non Convention law, as provided in Article 15;

– Regularly pass on information to account holders relating to their securities or intermediated securities, including information necessary for the account holder in order to exercise his rights, as provided by the non-Convention law and the account agreement;

– Pass on any income, as for example dividends and interests, flowing from the securities to the account holder, if and as provided by the non-Convention law and the account agreement;

23. This Convention does not require the relevant intermediary to establish a securities account with another intermediary or to take any action that is not within its power.

## 3. AMENDMENT OF ARTICLE 15

### Article 15

#### *Unauthorised ~~debts or designating entries~~ dispositions*

1. An intermediary may make a debit of securities to a securities account, or a designating entry or remove a designating entry, or dispose of securities using a method allowed under Article 13 only if it is authorized to do so:

(a) in respect of a debit or the disposition of securities by a method allowed under Article 13, by the account holder and, if applicable, the person [ . . ].

2. The non-Convention law and, to the extent permitted by the non-Convention law, the account agreement or the uniform rules of a securities settlement system determine the consequences of an unauthorised debit, or an unauthorised removal of a designating entry, or, subject to Article 18(2), an unauthorised designating entry, or the unauthorised disposition by a method allowed under Article 13.

**4. AMENDMENT OF ARTICLE 24(1)**<sup>1</sup>*Article 24**Holding or availability of sufficient securities*

1. An intermediary must, for each description of securities, hold or have available ~~for the benefit of its account holders, other than itself,~~ securities and intermediated securities of an aggregate number or amount equal to the aggregate number or amount of securities of that description credited to securities accounts which it maintain for ~~such its~~ its account holders and, if applicable, credited to securities accounts which it maintains for itself.

2. [...]

**5. AMENDMENT OF ARTICLE 28(1) AND (2)***Article 28**Obligations and liability of intermediaries*

1. The obligations of an intermediary under this Convention, including the manner in which an intermediary complies with its obligations, may be specified by the non-Convention law and, to the extent permitted by the non-Convention law, the account agreement or the uniform rules of a securities settlement system. If the substance of any such obligation is ~~addressed~~ specified<sup>2</sup> by any provision of the non-Convention law or, to the extent permitted by the non-Convention law, the account agreement or the uniform rules of a securities settlement system, compliance with that provision satisfies that obligation.

2. The liability of an intermediary in respect of its obligations is governed by the non-Convention law and, to the extent permitted by the non-Convention law, the account agreement or the uniform rules of a securities settlement system. Liability may not be excluded for gross negligence or wilful misconduct.

– END –

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<sup>1</sup> There is a need to amend Articles 25 and 26 accordingly.

<sup>2</sup> The term “specified” shall not be understood in the sense that the relevant law or account agreement must refer to a particular Article or obligation covered by the Convention.